

**CARNEGIE MELLON UNIVERSITY
CONSORTIUM AGREEMENT**

**RELATED TO THE RESEARCH PROGRAM IN CONTROLLED RADICAL
POLYMERIZATION (“CRP”) AT CARNEGIE MELLON’S CENTER FOR
MACROMOLECULAR ENGINEERING**

This Consortium Agreement (hereinafter referred to as "this **Agreement**") is made by and between Carnegie Mellon University, a Pennsylvania non-profit corporation located at 5000 Forbes Avenue, Pittsburgh, PA 15213-3890 ("CARNEGIE MELLON ") and MEMBER, a _____ existing under the laws of <please fill in state of organization> with its principal address at <please fill in address> (each of CARNEGIE MELLON and MEMBER being hereinafter referred to as a "Party" or collectively as "**Parties**").

WHEREAS, the purpose of the research program contemplated by this Agreement is of mutual interest and benefit to CARNEGIE MELLON and to MEMBER, and will further the instruction and research objectives of CARNEGIE MELLON in a manner consistent with its status as a non-profit, tax exempt, educational institution; and

WHEREAS, CARNEGIE MELLON has established and operates a Consortium related to research programs in CRP at CARNEGIE MELLON’s Center for Macromolecular Engineering (CME) and MEMBER wishes to receive the benefits of membership in that Consortium subject to the obligations set forth herein.

NOW, THEREFORE, in consideration of the promises set for herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1.0 Definitions

1.1 “ATRP” shall mean Atom Transfer Radical Polymerization -- a process for the controlled polymerization of vinyl monomers initially developed to bring about dramatic changes in the range of products attainable through free radical polymerization.

1.2 “CME” shall mean CARNEGIE MELLON’s Center for Macromolecular Engineering.

1.3 "Confidential Information" shall mean any data or information relating to the Technology, including trade secrets, know-how, copyrights, patent applications (including foreign applications), continuations, continuation-in-part and divisional applications, or any of them, and oral communications relating to the Technology. Confidential Information includes also (a) any and all data or information relating to the disclosing party's past or present research or development, including samples, know-how, techniques, specifications, plans, software, databases (electronic or otherwise), prototypes, documents, business

activities, and product, financial, marketing, manufacturing, organizational, technical information, methods, procedures, trade secrets, contracts, and confidential, nonpublic information of the disclosing party; and (b) any notes, analyses, summaries, or other records (whether written or oral) made or requested by receiving party which contain or are derived from any of the foregoing in (a), provided that information shall not be or shall cease to be Confidential Information if it

- (a) is known by the receiving party prior to the disclosure;
- (b) subsequently becomes public knowledge and/or published through no fault of the receiving party;
- (c) is independently developed the receiving party without use of or reference to the Confidential Information; or
- (d) is or was brought to the receiving party 's attention by a third party who has a legal right to do so.

1.4 “CRP” shall mean Controlled Radical Polymerization, a term broader than but including ATRP.

1.5 “CRP Consortium” or “Consortium” shall mean the CRP Consortium established by CARNEGIE MELLON on 1/1/2001.

1.6 “CRP Patents” shall mean all CARNEGIE MELLON patents issued on aspects of CRP, including continuations, continuation-in-part, re-examination, divisional, or re-issue of such patents in the U.S or any other country.

1.7 “CRP Research Program” shall mean a research program focused on expanding the understanding of CRP and provision of assistance in the development of materials based on CRP processes.

1.8 “CRP Technologies” shall mean Technology incorporating any of the CRP Patents.

1.9 “Effective Date” shall mean the date of last signature below.

1.10 “MEMBER” shall mean a MEMBER of the CRP Consortium. The Parties agree that by virtue of this Agreement, MEMBER shall be a MEMBER as long as it remains current with any amounts due to CARNEGIE MELLON set forth herein, and otherwise complies with the terms and conditions of this Agreement.

1.11 “New Special Patents” shall mean patents which result from Contracts with CRP Consortium MEMBERS.

1.12 “New Special Technologies” shall mean Technology incorporating any of the New Special Patents.

1.13 “Technology” shall mean the technology, patent(s), know-how, trade secrets, trademarks, copyrights, and other intellectual property, if any, relating to the CRP Patents and/or New Special Patents.

1.14 “Term of this Agreement” shall mean the time period commencing upon the Effective Date and ending on the earlier of (a) withdrawal from the Consortium or termination of this Agreement under Sections 4.0, 7.0 or 11.1, or (b) expiration of the term of the Consortium pursuant to Section 8.0.

