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I. INTRODUCTION

Significant technological advancements resulting from collaborative research and clinical activities have made The University of Texas M.D. Anderson Cancer Center a world leader in cancer research and patient care. Such technological advancements benefit cancer patients and, if successfully protected and commercialized, may provide significant sponsored research funding and royalty income. Under UT System and M.D. Anderson policies, 50% of royalty income flows back to inventors personally and 25% flows to their laboratories. M.D. Anderson inventors also may own equity in companies that commercialize their inventions.

The purpose of this Manual is to facilitate the rapid, efficient and effective transfer of technological advancements from the laboratory to patients' bedsides through commercialization. A copy of this Manual is distributed by the Office of Technology Development to each member of the faculty (other employees will be issued a copy upon request). Key issues are presented on the following page and the Director and staff of the Office of Technology Development are available to answer questions or assist Employees in securing and completing the documents referred to in this Manual.

Technology development, as used in this Manual, is the process of identifying, protecting, evaluating, marketing and transferring technology (Intellectual Property) created by M.D. Anderson employees to private industry. Intellectual Property is a valuable asset, and as such, it must be managed and protected to ensure its value to the patient, the inventor and M.D. Anderson.

M.D. Anderson has established a Technology Development Program for this purpose, and a Technology Development Board that is central to the implementation of the Program. The Board ensures executive review and endorsement of technology development opportunities and the impact of those opportunities on the programs and resources of M.D. Anderson, and monitors and endorses all ongoing projects and agreements. The Board approves all matters of policy, responsibility and process in regard to technology development. Reporting to the President, the Board is composed of the Vice President for Research or designee, the Vice President for Patient Care or designee, the Vice President for Academic Affairs or designee, the Associate Vice President for Business Affairs, one faculty representative from basic research, one faculty representative from the clinical divisions, and is chaired by the Executive Vice President for Administration and Finance or designee.

The Technology Development Program is governed by the Policies defined in Section II of this manual; these are in turn based upon the policies of M.D. Anderson and the UT System, the specifics of which are included in Appendices A through E in Volume II. M.D. Anderson's Technology Development Policies are implemented through the organizational responsibilities and the process defined in Sections III and IV, respectively. Users of this Manual are encouraged to be thoroughly familiar with it and its Appendices, the M.D. Anderson Employee's Guide to Technology Development (available from the Office of Technology Development), and the policies and procedures of the Office of the Vice President for Research (available from the Office of Research).

To be truly useful, this Manual should be considered as a dynamic tool, continually reflecting the best collective efforts of all participants involved and interested in an efficient and effective Technology Development Program at M.D. Anderson. Please address questions and suggestions for change or improvement to:

William J. Doty, Director
Office of Technology Development, Box 510
(713) 792-7598

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16 An employee includes all persons employed by The University of Texas M.D. Anderson Cancer Center, anyone using its facilities under the supervision of M.D. Anderson personnel, and postdoctoral and predoctoral fellows.

17 Intellectual Property is any invention, discovery, trade secret, technology, scientific or technological development, computer software or forms of expression in a tangible form created by an employee.
II. KEY ISSUES

• What do I do if I invent something?

As soon as you determine that you have made a discovery, fill out and sign an Invention Disclosure Report and forward it to the Office of Technology Development, Box 510 (call 2-7598 for assistance). If unsure that you have an invention (complete data is not always necessary), call 2-7598 for assistance.

• Am I required to disclose all of my inventions to M.D. Anderson?

Yes, if the invention was made on M.D. Anderson time, or made using M.D. Anderson resources, or is related to your employment responsibilities. If not, the invention is yours to keep and do with as you wish.

• When may I publish my invention?

If patent protection is to be sought, publication should be coordinated so that it takes place after the application has been filed to prevent loss of foreign patent rights.

If you have a short publication deadline, call the Office of Technology Development at 2-7598 so that the patent application process can be expedited if necessary.

• When may I disclose my invention to non-M.D. Anderson personnel?

Such disclosures also should be coordinated so that they take place after patent application; the disclosures should be made only if accompanied by a Confidential Disclosure Agreement executed by the recipient of the disclosure (contact the Office of Technology Development at 2-7598 for assistance).

• What happens after I disclose an invention to M.D. Anderson?

Your invention will be evaluated by the Office of Technology Development for commercialization potential and if warranted, may be evaluated by fellow faculty members for scientific merit and utility and by patent legal counsel for patentability.

If M.D. Anderson does not assert rights to your invention, rights it will be returned to you within six (6) months of receiving a completed Invention Disclosure Report.

If M.D. Anderson asserts rights to your invention it may be submitted to legal counsel for patent application if it appears to be patentable, has been licensed (or has sufficient commercial potential), and is in compliance with the mission of the institution. You probably will be involved with the attorneys in this process.

If a company, investor or venture capitalist desires to have rights to commercialize your invention, the Office of Technology Development will work with you and negotiate the appropriate Technology Development contracts (with legal assistance from the UT System Office of General Counsel).

• Who may be involved in reviewing and approving Technology Development contracts?

- Your Department Chairman and Division Head (program and resource matters)
- The Associate Vice President for Business Affairs (business and financial matters)
- The Technology Development Board (executive, program, resource, policy and, equity matters)
- The UT System Office of General Counsel (legal matters)
- The UT System Office of Asset Management (equity matters)
- The UT System Health Affairs Vice Chancellor’s Office (UT System approval)
- The UT System Board of Regents (Board approval)

Sponsored Research contracts also require approved protocols and checklists (contact the Office of Research for details).

The transfer of biological materials into or out of your lab are to be done under a Material Transfer Agreement (contact the Office of Sponsored Programs for details).

• May I own equity or sit on the Board of Directors or other governing board, or work as an employee or consultant for a company that is commercializing my invention?

Yes, as long as you receive prior approval from the Executive Vice President for Administration and Finance and the
U.T. System Board of Regents. You must follow UT System and M.D. Anderson's conflict of interest and outside employment policies and guidelines (refer to the Handbook of Operating Procedures). You also are required to annually report these types of equity holdings and outside employment activities as of Aug. 31 to the Office of Technology Development.

• **How can I learn more about the policies, responsibilities and process related to intellectual property as/or technology development?**

Become familiar with this Manual and the Employees and Private Industry Users Guides, and/or contact the Office of Technology Development at 2-7598.
III. POLICIES

A. Ownership

- The UT System Board of Regents retains ownership of all rights to M.D. Anderson intellectual property and shall assert and exploit its interests through M.D. Anderson unless otherwise conveyed to others under an authorized and properly executed contract.

- Within six (6) months of receiving a complete Invention Disclosure Report, intellectual property rights that M.D. Anderson declines to exploit will be returned in whole or in part to the employee/creator(s), subject to M.D. Anderson and UT System rights (refer to Appendix D, Vol. II, for details).

B. Equity/Royalty Income

- With prior written approval, M.D. Anderson employees may own equity interests and sit on Boards of Directors in companies that are formed to commercialize their inventions (refer to Appendix A, Vol. II, for details).

- 50% of income from the commercialization of M.D. Anderson's intellectual property will be given to employees who discover or create that intellectual property (refer to Appendix B, Vol. II, for details).

C. Documentation/Protection

- All discoveries (intellectual property) shall be fully documented by the creator(s) in bound notebooks with respect to relevant times, places, events, participants and witnesses and shall be maintained in a secure location and disclosed to others only as authorized in this manual.

- All intellectual property shall be promptly and candidly disclosed by employee/creators to the Office of Technology Development prior to publication through a journal, abstract, poster session, seminar or other public disclosure to allow, if appropriate, the protection process to begin as soon as possible and thereby minimize the impact upon academic freedom.

- Within six (6) months of receiving a complete Invention Disclosure Report, the assertion of rights and patent protection in the U.S. will be sought, provided that patent protection is available and the cost of such protection is reasonable compared to the derived benefits (including non-monetary benefits) and provided the assertion of rights is approved in writing by the President.

- Generally, patent protection for intellectual property will not be sought unless a private industry organization is available to bear the costs.

D. Authorized Disclosures

- Except for grant applications and manuscripts submitted for publication, no confidential information or intellectual property may be given by an employee to a person not directly employed by M.D. Anderson without having that person first sign a Confidential Disclosure Agreement (available from the Office of Technology Development). If such person desires any change in the Confidential Disclosure Agreement as a condition of signature, prior written approval must be obtained from Office of Technology Development.

- Commitments to any non-M.D. Anderson person or business regarding rights to M.D. Anderson's confidential information or intellectual property can only be made by written contract signed by the Associate Vice President for Business Affairs.

- Authorized disclosures to non-M.D. Anderson recipients shall be limited to providing such information as is minimally necessary to interest the recipient in the future development of the intellectual property.

- Any inadvertent disclosures to non-M.D. Anderson recipients shall be promptly reported to the Office of Technology Development; verbal reports shall be promptly followed by a written report prepared by the employee/creator.

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18 The Policies on Intellectual Property summarized in this section are based upon: The UT System Intellectual Property Policy (Appendix A); The M.D. Anderson Cancer Center Policies on Income Sharing (Appendix B); Name Use (Appendix C); Reversion of Rights of Inventors (Appendix D); and the UT System Business Procedure No. 45-11-90 (Appendix E) all of which appear in the Technology Development Program Manual Vol. II.

19 A contract is a written and executed legal document reflecting the obligations and rights of two or more parties.
E. Commercialization

- Evaluation and marketing of intellectual property will be conducted by the Office of Technology Development.

- Intellectual property shall be marketed in a manner that balances short-term and long-term returns to M.D. Anderson consistent with its mission, goals and objectives.

- Intellectual property that is sufficiently attractive to venture capitalists or other investors may be marketed as equity joint venture opportunities.

- Marketing efforts will seek to include reimbursement of costs, royalty income (including bonus or milestone payments), stock or stock options, sponsored research funding, facilities and equipment when possible and appropriate.

- All commercialization of M.D. Anderson’s intellectual property shall be the subject of written and duly authorized and executed contracts, including license agreements and equity joint venture agreements.

F. Contract Approvals and Signatures

- Technology Development contracts will be based upon standard forms adopted and pre-approved by M.D. Anderson and the UT System to the greatest extent possible, so as to facilitate M.D. Anderson, UT System, and Board of Regents review, approval and signature.

- No contract is valid until all appropriate M.D. Anderson and UT System reviews have been completed and all appropriate signatures have been secured, and fully executed copies distributed to the contract parties.

- Contracts that materially conform to relevant UT System and M.D. Anderson policies and guidelines and do not involve equity ownership by M.D. Anderson or its employees can be approved and signed by the UT System Office of General Counsel and the Executive Vice Chancellor for Health Affairs’ Office for the Board of Regents. All other contracts must also be approved and signed by the UT System Board of Regents as an agenda item at one of the Board’s quarterly meetings. Contracts which involve equity ownership by M.D. Anderson or an M.D. Anderson employee must also be approved and signed by the UT System Office of Asset Management prior to submission to the Board of Regents.

IV. RESPONSIBILITIES

A. President (or his designee) is responsible for:

- Making recommendations to the UT System regarding the assertion and exploitation of the UT System’s interest in intellectual property.

- Approving and/or signing all technology development contracts.

B. The Technology Development Board is responsible for:

- Monitoring the assertion, and exploitation and protection of UT System intellectual property rights or the return of those rights to the inventor by the Office of Technology Development.

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20 An equity joint venture is a collaborative arrangement between M.D. Anderson and a private industry organization wherein M.D. Anderson owns an equity share of a for-profit enterprise.

21 A royalty is a payment made to the owner of a patent or copyright for its use.

22 A license is a grant of rights by one party to another for specific purposes and is usually done under a written contract.