2.0 Purpose of the Consortium

The purpose of the Consortium is to create a vehicle for —

- a. Conducting additional research in CRP, including ATRP technology, at the CME at CARNEGIE MELLON, to expand the scope and to develop and define the limits of CRP technologies, including but not limited to polymerizable monomers, comonomers, polymer functionality and polymer topology, catalysts (including metals and ligands), and process conditions including catalyst recovery;
- b. providing a set of rights and benefits to the MEMBERS;
- c. training scientists in CRP for industry.

3.0 Statement of Work

CARNEGIE MELLON will use its best efforts to conduct a program of research in CRP Technology with the purpose of expanding the scope and to develop and define the limits of CRP methodologies, including but not limited to polymerizable monomers, comonomers and polymer topology, catalysts (including metals and ligands), process conditions including catalyst recovery, as well as the development of new CRP methodologies.

Specific CRP Research Program directions and projects may be modified from time to time under the direction of the Program Director to address interests and concerns of the MEMBERS on CRP technologies.

4.0 Research Team

The Consortium Director will be Professor Krzysztof Matyjaszewski (hereinafter referred to as "Program Director"). Research may be conducted in collaboration with other researchers who may join the Research Team as deemed appropriate by the Program Director. It is agreed that if the Program Director becomes unwilling or unable to carry out the CRP Research Program during the Term hereof then a MEMBER shall be entitled to terminate its participation in the Consortium upon giving sixty (60) days prior written notice to CARNEGIE MELLON. If a MEMBER elects to terminate its participation in accordance with this paragraph, the portion of such MEMBER's Membership Fee paid by MEMBER for the calendar year in which MEMBER terminates participation which has not been expended by CARNEGIE MELLON and which is not needed to pay non-cancelable commitments of CARNEGIE MELLON incurred in the course of the Research Program prior to termination will be returned to the MEMBER.

5.0 Advisory Board

One representative of each MEMBER, along with the Program Director, shall constitute the Consortium Advisory Board.

6.0 Membership Participation, Rights and Benefits

MEMBER will, during the Term of this Agreement and while current in Membership Fees, (see Sections 10.0 and 11.0), have the following rights which (except as otherwise specified below) shall not be available to the public during the term of the Consortium:

- 6.1 Each MEMBER will have access to certain Consortium information and participation in CRP Consortium activities and events, including the following:
 - a. Each MEMBER will have the right to attend and participate, along with other MEMBERS, in annual or semi-annual CRP meetings and presentations.
 - b. Each MEMBER may have one representative on the Consortium Advisory Board.
 - c. Each MEMBER will have the right to visit and interact with the CME lab (Note: An exploratory visit to the lab by Non-MEMBERS who are potential new MEMBERS will also be permitted).
 - d. Each MEMBER will have access to certain new CRP information prior to the submission of a publication.
- 6.2 Each MEMBER will have the right to negotiate commercial licenses for CRP Technologies.
- 6.3 Each MEMBER will have the right to negotiate individual research contracts (“Contracts”) for specific aspects and/or applications of CRP technology which are more specialized than the fundamental CRP Consortium work.
- 6.4 Each MEMBER which funds such a Contract will have the right of first refusal to negotiate commercial licenses for New Special Technologies which result from the Contract which such MEMBER funds, for agreed-upon, defined fields of use.
- 6.5 Each MEMBER will be able to send a researcher from their corporate laboratories to CARNEGIE MELLON for a short period of time (less than three months) to learn various CRP techniques. All intellectual property resulting from such efforts will be the property of CARNEGIE MELLON. Conversely, a researcher from CARNEGIE MELLON can be sent to a corporate research laboratory to teach CRP techniques.
- 6.6 Each MEMBER will have an automatic, non-transferable, no-cost limited license to practice the CRP Technologies for MEMBER’S own internal research purposes only, with the understanding that no products of this research may be provided to third parties absent advance written agreement from CARNEGIE MELLON. This

license for internal research purposes shall terminate immediately should the MEMBER cease to be a MEMBER in Good Standing.

- 6.7 The rights of a MEMBER set forth above continue during the Term of this Agreement, but remain in effect only so long as the MEMBER remains a MEMBER in Good Standing (see Section 11.1). The Rights of a MEMBER whose membership has terminated prior to termination of the Consortium are defined in Paragraph 11.2.

7.0 Membership Term

Members are requested to commit to membership for the continuing term of the Consortium, but withdrawal from membership effective for the next calendar year is permitted with at least one hundred and eighty (180) days prior written notice to CARNEGIE MELLON.

8.0 Term of the Consortium

The Consortium commenced on January 1, 2001 and will remain in effect so long as CARNEGIE MELLON, in its sole discretion, determines that a sufficient number of MEMBERS continue to support the work of the Consortium.

9.0 Duties of CARNEGIE MELLON

CARNEGIE MELLON agrees to furnish such available laboratory facilities and equipment it shall consider necessary for the work to be done as contemplated by this Agreement.