23 Refer to Exhibit A for the Technology Development Organizational Chart.
• Monitoring the commercialization of intellectual property by the Office of Technology Development.

• Endorsing resource commitments and program impacts, if any, that may be required for the commercialization of intellectual property, as recommended by the Office of Technology Development, and recommending same to the President for approval.

• Endorsing term sheets and standard contracts developed by the Office of Technology Development.

• Approving terms sheets and non-standard contracts developed by the OTD.

C. Selected Faculty members are responsible for:
• Reviewing, under confidentiality, the scientific merit and utility of Invention Disclosure Reports submitted by inventors through the Office of Technology Development and making recommendations to the Office of Technology Development.

D. Associate Vice President for Business Affairs is responsible for:
• Establishing and maintaining a program of technology development through the Office of Technology Development to commercialize employee discoveries.

• Providing sufficient resources to carry out the Technology Development Program.

• Approving all non-standard term sheets and technology development contracts recommended by the Office of Technology Development and forwarding them to the Executive Vice President for Administration and Finance for execution (pending endorsement by the Technology Development Board).

• Executing the Employee Royalty Sharing Forms for each License contract.

E. Office of Technology Development is responsible for:
• Establishing and maintaining an organization that effectively and efficiently facilitates, coordinates and manages the assessment and commercialization of intellectual property.

• Developing, implementing and executing a program to identify intellectual property at an early stage, reviewing publications and meeting with faculty on a regular basis to aid the discovery process; initiating, and/or assisting in the preparation of disclosures of intellectual property by employees; establishing and maintaining an inventory of intellectual property.

• Identifying products or services associated with intellectual property, determining the market potential of such products and services, and assessing their probable success and determining whether UT System should assert or return rights to each complete invention disclosure.

• Documenting resources which may be required for commercialization of the intellectual property and the potential impact on any existing or planned programs.

• Identifying and evaluating business opportunities related to intellectual property.

• Signing Confidential Disclosure and Option Agreements.

• Preparing Technology Development term sheets and contracts and securing their approval from the Associate Vice President for Business Affairs and their execution by the Executive Vice President for Administration and Finance (pending approval of the Technology Development Board for non-standard contracts).

• Negotiating all technology development contracts and securing their execution and approval.

• Reporting monthly on Technology Development Program results and activities to the Board and other interested parties.

• Conducting educational programs for employees regarding technology development, periodically updating this and other manuals and sharing them with other state and federal agencies or institutions, and participating in
educational programs to aid them in their technology development programs.

F. M.D. Anderson Employees are responsible for:
- Using their best efforts to create ideas, concepts, products, processes or services which may benefit M.D. Anderson, its patients, its employees or other parties.
- Promptly disclosing intellectual property to the Office of Technology Development.
- Documenting relevant times, places, events and participants regarding the creation of intellectual property, securing witnesses and their signatures on the documentation, providing secure safekeeping of documentation.
- Answering all questions and providing additional information requested by the Technology Development Board, the Office of Technology Development, the Associate Vice President for Business Affairs or the U. T. System Office of General Counsel outside legal counsel.

V. PROCESS\textsuperscript{24}

A. Discovery
The technology development process begins with the discovery or development of intellectual property. It is important for employees to recognize the value of their efforts and seek protection for it; when in doubt as to the appropriateness or timing of disclosure, the Office of Technology Development should be contacted for advice.

B. Documentation
Under United States patent laws, conflicting patent claims are generally settled on the basis of first to invent (patents are issued on the basis of the date of invention, as opposed to date of patent application filing). Therefore, it is imperative that any employee who creates intellectual property fully document such creation as to time, date, place and co-creators. See the *Intellectual Property/Employees' Guide to Technology Development* Handbook for additional information on obtaining a patent, inventorship, record keeping, timeliness and when to disclose.

C. Disclosure
The disclosure process is designed to document your invention and to initiate the protection process (if appropriate) and to protect employees from inadvertently conveying intellectual property to outside parties, which may diminish its value.

M.D. Anderson Employee
- Complete, sign and date an Invention Disclosure Report or forward to the Office of Technology Development.
- If a private industry organization expresses an interest in the intellectual property, contact the Office of Technology Development immediately. Do not disclose any proprietary information to the organization without first preparing an Invention Disclosure Report and securing a signed Confidential Disclosure Agreement (both available from the Office of Technology Development).

Office of Technology Development
- Receive and/or prepare Invention Disclosure Reports; ensure that the Invention Disclosure Report is completed, signed, dated and logged into the Intellectual Property Inventory System.
- If a private industry organization has expressed an interest in the intellectual property and wishes to review a description on a non-confidential basis, prepare (with review and approval of inventors) a non-confidential statement.
- If a private industry organization has expressed an interest in the intellectual property, prepare and execute a Confidential Disclosure Agreement.
- Monitor any information disclosed to any private industry or organization under a Confidential Disclosure Agreement.

D. Protection

\textsuperscript{24} See Exhibit B for an Overview of the Technology Development Process.
Generally, intellectual property has limited value if it is in the public domain. Therefore, to ensure maximization of intellectual property assets, M.D. Anderson shall seek protection of its intellectual property when licensed or otherwise economically warranted.

Office of Technology Development

Using outside patent legal counsel assess patentability of intellectual property and, when warranted, request the filing and prosecution of patent applications.

E. Evaluation

Not all of M.D. Anderson's intellectual property will be commercially feasible or of sufficient interest to private industry. Further, due to resource limitations and/or program impacts, M.D. Anderson may not be able to pursue all possible opportunities. This may result in some opportunities being licensed to private industry while other opportunities remain dormant.

Office of Technology Development

- From the Invention Disclosure Report, identify potential products or services, determine their market potential and assess the probability of success for licensing.
- Based upon the commercial evaluation and/or recommendations from faculty reviewers regarding scientific merit and utility, and recommendations from outside patent legal counsel regarding patentability, decide whether to assert or return rights.

F. Marketing

The value of protected intellectual property is best enhanced by the further development, manufacturing and distribution provided by private industry. Therefore, the Office of Technology Development has an active program to promote intellectual property to private industry.

G. Sponsored Research Support

Private industry sponsored research can be an important adjunct to M.D. Anderson's basic and clinical research programs associated with technology development. A licensee of M.D. Anderson's Intellectual Property often desires to support research at M.D. Anderson. With a long history of private industry supported research, M.D. Anderson presently has in place policies and procedures to govern acceptance of such support. See the Office of the Vice President of Research for specifics.

H. Contracting

The initial objective of Technology Development's efforts is a contract with private industry to commercialize intellectual property; the ultimate objective is a product or service that benefits M.D. Anderson's patients and/or research, education and prevention programs.

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25 Public domain refers to information that is not subject to legal protection from use by the public, such as information that has no patent or copyright protection.
Office of Technology Development

- Negotiate and execute a term sheet with a private industry organization.
- Negotiate contracts, secure signatures from the private industry organization, the UT System Office of General Counsel, the U. T. System Office of Asset Management (equity deals), and prepare a final term sheet.
- Forward contracts and final term sheets to the Associate Vice President for Business Affairs for approval execution and forwarding to the Executive Vice President for Administration and Finance for execution.
- Forward fully-executed contracts and term sheets to the Office of Sponsored Agreements and U.T. System Office of General Counsel for further handling.
- Forward standard technology development contracts to the Technology Development Board for monitoring.
- Forward non-standard technology development contracts to the Technology Development board for review and approval.
- Coordinate scheduling and record and distribute minutes of all Technology Development Board meetings.

Associate Vice President for Business Affairs

- Seek input and counsel from appropriate division heads and department chairman and approve technology development contracts and forward to Executive Vice President for Administration and Finance for execution.
- As appropriate, prepare and have executed the Employee Royalty Sharing Form.

Technology Development Board

- Monitor standard technology development contracts submitted by the Office of Technology Development.
- Review and approve non-standard technology development contracts.

I. MONITORING

Once a technology development contract becomes effective, the Office of Technology Development will monitor the activities of the licensee and will report significant events or issues to the Associate Vice President for Business Affairs and the Technology Development Board.
VI. EXHIBITS

A. Technology Development Organization Chart
B. Technology Development Board
EXHIBIT A

M.D. ANDERSON CANCER CENTER
TECHNOLOGY DEVELOPMENT
ORGANIZATION CHART

David J. Bachrach
Executive Vice President
Admin. & Finance

Willian Doty
Director

Cheryl McCants
Mgr. Patent Administration

Donna Nance
Executive Assistant

Carla Strobel
Admin. Assistant I

Karen Francis
Licensing Specialist

Karl Qin
Licensing Specialist
EXHIBIT B

The M.D. Anderson Technology Development Board

The Technology Development Board is appointed by the President and is composed of the following members:

- The Executive Vice President for Administration and Finance
- The Vice President for Research or designee
- The Vice President for Patient Care or designee
- The Vice President for Prevention or designee
- The Vice President for Academic Affairs or designee
- The Associate Vice President for Business Affairs
- Faculty Representative from Basic Research
- Faculty Representative from the Clinical Divisions
- The Medical Director for Industry Sponsored Research
- Associate Vice President for Public Affairs (ex-officio)
- Director of the Office of Technology Development (ex-officio and staff support for the Board)
- UT System Office of General Counsel, Manager of Intellectual Property (ex-officio)
ATTACHMENT A

THE UNIVERSITY OF TEXAS
M.D. ANDERSON CANCER CENTER

TECHNOLOGY DEVELOPMENT BOARD
BYLAWS

PURPOSE
The M.D. Anderson Cancer Center has established a Technology Development Program to identify, protect, evaluate, market and transfer UT System intellectual property created by M.D. Anderson employees. M.D. Anderson has established a Technology Development Board ("Board"), and an Office of Technology Development to implement the Program and to assure compliance with the Rules and Regulations of the Board of Regents of The University of Texas System.

The Technology Development Board endorses agreements developed by the Office of Technology Development and the impact of those agreements on the reputation, programs and resources of M.D. Anderson. The Technology Development Board approves all matters of policy, priorities, responsibilities and processes related to technology development and monitors all ongoing technology development activities and projects.

The Office of Technology Development conducts the necessary economic and business evaluations, completes the required staff work, initiates patent searches and applications, provides patent administrative support, develops term sheets and agreements, recommends priorities, policies, responsibilities and processes, and selects one or more faculty to review the scientific merit and utility of new inventions that have commercial potential.

The UT System Office of General Counsel, through the Manager of Intellectual Property and external legal counsel, provide patent legal counsel to the Technology Development Board and the Office of Technology Development.
APPOINTMENTS/REPORTING REQUIREMENTS/MEMBERSHIP

The Technology Development Board is appointed by and reports to the President. It is composed of the following members:

- Executive Vice President for Administration and Finance
- Vice President for Research or designee
- Vice President for Patient Care or designee
- Vice President for Academic Affairs or designee
- Vice President for Prevention or designee
- Associate Vice President for Business Affairs
- One Faculty Representative from Basic Research
- One Faculty Representative from the Clinical Divisions
- Medical Director for Industry Sponsored Research
- Associate Vice President for Public Affairs (ex-officio)
- Director of the Office of Technology Development (ex-officio and staff support for the Board)
- UT System Office of General Counsel, Manager of Intellectual Property (ex-officio)

RESPONSIBILITIES

The Technology Development Board is responsible for:

- Monitoring patent searches and applications initiated by the Office of Technology Development.
- Monitoring the assertion, exploitation and protection of UT System intellectual property rights or the return of those rights to the inventor by the Office of Technology Development.
- Monitoring the commercialization of intellectual property and the priorities set by the Office of Technology Development.
- Endorsing resource commitments and program impacts, if any, that may be required for the commercialization of intellectual property, as recommended by the Office of Technology Development, and recommending same to the President for approval.
- Endorsing standard term sheets and contracts developed by the Office of Technology Development.
- Approving non-standard term sheets and contracts developed by the Office of Technology Development.
- Endorsing the use of outside organizations to evaluate and market intellectual property as recommended by the Office of Technology Development.
MEETINGS AND MINUTES

- The Technology Development Board will meet on an as needed basis, or as determined by the Chairman of the Technology Development Board.

- A majority of the voting members constitute a quorum for the conduct of official business.

- Minutes documenting the issues considered and the actions taken and relevant information items shall be maintained in an official file by the Office of Technology Development. A copy of such minutes will be provided to each member of the Technology Development Board.

AMENDMENTS

- Proposals to the President to recommend amendments to the Bylaws of the Technology Development Board may be made by the approval of at least 2/3 of the voting Technology Development Board members voting by written ballet or in person.

- Proposed amendments to be considered by the Technology Development Board shall be distributed in writing to each Technology Development Board member sufficiently in advance of a scheduled meeting so as to allow adequate consideration by Technology Development Board members.
VII. APPENDICES

A. The U.T. System Intellectual Property Policy
B. The M.D. Anderson Cancer Center Policy on Income Sharing
C. The M.D. Anderson Cancer Center Policy on Name Use
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H. The M.D. Anderson Cancer Center Standard Patent License Agreement
I. The M.D. Anderson Cancer Center Standard Confidential Disclosure Agreement
A. U.T. SYSTEM INTELLECTUAL PROPERTY POLICY

2.4 Intellectual Property Policy

2.41 Statement of Basic Philosophy and Objectives.

While the discovery of patentable processes or inventions and the creation of other intellectual property is not the primary objective of the System, for any such discoveries or creations, it is the objective of the Board to provide an intellectual property policy which will encourage the development of inventions and other intellectual creations for the best interest of the public, the creator, and the research sponsor, if any, and that will permit the timely protection and disclosure of such intellectual property whether by development and commercialization after securing available protection for the creation, by publication or both. The policy is further intended to protect the respective interest of all concerned by ensuring to the public, to the inventor, to the System and to sponsors of specific research in varying degrees of protection, monetary return and recognition, as circumstances justify or require.

2.411 Each component institution may develop in its Handbook of Operating Procedures additional policies and rules covering the subject matter of this section not inconsistent with this section or other policies or procedures adopted by the Board.

2.42 General Policy

2.421 The intellectual property policy as adopted shall apply to all persons employed by the component institutions of the System, to anyone using System facilities under the supervision of System personnel, and to postdoctoral and predoctoral fellows.

2.422 This policy shall apply to intellectual property of all types (including any invention, discovery, trade secret, technology, scientific or technological development, or computer software) regardless of whether subject to protection under the patent, trademark or copyright laws. This policy shall not apply to faculty or staff authored written or visual work, except computer software, produced in the author's professional field, which property shall be owned by the creator; nor shall the policy apply to intellectual property produced as a work for hire in the performance of a contractor with the System or as a part of an employee's assigned work responsibilities, which property shall be owned by the Board.

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26 Part Two, Chapter V, Section 2.4 of the Rules and Regulations of the Board of Regents of The University of Texas System, as amended through December 7, 1989.
2.423 It is the intent of this policy to permit the creator of intellectual property maximum freedom in respect to their creations, consistent with their obligations to the System. Any person affected by this policy who as a result of his or her activities creates intellectual property other than on certain government or other sponsored research projects, where individual grant agreements provide otherwise, should have a major role in the ultimate determination of how it is to be made public - by publication, by development and commercialization after securing available protection for the creation, or both.

2.424 Property rights in intellectual property will be based on the degree of System support, as hereinafter specified.

2.425 The System, with the cooperation of the component institution, will provide review and management services for patentable inventions as well as other intellectual property either by its own staff, through a related foundation, or by other means.

2.426 It is a basic policy of the System that intellectual property be developed primarily to serve the public interest. This objective usually will require development and commercialization by nonexclusive licensing but the public interest may best be promoted by the granting of a limited exclusive license or even an exclusive license for the period of the patent. These determinations will be recommended and made in accordance with the administrative procedures hereinafter set out and with approval of the Board.


2.431 Patent Committees: To help administer the intellectual property policy at each component institution and to make recommendations to chief administrative officers for further referral to the System Administration and the Board (in those cases when action by the System Administration and/or the Board is required), Institutional Patent Committees shall be established as directed by the Office of the Chancellor. Each institution at its option may use the term "Intellectual Property Committee" in lieu of the "Patent Committee".

2.432 System Intellectual Property Office: To assist the Institutional Patent Committees to provide advice to individual faculty and staff members in intellectual property matters
and to coordinate details in respect to procedures for protecting and marketing intellectual property, a System Intellectual Property Office shall be established.

### 2.44 Classification of Discoveries by Source of Research Support

**2.441** Intellectual property that is unrelated to the individual's employment responsibility, has been developed as a result of the individual's efforts on his or her own time, with no System support or use of System's facilities.

**2.442** Intellectual property that is related to the individual's employment responsibility, or has resulted either from activities performed by the individual on System time, or with support by State funds, or from using System facilities.

**2.443** Intellectual property that has resulted from research supported by a grant or contract with the Federal Government or an agency thereof, a nonprofit or for profit nongovernmental entity or by a private gift to the System.

### 2.45 Property Rights and Obligations.

**2.451** Intellectual property unrelated to the individual's employment responsibility that is developed on an individual's own time and without System support or use of System facilities (see 2.441) is the exclusive property of the creator, and the System has no interest in any such property and no claim to any profits resulting therefrom. Should the creator choose to offer the creation to the System, the Institutional Patent Committee shall recommend as to whether the System should support and finance a patent application or other available protective measures and manage the development and commercialization of the property. If the creator makes the offer after obtaining a patent or other protection, the Institutional Patent Committee shall recommend as to whether the System should reimburse the creator for expenses in obtaining such protection. If the Institutional Patent Committee recommends and the creation is accepted for management by the System, the procedures to be followed and the rights of the parties shall be those set out in Subsection 2.4523 following.

**2.452** Intellectual property either related to the individual's employment responsibility, or resulting from activities performed on System time, or with support by State funds, or from using System facilities shall be subject to ownership by the Board. (See 2.442)

**2.4521** Before intellectual property covered by Section 2.422 is disclosed either to the public or for commercial purposes, and before publishing same, the creator shall submit such intellectual property to the Institutional Patent Committee for determination of the
System's interest. A component institution may establish guidelines in its Handbook of Operating Procedures for submitting different categories of intellectual property to its Institutional Patent Committee, and procedures to be followed by the Institutional Patent Committee in reviewing and evaluating such submissions. Such guidelines and procedures shall be consistent with this policy and shall be subject to approval as a part of the institutional Handbook of Operating Procedures by the Office of General Counsel, the Office of the Chancellor, and the Board. In those instances, however, where delay would jeopardize obtaining the appropriate protection for the property, the creator may, with the approval of the Chairman of the Institutional Patent Committee and the chief administrative officer, file a patent application or take other steps to obtain available protection prior to the Committee and administrative review provided in the following two subsections. If the request is granted, the creator may proceed with the filing of a patent application or other available protective measures pending the determination of the System's interest; provided, however, that the creator shall be reimbursed for expenses in filing the patent application or taking other steps to obtain protection if the decision of the System is to assert and exploit its interests. The Chairman of the Institutional Patent Committee shall notify the System Intellectual Property Office of any such application.

2.4522 If the Institutional Patent Committee recommends that the System not assert and exploit its interest, and that recommendation is approved the System Intellectual Property Office and the appropriate Executive Vice Chancellor, the creator shall be notified within ninety (90) days of the date of submission that he or she is free to obtain and exploit a patent or other intellectual property in his or her own right and the System shall not have any further rights, obligations or duties thereto. (In some instances, the Committee may elect to impose certain limitations or obligations, dependent upon the degree of System support.)

2.4523 If the System decides to patent or seek other available protection for intellectual property in which it decides to assert and exploit its interest, it shall proceed either through its own efforts or those of an appropriate private firm or attorney to obtain protection and manage the intellectual property. Under appropriate circumstances, and the consent of the Vice Chancellor and General Counsel and the approval of the Attorney General, component institutions may arrange to have services to obtain protection for intellectual property performed by a local outside attorney on a case-by-case basis. It shall be mandatory for all employees, academic and nonacademic, to assign the rights to intellectual property and patents to the Board when such creations fall within Paragraph 2.452. In those instances where the System licenses rights in intellectual property to third parties, the costs of licensing and obtaining a patent or other protection for the property on behalf of the Board shall first be recaptured from any royalties received by the System, and the remainder of such royalty income (including license fees, prepaid
royalties and minimum royalties) shall be divided as follows:

50% to creator
50% to System.

With the prior approval of the Board as an agenda item, a component institution may include provisions in its Handbook of Operating Procedures to adjust the allocation of royalties set forth herein, but in no event shall the creator receive more than 50% or less than 25% of such proceeds. The division of royalties from patents or other intellectual property managed by an intellectual property management concern will be controlled by the terms of the System's agreement with such concern, as approved by the Board. Any other deviation from this rule requires the prior approval of the Board.

2.453 Intellectual property resulting from research supported by a grant or contract with the Federal Government, or an agency thereof, with a nonprofit or for profit nongovernmental entity, or by a private gift or grant to the System shall be subject to ownership by the Board. (See 2.443.)

2.4531 Administrative approval of application requests to, and acceptance of grants or contracts with, the Federal Government or any agency thereof, with a nonprofit or for profit nongovernmental entity, or a private donor that contain provisions that are not consistent with this policy, or other policies and guidelines adopted by the Board from time to time implies a definite decision that the value to the System of receiving the grant or performing the contract outweighs the impact of any non-conforming provisions of the grant or contract on the basic intellectual property policies and guidelines of the System.

2.4532 The intellectual property policies and guidelines of the System are subject to, and thus amended and superseded by, the specific terms pertaining to intellectual property rights included in Federal grants and contracts, or grants and contracts with nonprofit and for profit nongovernmental entities or private donors, to the extent of any conflict.

2.4533 In those instances where it is possible to negotiate System-wide intellectual property agreements with the Federal agencies or nonprofit and for profit nongovernmental entities, or private donors and thereby obtain more favorable treatment for the creator and the System, every effort will be made to do so with the cooperation and concurrence of the Office of Asset Management and the Intellectual Property Office after consultation with the Institutional Patent Committee and the chief administrative officer.

2.4534 Employees of the System whose intellectual property creations result from a grant or
contract with the Federal Government, or any agency thereof, with a non-profit or for-profit nongovernmental entity, or by private gift to the System shall make such assignment of such creations as is necessary in each case in order that the System may discharge its obligation, expressed or implied, under the particular agreement.

2.46 Equity Interests.

2.461 In agreements with business entities relating to rights in intellectual property owned by the Board, the System may receive equity interests as partial or total compensation for the rights conveyed.

2.462 Consistent with Section 51.912, Texas Education Code, and subject to review and approval by the chief administrative officer of the component institution, the appropriate Executive Vice Chancellor, the Chancellor and the Board, employees of the System who conceive, create, discover, invent or develop intellectual property may hold an equity interest in a business entity that has an agreement with the System relating to the research, development, licensing or exploitation of that intellectual property.

2.463 The System may negotiate, but shall not be obligated to negotiate, an equity interest on behalf of any employee as a part of an agreement between the System and a business entity relating to intellectual property conceived, created, discovered, invented or developed by the employee and owned by the Board.