10.0 Consortium Fees and Payments

10.1 Membership Fee

The MEMBER, as its share of the Consortium funding, will pay a Membership Fee of \$25,000 per calendar year for the term of the CRP Consortium, which Membership Fee is due on or before each September 1 prior to the start of each calendar year (and, in the case a MEMBER first joins the Consortium at any time after such September 1 date, the Membership Fee for such next calendar year shall be due at such time as the MEMBER first joins the Consortium); provided, that in the event that MEMBER has 25 employees or less at all times during the twelve (12) months immediately preceding the relevant September 1 date, then the MEMBER's Membership Fee for the calendar year immediately following such September 1 date shall be \$5,000 for that calendar year. Should MEMBER first join the Consortium at any point during the calendar year, the Membership Fee for that calendar year in which the MEMBER joins the Consortium shall be pro rated accordingly for that calendar year. Notwithstanding the foregoing, the Membership Fee per calendar year may be increased prospectively (for the relevant upcoming calendar year and thereafter) from time to time, but no more often than once per annum, if at all, upon notice to the MEMBERS at any annual or semi-annual CRP meeting held as referenced in Section 6.1(a) above prior to the relevant September 1 date.

Payments are to be sent by either wire transfer or check, as follows:

Wire Transfers: BNY Mellon
 500 Ross Street
 Pittsburgh, PA 15262
 Carnegie Mellon University
 Account Number 197-9003
 ABA Number 043000261

Checks: Carnegie Mellon University
 Center for Technology Transfer and Enterprise Creation
 4615 Forbes Avenue
 Pittsburgh, PA 15213-3890

11.0 Membership in "Good Standing"

- 11.1 The rights of MEMBERS in "Good Standing" (Section 6) will be contingent on the timely payment of Membership Fees as provided for in Section 10. A MEMBER whose payment is overdue will receive notice by CARNEGIE MELLON and, if payment of the amount due is not received within 30 days, such MEMBER will, after the end of such 30 day period, automatically cease to have the rights described in Section 6 and such MEMBER's membership in the Consortium will be considered to have terminated. However, such termination shall not relieve a MEMBER of its obligations hereunder, including but not limited to the MEMBER's obligation under Sections 10.1 and 13.0.
- 11.2 If a MEMBER ceases to be a MEMBER in Good Standing during the term of the Consortium, the following rules will apply with regard to Contracts and license agreements:
- a. Contracts entered pursuant to Section 6.3 may not continue and will be subject to automatic termination as of the date when MEMBER ceases to be a MEMBER in Good Standing.
 - b. Licenses for New Special Technologies which were entered into between MEMBER and CARNEGIE MELLON while the company was a MEMBER in Good Standing will remain in effect; additional licenses for New Special Technologies may be negotiated by the MEMBER in accordance with Section 6.4 (during the term of the Consortium) for Technology which was developed and disclosed while the MEMBER was still a MEMBER in Good Standing (but with no rights to license the underlying CRP Technologies unless such licenses were granted to the MEMBER pursuant to a license agreement entered into between MEMBER and CARNEGIE MELLON during the time that the MEMBER was a MEMBER in Good Standing).
 - c. The MEMBER will retain no rights to license CRP Technologies unless such licenses were granted to the MEMBER pursuant to a license agreement entered into between MEMBER and CARNEGIE MELLON during the time that the MEMBER was a MEMBER in Good Standing.

12.0 Intellectual Property; Licensing Rights; Patenting

- 12.1 Any intellectual property developed pursuant to the Consortium, including but not limited to patents, copyrights, know-how, and trade secrets, (hereby defined as "Intellectual Property"), CRP Technologies, and New Special Technologies shall be owned by CARNEGIE MELLON regardless of whether MEMBERS or their employees have participated in the creation thereof, and MEMBERS hereby assign all ownership and other intellectual property rights therein to CARNEGIE MELLON. Any intellectual property created solely by a MEMBER without the use of CARNEGIE MELLON facilities shall be the property of that MEMBER regardless of whether it is derived from Intellectual Property, CRP Technologies, and/or New Special Technologies; the foregoing does not give any rights to practice the Technology absent a license entered into between MEMBER and CARNEGIE MELLON as contemplated by Section 6.2 of this Agreement.
- 12.2 International Patenting: CARNEGIE MELLON has applied for patent coverage of certain CRP Patents in certain major industrial countries. If possible, CARNEGIE MELLON will apply for coverage of additional CRP Patents at a MEMBER'S request in any additional country at the Member's cost. If CARNEGIE MELLON should consider dropping during the term of the Consortium maintenance fees on issued CRP Patents, CARNEGIE MELLON will first poll the MEMBERS on the value of such coverage to each MEMBER and, if interest is expressed, will offer those MEMBERS continuation of such coverage if MEMBERS will pay for any further maintenance fees and expenses. With regard to countries desired by one or more MEMBERS for which CARNEGIE MELLON declines to file for or maintain patent coverage at CARNEGIE MELLON's expense, a MEMBER (or MEMBERS) may request that CARNEGIE MELLON file for or maintain such coverage at that MEMBER's or MEMBERS' expense; that MEMBER or MEMBERS may later deduct the full out-of-pocket costs paid by such MEMBER(S) of such a filing (and subsequent fees) from royalty payments due under a license agreement to CARNEGIE MELLON which are based on licensed revenues in that country.
- 12.3 Grant-Back of Improvements: Improvements by MEMBERS to CRP Technologies and/or New Special Technologies ("Improvements") licensed to them shall be made available on a perpetual royalty-free basis to CARNEGIE MELLON for research, educational, academic, and/or administrative purposes only.