2.464 Dividend income and income from the sale or disposition of equity interests held by the Board pursuant to agreements relating to intellectual property shall belong to the System and shall be distributed in accordance with the provisions of Section 2.50 below.

2.465 Dividend income and income from the sale or disposition of an equity interest held by a System employee pursuant to an agreement between the System and a business entity relating to rights in intellectual property conceived, created, discovered, invented or developed by such employee shall belong to the employee.

2.47 Business Participation.

2.471 Any System employee who conceives, creates, discovers, invents or develops intellectual property shall not serve as a member of the board of directors or other governing board or as an officer or an employee (other than as a consultant) of a business entity that has an agreement with the System relating to the research, development, licensing, or exploitation of that intellectual property without prior review.
2.472 When requested and authorized by the Board, an employee may serve on behalf of the Board as a member of the board of directors or other governing board of a business entity that has an agreement with the System relating to the research, development, licensing or exploitation of intellectual property.

2.48 Reporting

2.481 Any employee covered by Section 2.462, 2.471 or 2.472 shall report in writing to the chief administrative officer of the component institution, or to such other person as may be designated by the chief administrative officer, the name of any business entity as referred to therein in which the person has an interest or for which the person serves as a director, officer or employee and shall be responsible for submitting a revised written report upon any change in the interest or position held by such person in such business entity. These reports shall be accumulated in the office of the Chief Administrative Officer or designee and then forwarded to the appropriate Executive Vice Chancellor by September 1 of each year so that the Office of the Chancellor may file a report with the Board at its October meeting. After the report has been approved by the Board, the Office of the Chancellor shall prepare the report to the Governor and the Legislature required by Section 51.912 (c), Texas Education Code.

2.49 Approval of Agreements Relating to Rights in Intellectual Property.

2.491 Agreements relating to rights in intellectual property shall ordinarily be approved by the Board on the institutional docket following review by the Office of General Counsel and approval by the chief administrative officer of the component institution and the appropriate Executive Vice Chancellor and the Chancellor.

2.492 Any agreement altering substantially the basic intellectual property policy of the System as set out in the preceding sections and other policies and guidelines that may be adopted by the Board shall have the advance approval of the chief administrative officer, the appropriate Executive Vice Chancellor, the Chancellor, and the Board as an agenda item. Such an alteration in a sponsored research agreement shall not be considered substantial and may be approved by the Board on the institutional docket if, in the judgment of the chief administrative officer and with the concurrence of the appropriate Executive Vice Chancellor, the benefits from the level of funding for the proposed research and/or other consideration from the sponsor outweigh any potential disadvantage that may result from the policy deviation.
2.50 **Income from Intellectual Property.**

The portion of the net income the System retains from royalties and any other intellectual property-related income shall be used first to defray the expenses, if any, of the System Intellectual Property Office and thereafter, as approved by the Board, for research purposes at the component institutions where the income providing creation originated. At the option of a component institution, such income may be accumulated in an endowment fund administered by the Office of Asset Management with the income to be distributed to the component institution for such purposes as may be approved by the Board.

2.51 **Implementation of Intellectual Property Policy.**

The Office of Asset Management and the Office of General Counsel through the System Intellectual Property Office shall prepare and distribute to the component institutions such Model Agreements and recommended procedures as may be considered appropriate for the implementation of the provisions of this policy as well as other policies and guidelines adopted by the Board.

2.52 Unless otherwise required by law or the Regents’ Rules and Regulations, each intellectual property agreement approved hereunder shall be construed in accordance with the Intellectual Property Policy in existence as of its approval date.
Background

The current institutional policy relative to disbursement of royalties received is for the inventor to receive 50% of all royalties after payment of expenses in gaining the patent. The remaining dollars are to be provided to the inventor's department (25%), to the inventor's vice president (20%), and to our technology development department (5%).

Example:

$100,000 royalty received by institution
$ 40,000 cost for patent protection
$ 60,000 to be distributed pursuant to policy

MDACC Distribution:

$ 30,000 to inventor
$ 15,000 to inventor's, department
$ 12,000 to inventor's vice president
$  3,000 to technology development department

Issue

There are no dollars available to cover the costs of patents that do not produce royalties or for new patents. Fiscal management has allowed the patent royalty account to run in overdraft and is currently at a deficit totaling $734,763. An account analysis shows the following:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royalty Receipts</td>
<td>$449,327</td>
</tr>
<tr>
<td>Expenses related to patents</td>
<td>(958,615)</td>
</tr>
<tr>
<td>Payments to Inventors</td>
<td>(225,476)</td>
</tr>
<tr>
<td>Account Balance @ 1/11/90</td>
<td>($734,764)</td>
</tr>
</tbody>
</table>

Fiscal Note

The current policy does not provide for sufficient dollars to flow back to the patent fund. The recommended policy will provide for cost recovery on all patents, with those patents providing royalties covering expenses for those that do not financially succeed. If our current policy is not changed, the deficit position of our patent fund will become a greater problem to solve.

Recommendation
It is recommended that a share of the institution's portion of the royalty distribution go toward defraying the cost of other patents. It is recommended that the 20% share that is, under current policy, dedicated to the inventor's vice president be distributed instead to defray the cost of patents that have not been fiscally successful.

The recommended policy would distribute royalty proceeds as follows:

100% to patent fund until all costs on that patent are paid

Amounts received after full cost recovery will be distributed as follows:

- 50% to the inventor
- 25% to the inventor's department
- 20% to the patent fund
- 5% to our technology development department

This policy will take effect with all patent activity after February 1, 1990. The existing deficit will be covered by a year end allocation of available funds. While the proposed plan will reduce the need for such special allocations in the future, it will not eliminate it entirely.

The endorsement of the PEB is recommended.

Executive Board Action

The Board approved the policy on a two-year trial basis with the modification that the policy will take effect with all patent activity from February 1, 1990 through January 31, 1992. After that period, it was agreed that the institution would return to the original patent policy.

Implementation

Mr. Bachrach will implement this item and was asked to make a report on the status of patent lawyers for M.D. Anderson.
C. M.D. ANDERSON CANCER CENTER POLICY ON NAME USE

Policy Regarding
Procedure For Obtaining A License
To Use Names and Marks

The various names, trademarks, and service marks related to the Cancer Center (e.g., “The University of Texas M.D. Anderson Cancer Center;” “M.D. Anderson Cancer Center;” “M.D. Anderson;” and the “Cancer Center” logo) are owned by The University of Texas System Board of Regents. Entities licensed by the Board of Regents may use a specific name or mark for specified goods or services.

The procedure for the processing of requests to license the Cancer Center’s names and marks is as follows:

1. Requests for a names/marks license should be made through the Office of Technology Development. Requests must specify the names and/or marks sought to be licensed and must define the services and/or products with which the names and/or marks will be used. All other license agreements must contain the following clause:

   The Company shall not have the right to use in any way any photograph of any Cancer Center facility or employee or any trademark, service mark, or name of Cancer Center or U.T. System, including but not limited to: The University of Texas M.D. Anderson Cancer Center; Anderson; M.D. Anderson; and the Cancer Center logo. Requests to license Cancer Center’s names or marks will be forwarded to the Director, Office of Technology Development, at the Cancer Center and then to the Office of General Counsel of The University of Texas System.

2. The Office of Technology Development, once it approves the request for further processing, will forward it along with other pertinent information to the Associate Vice President for Public Affairs for review and approval.

3. Following approval by the Associate Vice President for Public Affairs, the request will be forwarded to Legal Affairs for review and approval.

4. Following approval by the Executive Vice President for Administration and Finance, the Office of Technology Development will submit the request to the President’s Executive Board and the President.

5. Following the approval of the Board and the President, the request will be forwarded to the U.T. System Office of General Counsel for review and approval.
6. After all approvals are obtained and an affirmative decision has been made in accordance with all Cancer Center and U.T. System policies, an executed license agreement will be presented by the Cancer Center to the Board of Regents as an Agenda Item for approval.
D. M.D. ANDERSON CANCER CENTER POLICY ON REVERSION OF RIGHTS TO INVENTOR(S)

Background

Occasionally a decision is made not to exploit intellectual property developed at the Cancer Center. When this occurs, certain rights can revert to the inventors who can then patent and exploit the property as they wish.

Issue

Section 2.4522 of The University of Texas System Intellectual Property Policy States:

"If the Institutional Patent Committee recommends that the system not assert and exploit its interest, and that recommendation is approved by the System Intellectual Property Office and the Office of the Chancellor, the creator shall be notified within ninety days of the date of submission that he or she is free to obtain and exploit a patent or other intellectual property in his or her own right and the System shall not have any further rights, obligations or duties thereto. In some instances, the Committee may elect to impose certain limitations or obligations, dependent upon the degree of System support."

The Cancer Center may, at its election, retain any rights in an invention including a non-exclusive right to the intellectual property on behalf of itself and all related entities, including system and all components of System. This would also include any related entities and their sublicensees, or subsidiaries.

When the Cancer Center has determined that it does not wish to exploit its interest in the intellectual property, and does not invest any funds in protection or development of said property, then all rights except as noted above can revert to the inventor. The inventor may then exploit the property as desired.

Fiscal Note

None.

Recommendation

It is recommended that the President's Executive Board approve the policy.

Executive Board Action

The Board agreed with the issue and approved the policy as amended and included herein.

Implementation
Mr. Bachrach will implement this item.

**Policy**

Following U. T. System approval, all rights to the intellectual property that are not affirmatively pursued, retained, or exploited by the Cancer Center revert to the inventor with the Page 2 rev of rights freedom to exploit as desired. The Cancer Center shall retain a non-exclusive right to make and use said intellectual property for itself, U. T. System, all System components, and any of their related entities and their sublicensees. All agreements and other legal vehicles by which rights revert to inventors will include language retaining the non-exclusive rights listed here. Rights reverting to an inventor will be conveyed by a formal letter agreement executed by the inventor(s) and by the President or his designee. Once any rights revert to an inventor, the Cancer Center will have nothing to do with attempts to commercialize the intellectual property; no Cancer Center personnel will have any role as an agent or on behalf of the Cancer Center in such attempts; no Cancer Center resources will be expended in such attempts; and no reference to the Cancer Center may be made in relation to the intellectual property or in attempts to commercialize or advertise it.
E. THE U.T. SYSTEM POLICY ON OUTSIDE EMPLOYMENT

13.1 Members of the faculty or staff of component institutions should not be discouraged from accepting appointments of a consultative or advisory capacity with governmental agencies, industry, or other educational institutions. The consideration to the System of such activity is the improvement of the individual by virtue of his or her continuing contact with non-academic problems in the non-academic world.

13.2 Members of the faculty or staff should be discouraged from accepting regular employment with units outside the System because this action would be divisive of loyalties and does not provide the return to the institutions indicated in 13.1.

13.3 Conflict of interest should be avoided in all instances of outside employment, but conflict of interest in an academic institution means outside activity which intrudes upon the academic functions of teaching, scholarly activities, and service to the institution.

13.4 Even in the case of members of the staff specifically engaged only in residence work, there exists an obligation, usually intermittent, to furnish expert knowledge and counsel for public benefit free of charge, provided that the meeting of this obligation by a faculty or staff member does not interfere with his or her regular duties, and provided further that in meeting this obligation a faculty or staff member on full-time duty shall avoid undue competition with legitimate private agencies.

13.5 No member of the faculty or staff engaged in outside remunerative activities shall use in connection therewith the official stationery of the System or any of its component institutions, or give as a business address any building or department of the institution.

13.6 No member of the faculty or staff accept employment or any position of responsibility if the discharge of such employment or responsibility will be antagonistic to the interests of the State of Texas or the System or any of its component institutions.

13.7 Every member of the faculty or staff who gives professional opinions must protect the System and its component institutions against the use of such opinions for advertising purposes. That is, when the employee does work in a private capacity, the employee must make it clear to those who employ him or her that the work is unofficial and that the name of the System and it component institutions is not in any way to be connected with the employee’s name, exceptions being made of the name of the author attached to books, pamphlets, and articles in periodicals.

16Sec. III.13 from the U.T. System Handbook of Operating Procedures.
13.8 No member of the faculty or staff shall accept pay from private persons or corporations for tests, assays, chemical analyses, bacteriological examinations, or other such work of a routine character, which involve the use of property owned by the system or its component institutions, unless advance permission has been obtained from the chief administrative officer and provision has been made for compensation to the System or its component institutions.

13.9 No member of the full-time staff of the System on a twelve-month or nine-month basis shall be employed in any outside work or activity or receive from an outside source a regular retainer fee or salary until a description of the nature and extent of the employment has been filed with an approved by appropriate administrative officials as set forth in the institutional Handbook of Operating Procedures of each component institution. For special provisions relating to other state or federal employment, see Subsections 13.(10), 13.(11), 13.(12) of this Section.

13.(10) Subject to the other provisions of this Section, a member of the faculty or staff may hold other non-elective offices or positions of honor, trust, or profit with the State of Texas or the United States if holding the other offices or positions is of benefit to the State of Texas or is required by state or federal law, and if there is no conflict between holding the office or position and holding the original office or position for which the member of the faculty or staff receives salary or compensation.

13.(11) Before a number of the faculty or staff may accept an offer to serve in other non-elective offices or positions of honor, trust, or profit with the State of Texas or the United States, the member of the faculty or staff must obtain from the appropriate administrative officials and the Board a finding that the requirements or this Section have been fulfilled, including the expected additional compensation to be received from such service. The finding of the Board shall be recorded in the official minutes of the meeting of the Board at which approval was granted.

13.(12) The chief administrative office must keep a record of compensation received from additional state or federal employment, or both, including specifically: salary, bonuses, and per diem or other type of compensation.
F. U.T. SYSTEM BUSINESS PROCEDURE MEMORANDUM NO. 45-11-90

TO: Distribution List

SUBJECT: PROCEDURES FOR PROCESSING SPONSORED RESEARCH AGREEMENTS

I. Agreements Requiring No U.T. System Review Prior to Execution

A. The following types of sponsored research agreements need not be sent to the appropriate Executive Vice chancellor or to the Office of General Counsel prior to execution:

1. Standard sponsored research agreements so designated by the Office of General Counsel;

2. Standard sponsored research agreements with specified nonsubstantive modifications as determined by the chief administrative officer or approved designee;

3. Company universal agreements pre-approved as to form as uniform agreements by the Office of General Counsel;

4. Company universal agreements with specified nonsubstantive modifications as determined by the chief administrative officer or an approved designee; and

5. Renewal or specified extension of previously approved sponsored research agreements continuing the same or related research.

B. The agreements listed above require administrative approval by the appropriate Executive Vice Chancellor prior to inclusion in the institutional docket in accordance with Regents' requirements for docket approval.

The request for administrative approval must be accompanied by a certification from the chief administrative officer in a form specific for the type of agreement submitted. (Attachments A-E)

II. Agreements Requiring U.T. System Administration Review and Approval Prior to Execution

A. A photocopy of all other proposed sponsored research agreements must be forwarded
to the appropriate Executive Vice Chancellor for U.T. System Administration review and approval pursuant to the Regents' Rules prior to execution.

B. Each agreement shall be accompanied by one of the following:

1. A form certification (Attachment F) from the chief administrative officer for agreements where no intellectual property is anticipated or

2. A form letter (Attachment G) for all other agreements.

C. Pursuant to the Regents' Rules and as outlined in Item III of these Procedures, the appropriate Executive Vice Chancellor will determine if a submitted agreement may be included in the institutional docket following administrative approval or if the agreement requires approval via submission to the U. T. Board of Regents as an Agenda Item.
D. The component institution may send the original signed sponsored research agreement to the sponsor after administrative approval for inclusion in the institutional docket. If agenda approval is required, the document may not be executed until after U. T. Board of Regents’ approval.

NOTE: Component institutions are encouraged to contact the Office of General Counsel directly for legal advice and assistance at any stage of negotiation or contract preparation. Institutions should contact the Office of General Counsel upon identification of all proposed agreements that should be developed as company universal agreements.

III. Approval of Agreements by the U. T. Board of Regents

A. The following agreements may be approved for inclusion in the institutional docket after administrative approval:

1. Specified sponsored research agreements (see attached Forms A - F);

2. Certain sponsored research agreements containing alterations to the Intellectual Property Policy or Guidelines (pursuant to the Regents’ Rules and the criteria in Article IV of these Procedures).

B. All other agreements altering the Intellectual Property Policy or Guidelines must be submitted to the U. T. Board of Regents for approval as Agenda Items.

IV. Criteria for Docket Submission of Certain Agreements

The following guidelines should be considered in order for sponsored research agreements containing alterations to the Intellectual Property Policy or Guidelines to be submitted to the U.T. Board of Regents for approval on the institutional docket pursuant to Subdivision 2.492, Chapter V, Part Two of the Regents' Rules because the benefits from the level of funding for the proposed research and/or other consideration from the sponsor outweigh any potential disadvantage that may result from the policy deviation:

A. In the event that funding is conditioned on the grant to the sponsor of a royalty-free, non-exclusive license or other substantial intellectual property right, it is important that fair value be received for such rights because the State of Texas cannot subsidize private research. Consequently, consideration from the sponsor should include the following:

1. Funding and/or other consideration (whether received in the form of cash,
equipment, services or supplies) should have an estimated value of at least $50,000; and

2. Overhead should be included at the rate normally charged by the component institution.

B. Any grant of rights, whether in data, inventions or intellectual property, should be limited to results of research (a) conducted by the identified investigators; (b) directly funded by the sponsor; (c) arising directly from the performance of the agreement; and (d) arising during the term of the agreement.

C. The proposed agreement must indemnify the component institution and The University of Texas System and their Regents, officers, agents, representatives and employees (including the principal and other investigators) against any claim, loss or judgment arising from the sponsor’s exercise of rights with respect to or use of the research results.

D. The likelihood of patentable inventions and significant potential commercial benefits arising from the research should be carefully considered.

E. The proposed agreement must conform with the Constitution and applicable laws of the State of Texas and applicable federal laws and regulations.

F. The proposed research should comport with legitimate academic and university research interests, should not incur unrelated business income tax liability, and should not be conducted solely for the proprietary interests of the sponsor.

The procedures outlined in this memorandum are effective April 1, 1990.

Attachments (transmittal forms A-G)
U.T. SYSTEM SPONSORED RESEARCH TRANSMITTAL FORM A

STANDARD SPONSORED RESEARCH AGREEMENT

Institution: 

Dr. 
Executive Vice Chancellor for 

The University of Texas System
601 Colorado Street
Austin, Texas 78701

RE: Agreement with (__________)-(__________) Investigator

Dear Dr. :

We request your administrative approval of an executed agreement with _________________.

Description of project follows, to include:

1. Title of Project: ____________________________
2. Principal Investigator(s): ____________________________
3. Description of Project: ____________________________
4. Amount of Sponsorship: ____________________________
5. Term of Agreement: ____________________________

The agreement is a standard sponsored research agreement in the form approved by the Office of General Counsel.

Sincerely,
U.T. SYSTEM SPONSORED RESEARCH TRANSMITTAL FORM B

STANDARD SPONSORED RESEARCH AGREEMENT WITH NONSUBSTANTIVE MODIFICATIONS

Date:__________________
Institution:__________________

Dr. __________
Executive Vice Chancellor for
__________ Affairs
The University of Texas System
601 Colorado Street
Austin, Texas  78701

RE: Agreement with (__________) - (__________) Investigator

Dear Dr. __________:

We request your administrative approval of an executed agreement with ________________.

The agreement is a standard sponsored research agreement with nonsubstantive modifications as follows:

1.

2.

3.

This agreement has been reviewed at the institutional level and the modifications to this agreement do not, in my judgment, render the agreement nonconforming to the U.T. System Intellectual Property Policy or Guidelines concerning sponsored research agreements.

Sincerely,
Approved Designee
Attachment
(1 photocopy of agreement)

____________________________
Chief Administrative Officer (or

____________________________
APPROVED

By:__________________________
        U.T. System

Date:__________________________

UTS/4/1/90-B
U.T. SYSTEM SPONSORED RESEARCH TRANSMITTAL FORM C

COMPANY UNIVERSAL AGREEMENT
Date:______________

Institution:______________

Dr.______________
Executive Vice Chancellor for
_________ Affairs
The University of Texas System
601 Colorado Street
Austin, Texas 78701

RE: Agreement with (__________) - (__________) Investigator

Dear Dr.______________:

We request your administrative approval of an executed agreement with _________________.

Description of project follows, to include:

1. Title of Project:______________________________

2. Principal Investigator(s):______________________________

3. Description of Project:______________________________

4. Amount of Sponsorship:______________________________

5. Term of Agreement:______________________________

The agreement is a current company universal agreement with ________________ approved by the Office of General Counsel.

Sincerely,
Chief Administrative Officer (or Approved Designee)

______________________________  
APPROVED

By: ________________________
   U.T. System

Date: ________________________

UTS4/1/90-C
U.T. SYSTEM SPONSORED RESEARCH TRANSMITTAL FORM D

COMPANY UNIVERSAL AGREEMENT WITH NONSUBSTANTIVE MODIFICATIONS

Date:____________________
Institution:____________________

Dr. ________________
Executive Vice Chancellor for
__________ Affairs
The University of Texas System
601 Colorado Street
Austin, Texas  78701

RE: Agreement with (__________) - (__________) Investigator

Dear Dr. __________:

We request your administrative approval of an executed agreement with _____________.

The agreement is a company universal agreement with _____________ approved by the Office of
General Counsel with nonsubstantive modifications as follows:

1.

2.

3.

This agreement has been reviewed at the institutional level and the modifications to this agreement do
not, in my judgment, render the agreement nonconforming to the U.T. System Intellectual Property
Policy or Guidelines concerning sponsored research agreements.

Sincerely,

____________________________________
Approved Designee

Attachment
(1 photocopy of agreement)

______________________________
APPROVED

By: ________________________
    U.T. System

Date: ________________________

UTS/4/1/90-D
U.T. SYSTEM SPONSORED RESEARCH TRANSMITTAL FORM E

RENEWAL OR EXTENSION OF PREVIOUSLY APPROVED SPONSORED RESEARCH AGREEMENT
(CONTINUING THE SAME OR RELATED RESEARCH)

Date:______________
Institution:______________

Dr. _______________
Executive Vice Chancellor for
_______ Affairs
The University of Texas System
601 Colorado Street
Austin, Texas 78701

RE: Agreement with (____________) - (____________) Investigator

Dear Dr. ______________:

We request your administrative approval of an executed agreement with ________________.

Description of project follows, to include:

1. Title of Project:__________________________________________________________

2. Principal Investigator(s):________________________________________________

3. Description of Project:___________________________________________________

4. Amount of Sponsorship:___________________________________________________

5. Term of Agreement:_____________________________________________________

The agreement is a renewal or extension of a sponsored research agreement executed on __________
and previously approved for submission in the institutional docket on ____________________.

Sincerely,
Attachment
BPM 45-11-90

U.T. SYSTEM SPONSORED RESEARCH TRANSMITTAL FORM F

REQUEST FOR U.T. SYSTEM REVIEW                      Date:______________
(Conforming Agreement)                          Institution:______________

Dr. ______________
Executive Vice Chancellor for
____________ Affairs
The University of Texas System
601 Colorado Street
Austin, Texas 78701

RE: Agreement with (________) - (________) Investigator

Dear Dr. ______________:

Please review the attached proposed sponsored research (or clinical study) agreement with __________
______________________________________________________________

The proposed agreement has been reviewed at the institutional level. Intellectual property provisions of
the agreement, if any, are confined to rights to inventions arising from performance of the agreement. In
my judgment

\[\begin{align*}
&\text{no intellectual property is anticipated to result from performance of the project.} \\
&\text{intellectual property may be anticipated to result from performance of the project.}
\end{align*}\]

With regard to indemnification provision,

\[\begin{align*}
&\text{indemnification language is the standard indemnification language approved by the Office of}
&\text{General Counsel.} \\
&\text{no indemnification is required because the sponsor has neither furnished nor required the use of}
&\text{materials, processes, or procedures.}
\end{align*}\]

Sincerely,
(Approved Designee)

Attachments

1) 2 photocopies of agreement
2) All attachments to agreement
   (other than protocols)

__________________________________________
Approved as conforming to the Regents'
Rules concerning intellectual property

By: ___________________________  By: ___________________________

Date: ___________________________  Date: ___________________________

OGC/IP File # __________
UTS 4/1/90-F
U.T. SYSTEM SPONSORED RESEARCH TRANSMITTAL FORM G

REQUEST FOR U.T. SYSTEM REVIEW                                               Date:______________
(Nonconforming Agreement)                                                Institution:______________

Dr. __________________
Executive Vice Chancellor for
__________________ Affairs
The University of Texas System
601 Colorado Street
Austin, Texas 78701

RE: Agreement with (_________) - (_________) Investigator

Dear Dr. ______________:

Please review the attached proposed agreement with ____________________________.

In my judgment,

\[
\begin{align*}
\text{no intellectual property is anticipated to result from performance of the project.} \\
\text{intellectual property may be anticipated to result from performance of the project.}
\end{align*}
\]

The proposed agreement has been reviewed at the institutional level, and the following deviations from the U.T. System Intellectual Property Policy or Guidelines concerning sponsored research agreements are identified:

__________________________________________________________________________

__________________________________________________________________________  Explanations that may be helpful to the resolution of any outstanding issues related to the agreement (if any) are attached to this letter.

The individual(s) we have worked with at the sponsoring company are ________________

__________________________________________________________________________  (I/We understand that the Office of General Counsel will not contact the sponsoring company unless and until this institution requests O.G.C. to do so.)
If appropriate in light of criteria specified in Item IV of "Procedures for Processing Sponsored Research Agreements":

It is my opinion that the benefits from the level of funding for the proposed research and/or other consideration from the sponsor outweigh any potential disadvantage that may result from policy deviation(s).

Further considerations are as follows:__________________________________________

__________________________________________

Sincerely,

_______________________________
Chief Administrative Officer (or Approved Designee)
Attachments

1) 2 photocopies of agreement
2) All attachments to agreement
   (other than protocols)

________________________________________

APPROVED

By: __________________________
   U.T. System

Date: __________________________

UTS/4/1/90-G
INVENTION DISCLOSURE REPORT

The purpose of this INVENTION DISCLOSURE REPORT (IDR) is to:

• provide a complete description of an Invention as written by the Inventor(s)
• serve as the basis for evaluation of patentability and commercial potential by the Office of Technology Development
• serve as the basis for evaluation of scientific merit and utility by the Intellectual Property Committee.
• serve as the basis for patent application(s)

Evaluation of the patentability of an Invention is based upon application of patent law and U.S. Patent and Trademark Office practice. The primary patentability criteria are "novelty" and "non-obviousness." The Invention Disclosure Report must fully, completely, and accurately describe and document the invention and the creative inventors and describe the novel features that make the invention different from anything else. The Invention Disclosure Report must also document that existing public information would NOT result in an obvious idea similar to the Invention to someone else "skilled in the art."

IN ORDER TO ENSURE THAT M.D. ANDERSON'S PROPRIETARY RIGHTS AND VALUES ARE NOT LOST AND THAT PUBLICATION IS NOT UNNECESSARILY DELAYED, AN INVENTION SHOULD BE DISCLOSED AS SOON AS CONCEIVED AND/OR REDUCED TO PRACTICE. WITHIN 180 DAYS OF RECEIPT OF AN INVENTION DISCLOSURE REPORT THAT IS COMPLETE IN ALL RESPECTS, M.D. ANDERSON, THROUGH THE OFFICE OF TECHNOLOGY DEVELOPMENT WILL DETERMINE WHETHER OR NOT TO ASSERT RIGHTS TO THE INVENTION, OR TO RETURN RIGHTS TO THE INVENTOR(S).

Should you have any questions, please call the Office of Technology Development at 2-7598 or refer to M.D. Anderson's Handbook of Operating Procedures Volume II, Section M.

Please mail the completed Invention Disclosure Report to:

William J. Doty, Director
Office of Technology Development
Box 510, FBB 1405, 792-7598
(Revised 12/95)
THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER
INVENTION DISCLOSURE REPORT

Please do not write on the back of any page. Attach additional pages as required. This form is available on diskette in Wordperfect (Windows). Call 2-7598 for information.

1. a. Description/Title of Invention:

   b. Key word Descriptions of Invention (max.five):

2. Name of Inventor(s):

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<th>Div/Dept/</th>
<th>% Creative</th>
<th>Employer/</th>
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<td>Phone</td>
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3. Contribution: briefly describe each inventors' association with the invention, i.e. exactly what creative action/activity he/she contributed to the invention (you may attach an extra sheet if you need more space).

   a.  
   b.  
   c.  
   d.  
   e.  
   f.  

4. a. Date the invention was conceived (when you first thought of it or made the key observation):

   b. Is the invention described in a meeting, poster session or seminar, or in a published paper or abstract (or submitted for publication)?

      Yes______ No _______ If Yes, please provide the following information:

      i) Name of Journal/Meeting:
      ii) Date of submission (unless already published):
      iii) Date of Publication (estimate if only submitted):
      iv) Date of Electronic Publication (in full or abstract) on Internet, World-Wide-Web, Gopher Site, Subscriber Service etc. (if you're not sure, contact the publisher or meeting site):
      iv) Was the disclosure sufficient to allow someone else to duplicate the invention?
          _____ Yes          _____ No
c. Date you made the first drawing, design, formulation, construction or model, if applicable:

d. Date of the first use of the invention, if applicable:

5. Was the development of the Invention (or any of the inventors) supported IN ANY WAY (equipment, funding, materials, etc.) by a Gift, Grant or Contract?

   a. Yes __________ No __________ If Yes, complete b and c:

   b. Gift/Grant Information (Company, Institution, Government Agency, or Private Foundation):

      Funding Source ____________________________
      Project Title: ____________________________
      Number ________ MDA Acct No. ______________

   c. Contract Information (Private Industry Material Transfer and/or Sponsored Research):

      Sponsor Name ______________________________
      Project Title ______________________________
      Contract No. ______________________________
      Contact Name ______________________________ Phone: ____________________________

   Please continue on a separate sheet if you used more than one funding source, or if you used a funding source other than provided for here.
6. How much money to date has been spent on the development of this technology?

7. Please provide names of M.D. Anderson faculty/staff who have sufficient technical knowledge in this field to serve as a scientific reviewer of your invention.

8. Please respond to items 8a through k on a separate attachment:

   a. Please explain what the invention does or how it could be used.

   b. Please explain how the invention works.

   c. Please explain how the invention is an improvement over the way things were done before (better results, easier to use, etc.) or whether it permits something completely new to be done.

   d. Please summarize the results of your in vitro and in vivo experiments.

   e. If your invention is an experimental observation (a new biological effect, a purified protein, a DNA sequence, a new therapeutic or diagnostic method, etc.) please attach your experimental procedures and data. For example, you may attach a manuscript in preparation.

   f. If your invention is a device, please include a sketch, drawing, circuit diagram, photograph, etc. Does a prototype exist? ___ yes ___ no

   g. Please describe the products or services that could be sold based upon your invention.

   h. Please explain your Clinical Development Plans: What are the steps that must be taken to complete the basic research and pre-clinical research (toxicology, pharmacokinetics, tissue distribution, animal efficacy, etc.)? Which steps will you perform and which steps will be done by collaborators and who are they?

   i. Please prepare a budget (as you would in a grant application) with your best estimate of the time and cost (salaries, fringe benefits, materials and supplies, equipment and travel) to complete the research and get this invention to the first phase of clinical testing.
j. Please suggest companies that might be interested in producing products or services using your invention; if known, please provide the name, address, and phone number of a contact person at each company.

k. Please attach a bibliography of the references that you are aware of that are relevant to your invention, including all relevant articles by any of the inventors (PLEASE ENCLOSE COPIES OF EACH REFERENCE). Please explain how each reference is similar to or different from your invention.

SIGNATURE OF INVENTOR(S)

_____________________________________________

Date

_____________________________________________

Date

_____________________________________________

Date

_____________________________________________

Date

_____________________________________________

Date
H. M.D. ANDERSON CANCER CENTER STANDARD PATENT LICENSE AGREEMENT

PATENT AND TECHNOLOGY LICENSE AGREEMENT

THIS _______ ( ) Page AGREEMENT ("AGREEMENT") is made by and between the BOARD OF REGENTS ("BOARD") of THE UNIVERSITY OF TEXAS SYSTEM ("SYSTEM"), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER ("MDA"), a component Institution of the SYSTEM and ____________________________, a _______________________ corporation having a principal place of business located at ________________________________ ("LICENSEE").

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RECITALS

A. BOARD owns certain PATENT RIGHTS and TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER, which were developed at MDA, a component institution of SYSTEM.

B. BOARD desires to have the LICENSED SUBJECT MATTER developed in the LICENSED FIELD and used for the benefit of LICENSEE, the inventor, BOARD, and the public as outlined in the Intellectual Property Policy promulgated by the BOARD.

C. LICENSEE wishes to obtain a license from BOARD to practice LICENSED SUBJECT MATTER.

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

I. EFFECTIVE DATE

1.1 This AGREEMENT shall be effective as of ______________________ subject to approval by BOARD (“EFFECTIVE DATE”).

II. DEFINITIONS

As used in this AGREEMENT, the following terms shall have the meanings indicated:

2.1 AFFILIATE shall mean any business entity more than 50% owned by LICENSEE, any business entity which owns more than 50% of LICENSEE, or any business entity that is more than 50% owned by a business entity that owns more than 50% of LICENSEE.

2.2 LICENSED FIELD shall mean ______________________ within the LICENSED SUBJECT MATTER.

2.3 LICENSED PRODUCTS shall mean any product or service SOLD by LICENSEE comprising LICENSED SUBJECT MATTER pursuant to this AGREEMENT.

2.4 LICENSED SUBJECT MATTER shall mean inventions and discoveries defined herein as PATENT RIGHTS or as TECHNOLOGY RIGHTS.

2.5 LICENSED TERRITORY shall mean ______________________ in which LICENSED PRODUCTS are sold by LICENSEE.

2.6 NET SALES shall mean the gross revenues received by LICENSEE from the SALE of LICENSED PRODUCTS less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount).

2.7 PATENT RIGHTS shall only mean any and all of BOARD’S rights in information or discoveries claimed in invention disclosures, patents, and/or patent applications, whether domestic or foreign, and all divisionals, continuations, continuations-in-part, reissues, reexaminations or extensions thereof, and any letters patent that issue thereon as defined in Exhibit I hereto subject to the limitations, if any, set forth therein.

2.8 SALE or SOLD shall mean the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or an AFFILIATE.

2.9 Subject to the limitations, if any, set forth in Exhibit I hereto, TECHNOLOGY RIGHTS shall mean BOARD’S rights in any technical information, know-how, process, procedure, composition, device,
method, formula, protocol, technique, software, design, drawing or data created by the inventors listed in Exhibit I hereto and relating to LICENSED SUBJECT MATTER which is not claimed in PATENT RIGHTS but which is necessary for practicing PATENT RIGHTS regardless of whether any patent is actually issued during the term of this AGREEMENT.

III. LICENSE

3.1 BOARD hereby grants to LICENSEE a royalty-bearing, exclusive license under LICENSED SUBJECT MATTER to manufacture, have manufactured, use and/or sell LICENSED PRODUCTS within LICENSED TERRITORY for use within LICENSED FIELD and, subject to Paragraph 4.5 herein, shall extend to BOARD's undivided interest in any LICENSED SUBJECT MATTER developed during the term of this AGREEMENT and jointly owned by BOARD and LICENSEE. This grant shall be subject to Paragraph 14.2 and 14.3, hereinbelow, the payment by LICENSEE to BOARD of all consideration as provided in Paragraph 4.2 of this AGREEMENT, (as well as the timely payment of all amounts due under any Sponsored Research Agreement between MDA and LICENSEE in effect during the term of this AGREEMENT) and shall be further subject to rights retained by BOARD and MDA to:

(a) Publish the general scientific findings from research related to LICENSED SUBJECT MATTER; and

(b) Subject to the provisions of ARTICLE XI herein below, use any information contained in LICENSED SUBJECT MATTER for research, teaching, patient care, and other educationally-related purposes.

3.2 LICENSEE shall have the right to extend the license granted herein to any AFFILIATE provided that such AFFILIATE consents to be bound by this AGREEMENT to the same extent as LICENSEE.

3.3 Subject to the Paragraph 3.4 herein below, LICENSEE shall have the right to grant sublicenses under LICENSED SUBJECT MATTER consistent with the terms of this AGREEMENT provided that LICENSEE shall be responsible for its sublicensees relevant to this AGREEMENT, and for diligently collecting all amounts due LICENSEE from sublicensees. In the event a sublicensee pursuant hereto becomes bankrupt, insolvent or is placed in the hands of a receiver or trustee, LICENSEE, to the extent allowed under applicable law and in a timely manner, agrees to use its best reasonable efforts to collect any and all consideration owed to LICENSEE and to have the sublicense agreement confirmed or rejected by a court of proper jurisdiction.

3.4 LICENSEE agrees to either:

(a) deliver to BOARD for BOARD’S approval a true and correct copy of any sublicense granted by LICENSEE, and any modification or termination thereof, within thirty (30) days after execution, modification, or termination; and upon termination of this AGREEMENT, any and all sublicenses granted by LICENSEE and approved by BOARD shall be assigned to BOARD; or

(b) deliver to BOARD for BOARD’S information a true and correct copy of each sublicense granted by LICENSEE, and any modification or termination thereof, within thirty (30) days after execution, modification, or termination; and upon termination of this AGREEMENT, any and all existing sublicenses granted by LICENSEE and not approved by BOARD shall be terminated, unless otherwise agreed to in writing by BOARD.

IV. CONSIDERATION, PAYMENTS AND REPORTS

4.1 In consideration of rights granted by BOARD to LICENSEE under this AGREEMENT, LICENSEE agrees to pay MDA the following:
(a) ___________ Dollars ($_________) for all out-of-pocket expenses incurred by MDA through filing, prosecuting, enforcing and maintaining PATENT RIGHTS licensed hereunder, and all future expenses incurred by MDA, for so long as, and in such countries as, this AGREEMENT remains in effect. MDA will invoice LICENSEE upon approval of this AGREEMENT by BOARD, and upon a quarterly basis thereafter beginning ___________ for expenses incurred by MDA after ___________ and the amounts invoiced will be due and payable by LICENSEE within thirty (30) days thereafter; and

(b) A non-refundable license documentation fee in the amount of $_____________, which shall not reduce the amount of any other payment provided for in this ARTICLE IV, and which shall be due and payable within thirty (30) days after approval of this AGREEMENT by BOARD as invoiced by MDA; and

(c) A non-refundable quarterly license maintenance fee of ___________ Dollars ($_____________), payable until the first sale of LICENSED PRODUCTS and such fee shall not reduce any other payment provided for in this ARTICLE IV, and which shall be invoiced by MDA and payable by LICENSEE concurrently with the future quarterly payments for MDA's out-of-pocket expense as provided for in Paragraph 4.1(a) hereinabove; and

(d) A running royalty equal to ___________ percent (___%) of LICENSEE's NET SALES of LICENSED PRODUCTS in the LICENSED TERRITORY, and ___________ percent (___%) of LICENSEE'S NET SALES of LICENSED PRODUCTS outside of LICENSED TERRITORY (within minimum annual royalties of $_____________), and fifty percent (50%) of all consideration other than Research and Development ("R&D") money received by LICENSEE from any sublicensee pursuant to Paragraphs 3.3 and 3.4 herein above, including but not limited to royalties, up-front payments, marketing, distribution, franchise, option, license, or documentation fees, bonus and milestone payments and equity securities, payable within thirty (30) days after March 31, June 30, September 30, and December 31, at which time LICENSEE shall also deliver to BOARD and MDA a true and accurate report, giving such particulars of the business conducted by LICENSEE and its sublicensee, if any exist, during the preceding three (3) calendar months under this AGREEMENT as are pertinent to an account for payments hereunder. Such report shall include at least (a) the quantities of LICENSED PRODUCTS that it has produced; (b) the total SALES, (c) the calculation of royalties thereon; and (d) the total royalties so computed and due BOARD. Simultaneously with the delivery of each such report, LICENSEE shall pay to BOARD the amount, if any, due for the period of such report. If no payments are due, it shall be so reported. Should LICENSEE be obligated to pay running royalties to third parties to avoid infringing such third parties' patent rights which dominate BOARD'S PATENT RIGHTS, LICENSEE may reduce the running royalty due MDA by such running royalties to such third parties, provided, however, the running royalty due MDA shall in no case be less than one-half the rates stated hereinabove.

4.2 During the Term of this AGREEMENT and for one (1) year thereafter, LICENSEE shall keep complete and accurate records of its and its sublicensees' SALES and NET SALES of LICENSED PRODUCTS to enable the royalties payable hereunder to be determined. LICENSEE shall permit BOARD or its representatives, at BOARD'S expense, to periodically examine its books, ledgers, and records during regular business hours for the purpose of and to the extent necessary to verify any report required under this AGREEMENT. In the event that the amounts due to BOARD are determined to have been underpaid in an amount equal to or greater than five percent (5%) of the total amount due during the period of time so examined, LICENSEE shall pay the cost of such examination, and accrued interest at the highest allowable rate.

4.3 Upon the request of BOARD or MDA but not more often than once per calendar year, LICENSEE shall deliver to BOARD and MDA a written report as to LICENSEE'S efforts and accomplishments during the preceding year in commercializing LICENSED SUBJECT MATTER in the LICENSED TERRITORY and LICENSEE'S commercialization plans for the upcoming year.
4.4 All amounts payable hereunder by LICENSEE shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks shall be made payable to The University of Texas M.D. Anderson Cancer Center and mailed by U.S. Mail to Box 297402, Houston, Texas 77297 Attention: Manager, Sponsored Programs.

4.5 No payments due or royalty rates under this AGREEMENT shall be reduced as the result of co-ownership of LICENSED SUBJECT MATTER by BOARD and another party, including LICENSEE.

V. SPONSORED RESEARCH

If LICENSEE desires to fund sponsored research within the LICENSED SUBJECT MATTER, and particularly where LICENSEE receives money for sponsored research payments pursuant to a sublicense under this AGREEMENT, LICENSEE shall notify MDA in writing of all opportunities to conduct such sponsored research (including clinical trials, if applicable), shall solicit research and/or clinical proposals from MDA for such purpose, and shall give good faith consideration to funding such proposals at MDA.
VI. PATENTS AND INVENTIONS

6.1 If after consultation with LICENSEE it is agreed by BOARD and LICENSEE that a new patent application should be filed for LICENSED SUBJECT MATTER, BOARD will prepare and file appropriate patent applications, and LICENSEE will pay the cost of searching, preparing, filing, prosecuting and maintaining same. If LICENSEE notifies BOARD that it does not intend to pay the cost of an application, or if LICENSEE does not respond or make an effort to agree with BOARD on the disposition of rights of the subject invention, then BOARD may file such application at its own expense and LICENSEE shall have no rights to such invention. BOARD shall provide LICENSEE with a copy of the application for which LICENSEE has paid the cost of filing, as well as copies of any documents received or filed during prosecution thereof.

VII. INFRINGEMENT BY THIRD PARTIES

7.1 LICENSEE shall have the obligation of enforcing at its expense any patent exclusively licensed hereunder against infringement by third parties and shall be entitled to retain recovery from such enforcement. LICENSEE shall pay MDA a royalty on any monetary recovery to the extent that such monetary recovery by LICENSEE is held to be damages or a reasonable royalty in lieu thereof. In the event that LICENSEE does not file suit against a substantial infringer of such patents within six (6) months of knowledge thereof, then BOARD shall have the right to enforce any patent licensed hereunder on behalf of itself and LICENSEE (MDA retaining all recoveries from such enforcement) and/or reduce the license granted hereunder to non-exclusive.

7.2 In any suit or dispute involving an infringer, the parties shall cooperate fully, and upon the request and at the expense of the party bringing suit, the other party shall make available to the party bringing suit at reasonable times and under appropriate conditions all relevant personnel, records, papers, information, samples, specimens, and the like which are in its possession.

VIII. PATENT MARKING

8.1 LICENSEE agrees that all packaging containing individual LICENSED PRODUCT(S), and documentation therefor, sold by LICENSEE, SUBSIDIARIES, and sublicensees of LICENSEE will be marked permanently and legibly with the number of the applicable patent(s) licensed hereunder in accordance with each country’s patent laws, including Title 35, United States Code.

IX. INDEMNIFICATION

9.1 LICENSEE shall hold harmless and indemnify BOARD, SYSTEM, MDA, its Regents, officers, employees, students, and agents from and against any claims, demand, or causes of action whatsoever, costs of suit and reasonable attorney’s fees including without limitation those costs arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by LICENSEE or its officers, employees, agents or representatives.

X. USE OF BOARD AND COMPONENT’S NAME

10.1 LICENSEE shall not use the name of (or the name of any employee of) MDA, SYSTEM or BOARD without the advance, express written consent of BOARD secured through:

The University of Texas
M.D. Anderson Cancer Center
Office of Public Affairs
1515 Holcombe Boulevard
XI. CONFIDENTIAL INFORMATION

11.1 BOARD and LICENSEE each agree that all information contained in documents marked “confidential” which are forwarded to one by the other shall be received in strict confidence, used only for the purposes of this AGREEMENT, and not disclosed by the recipient party (except as required by law or court order), its agents or employees without the prior written consent of the other party, unless such information (a) was in the public domain at the time of disclosure, (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns, (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it, (d) was already known by the recipient party at the time of disclosure, (e) was independently developed or (f) is required to be submitted to a government agency pursuant to any preexisting obligation.

11.2 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 three (3) years thereafter.

XII. ASSIGNMENT

12.1 This AGREEMENT may not be assigned by LICENSEE without the prior written consent of BOARD.

XIII. TERMS AND TERMINATION

13.1 Subject to Articles 13.2, 13.3 and 13.4 hereinbelow, the term of this AGREEMENT shall extend from the Effective Date set forth hereinabove to the full end of the term or terms for which PATENT RIGHTS have not expired, and if only TECHNOLOGY RIGHTS are licensed and no PATENT RIGHTS are applicable, for a term of fifteen (15) years.

13.2 BOARD shall have the right at any time after one (1) year from the EFFECTIVE DATE of this AGREEMENT to terminate the license granted herein in any national political jurisdiction within the LICENSED TERRITORY if LICENSEE, within ninety days after written notice from BOARD of such intended termination, fails to provide written evidence satisfactory to BOARD that LICENSEE has commercialized or is actively and effectively attempting to commercialize an invention licensed hereunder within such jurisdiction(s). Accurate, written evidence provided by LICENSEE to BOARD within said ninety (90) day period that LICENSEE has an effective, ongoing and active research, development, manufacturing, marketing, sales and/or licensing program, as appropriate, directed toward obtaining regulatory approval and/or production and/or sale of LICENSED PRODUCTS incorporating PATENT RIGHTS or incorporating TECHNOLOGY RIGHTS within such jurisdiction shall be deemed satisfactory evidence.

13.3 Subject to any rights herein which survive termination, this AGREEMENT will earlier terminate in its entirety:

(a) automatically if LICENSEE shall become bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver or trustee, whether by voluntary act of LICENSEE or otherwise; or

(b) (i) upon thirty (30) days written notice by BOARD if LICENSEE shall breach or default on
the payment obligations of ARTICLE IV, or use of name obligations of ARTICLE X; or (ii) upon ninety (90) days written notice by BOARD if LICENSEE shall breach or default on any other obligation under this AGREEMENT; provided, however, LICENSEE may avoid such termination if before the end of such thirty (30) or ninety (90) day period if LICENSEE provides notice and accurate, written evidence satisfactory to BOARD that such breach has been cured and the manner of such cure; or.

(c) at any time by mutual written agreement between LICENSEE and BOARD, or without cause upon one hundred eighty (180) days written notice by LICENSEE to BOARD, subject to any rights herein which survive termination.

13.4 Upon termination of this AGREEMENT for any cause:

(a) nothing herein shall be construed to release either party of any obligation matured prior to the effective date of such termination.

(b) LICENSEE covenants and agrees to be bound by the provisions of ARTICLES IX, X AND XI of this AGREEMENT.

(c) LICENSEE may, after the effective date of such termination, sell all LICENSED PRODUCTS and parts therefore that it may have on hand at the date of termination, provided that LICENSEE pays the earned royalty thereon and any other amounts due pursuant to ARTICLE IV of this AGREEMENT.

(d) LICENSEE grants to BOARD a non-exclusive royalty bearing license with the right to sublicense others with respect to improvements made by LICENSEE (including improvements licensed by LICENSEE from third parties) in the LICENSED SUBJECT MATTER. LICENSEE and BOARD agree to negotiate in good faith the royalty rate for said non-exclusive license. BOARD’s right to sublicense others hereunder shall be solely for purposes of permitting others to develop and commercialize the entire technology package.

XIV. WARRANTY: SUPERIOR-RIGHTS

14.1 Except for the rights, if any, of the Government of the United States as set forth hereinbelow, BOARD represents and warrants its belief that it is the owner of the entire right, title, and interest in and to LICENSED SUBJECT MATTER, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

14.2 LICENSEE understands that the LICENSED SUBJECT MATTER may have been developed under a funding agreement with the Government of the United States of America and, if so, that the Government may have certain rights relative thereto. This AGREEMENT is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation, including P.L. 96-517 as amended by P.L. 98-620. To the extent that there is a conflict between any such agreement, applicable law or regulation and this AGREEMENT, the terms of such Government agreement, applicable law or regulation shall prevail.

14.3 LICENSEE understands and agrees that BOARD, by this AGREEMENT, makes no representation as to the operability or fitness for any use, safety, efficacy, approvablity by regulatory authorities, time and cost of development, patentability, and/or breadth of the LICENSED SUBJECT MATTER. BOARD, by this AGREEMENT, makes no representation as to whether there are any patents now held, or which will be held, by others or by BOARD in the LICENSED FIELD, nor does BOARD make any representation that the inventions contained in PATENT RIGHTS do not infringe any other patents now held or that will be held by others or by BOARD.
14.4 LICENSEE, by execution hereof, acknowledges, covenants and agrees that LICENSEE has not been induced in anyway by BOARD, SYSTEM, MDA or employees thereof to enter into this Agreement, and further agrees that LICENSEE has conducted sufficient due diligence with respect to all items and issues pertaining to Article XIV herein and all other matters pertaining to this Agreement and agrees to accept all risks inherent herein.

XV. GENERAL

15.1 This AGREEMENT constitutes the entire and only AGREEMENT between the parties for LICENSED SUBJECT MATTER and all other prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

15.2 Any notice required by this AGREEMENT shall be given by prepaid, first class, certified mail, return receipt requested, and addressed in the case of BOARD to:

BOARD OF REGENTS
The University of Texas System
201 West Seventh Street
Austin, Texas 78701
ATTENTION: System Intellectual Property Office

with copy to: The University of Texas
M.D. Anderson Cancer Center
Office of Technology Development
1020 Holcombe Boulevard, Suite 1405
Houston, Texas 77030
ATTENTION: William J. Doty

or in the case of LICENSEE to:

__________________________________
__________________________________
__________________________________
ATTENTION: _______________________

or such other address as may be given from time to time under the terms of this notice provision.

15.3 LICENSEE covenants and agrees to comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this AGREEMENT.

15.4 This AGREEMENT shall be construed and enforced in accordance with the laws of the United States of America and of the State of Texas.

15.5 Failure of BOARD to enforce a right under this AGREEMENT shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.

15.6 Headings included herein are for convenience only and shall not be used to construe this AGREEMENT.
15.7 If any provision of this AGREEMENT shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this AGREEMENT.

IN WITNESS WHEREOF, parties hereto have caused their duly authorized representatives to execute this AGREEMENT.

THE UNIVERSITY OF TEXAS
M.D. ANDERSON CANCER CENTER
By _________________________________
    David J. Bachrach
    Executive Vice President
    for Administration and Finance

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM
By _________________________________
    Ray Farabee
    Vice Chancellor and
    General Counsel

APPROVED AS TO CONTENT:
By _________________________________
    William J. Doty
    Director, Technology Development

APPROVED AS TO FORM:
By _________________________________
    Dudley R. Dobie, Jr.
    Manager, Intellectual Property

CONTRACTING PARTY

By _________________________________
    typed name
    typed title
I. The M.D. ANDERSON CANCER CENTER CONFIDENTIAL DISCLOSURE AGREEMENT

THE UNIVERSITY OF TEXAS
M.D. ANDERSON CANCER CENTER
1515 Holcombe Boulevard
Houston, Texas  77030

CONFIDENTIAL DISCLOSURE AGREEMENT

Recipient:

Effective Date:

Subject Matter:

This Agreement is made as of the Effective Date by and between The University of Texas M.D. Anderson Cancer (the "University") and the above named Recipient.

WHEREAS, the University has certain confidential information relating to the above Subject Matter and desires to engage in general discussions of the possibility of scientific and business interchange concerning such confidential information; and,

WHEREAS, the Recipient is interested in examining and evaluating said confidential information in order to evaluate the commercial market relative to the Subject Matter, and to determine the desirability of acquiring rights in, and to, such information, including an interest in any patent rights now existing, or hereafter obtained, relative to said confidential information.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the University and Recipient (hereinafter collectively referred to as the "Parties") agree:

1. The information subject to this Agreement shall be any confidential information provided hereunder relating to the Subject Matter, including, but not limited to, drawings, schematics, samples, devices, biological materials and applications for intellectual property protection (collectively referred to as the "Proprietary Information"). The initial Proprietary Information to be provided by the University is identified in the box above, and/or in Appendix A hereto.

2. Each item of Proprietary Information made available to the Recipient in written or photographic form will be conspicuously marked with an appropriate legend on the cover page thereof. No such written or photographic material will be so labeled which is not, in good faith, believed to contain Proprietary Information. In the interest of promoting open discussions between the Parties, it is recognized that oral Proprietary Information will be communicated. To the extent possible, a written summary of such oral Proprietary Information will be prepared by the University and provided to the Recipient within sixty (60) days of such disclosure. It is understood, however, that failure of the University to reduce said oral Proprietary Information to writing shall, in no way, alter the obligations of the Recipient under this Agreement.

3. The Recipient may use the Proprietary Information provided solely for the purpose of evaluating the commercial market and to determine the desirability of acquiring rights in and to such Proprietary Information, including an interest in any patent rights now existing, or hereafter obtained. The Recipient will exercise the same degree of care relative to the Proprietary Information as it employs in the protection and security of its own confidential material.

4. Recipient shall be entitled, at its option, to subject the Proprietary Information to such test, analyses, experiments, or studies as are warranted in its judgment or are of interest to Recipient. To this end, subject to the execution of a written Confidential Disclosure Agreement, Recipient may disclose Proprietary Information to its consultants, retained by Recipient because of their standing in the areas of concern or interest, and where applicable, divisions, subsidiaries or affiliates of Recipient.
for evaluation and/or approval purposes. Recipient agrees that it shall remain liable to the University for any unauthorized disclosure of Proprietary Information caused by any act or omission of any such consultant, divisions, subsidiaries, or affiliates.

5. For the purpose of Recipient's evaluation of the Proprietary Information, the term of this Agreement shall be for a period of six (6) months from the Effective Date, unless such period is extended by the University (the "Term"). Recipient's obligations relative to nonuse (except as provided for herein), nondisclosure and safeguarding the Proprietary Information as set forth herein shall remain in effect for a period of three (3) years following the Term.

6. At the conclusion of the Term, Recipient shall return all Proprietary Information, and copies thereof, to the University; provided, however, that for biological or chemical materials that are destroyed by Recipient, in lieu of return, a certification of such destruction shall be provided. Notwithstanding the foregoing, Recipient shall retain one copy of any written or photographic Proprietary Information provided hereunder in its legal department in order that a record of the material submitted may be preserved.

7. No obligation will exist under this Agreement with respect to any item of information that:
   
   a. is known to Recipient prior to receipt from the University; or
   b. becomes publicly known through sources other than Recipient or its consultants, divisions, subsidiaries, and affiliates to which Recipient has disclosed such information pursuant to this Agreement; or,
   c. is lawfully received by Recipient after the Effective Date of this Agreement from a party other than the University, its employees or agents; or,
   d. is approved for public release by written authorization of the University; or,
   e. is developed independent of the information derived from the Proprietary Information; or,
   f. is disclosed pursuant to the requirement of a United States government agency or judicial body, where disclosure is required by operation of law.

8. The University represents and warrants that to its present knowledge it has the full right and authority to disclose Proprietary Information to the Recipient.

9. This represents the entire agreement between the parties. No right or obligation other than those recited herein are to be implied from this Agreement. No license is hereby promised or granted, directly or indirectly, under any patent, copyright, trade secret, or other proprietary right.

10. Recipient shall not use the name of the University without express written consent of MDA secured through:

    The University of Texas
    M.D. Anderson Cancer Center
    Office of Public Affairs
    1515 Holcombe Boulevard
    Box 229
    Houston, Texas 77030
    ATTENTION: Stephen C. Stuyck
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

ACCEPTED BY

THE UNIVERSITY OF TEXAS
M.D. ANDERSON CANCER CENTER:  

Signature: __________________________
William J. Doty
Director, Technology Development

Name: ____________________________

Date: _____________________________

RECIPIENT:

Signature: __________________________

Name: ____________________________

Title: _____________________________

Date: _____________________________