13.0 Confidential Information

- 13.1 All MEMBERS receiving Confidential Information relating to the CRP Consortium from CARNEGIE MELLON shall maintain in confidence and shall not disclose to any person or entity any Confidential Information for a period of five (5) years from the date of such disclosure, unless such information ceases to be Confidential

Information prior to the end of such five-year period through no fault of MEMBER, or MEMBER and CARNEGIE MELLON enter into a written agreement authorizing same. MEMBER shall exercise all reasonable precautions to prevent the disclosure of Confidential Information, and in any event shall maintain with respect to such Confidential Information a standard of care which is no less than that standard which MEMBER maintains to prevent the disclosure of its own confidential information. MEMBER acknowledges that the Confidential Information is a unique and valuable asset of CARNEGIE MELLON, and that disclosure in breach of this Agreement would result in irreparable injury to CARNEGIE MELLON which could not be remedied by monetary damages. Therefore, the Parties agree that, in the event of a breach or threatened breach of the terms of this Agreement, CARNEGIE MELLON shall be entitled to an injunction prohibiting any such breach, or to specific performance or any other equitable remedy available to CARNEGIE MELLON. Any such equitable relief shall be in addition to and not in lieu of any other appropriate relief at law to which CARNEGIE MELLON may be entitled.

- 13.2 All documents, materials and know-how which may be furnished to CARNEGIE MELLON by MEMBER pursuant to the work to be performed hereunder shall be, if suitably and properly marked as Confidential Information or suitably and properly so designated in tangible form, deemed MEMBER'S Confidential Information and therefore considered as Confidential Information and shall not be used by CARNEGIE MELLON other than for the work under this Agreement. CARNEGIE MELLON shall use the same degree of care as it uses in protecting and preserving its own proprietary/ confidential information of like kind to avoid disclosure or dissemination thereof.
- 13.3 Confidential Information which is disclosed orally or otherwise than in tangible form by MEMBER shall be considered MEMBER'S Confidential Information if (a) the information is suitably and properly so identified as Confidential Information at the time of disclosure and a written summary is provided to CARNEGIE MELLON within twenty (20) days thereafter or (b) the information is suitably and properly so identified as Confidential Information in a writing provided to CARNEGIE MELLON prior to or at the time of disclosure by MEMBER.
- 13.4 Neither party shall be liable for the inadvertent or accidental disclosure of the other's Confidential Information if such disclosure occurs despite the exercise of the same degree of care as such party normally takes to preserve its own such data or information, but no less than a reasonable standard of care.
- 13.5 No confidentiality obligation shall apply to information if the information is not or ceases to become Confidential Information as provided in this Agreement.
- 13.6 It is understood that if CARNEGIE MELLON submits any Confidential Information it owns to MEMBER then MEMBER will be obligated to treat and protect CARNEGIE MELLON's Confidential Information as if its own.
- 13.7 CARNEGIE MELLON will use a good faith effort to have each student who has access to MEMBER'S proprietary information in performance of the work execute an appropriate confidentiality agreement.

- 13.8 In addition to the provisions of this Section 13, specific mutual confidentiality agreements may be entered into between CARNEGIE MELLON and MEMBER.

14.0 Publications

- 14.1 Subject to the non-disclosure obligations created by or pursuant to this Agreement, all reports and papers of research and other activities conducted under the CRP Research Program may be published by CARNEGIE MELLON in accordance with its publication policies. Any such reports or papers shall refer to the fact that the project was conducted pursuant to a grant from MEMBER if such reference is desired by the MEMBER.
- 14.2 In order that information concerning scientific, software or technical developments conceived or first actually reduced to practice in the performance of the CRP Research Program is not prematurely published so as to adversely affect a patent, copyright or proprietary interests of MEMBER in any information it has conveyed to CARNEGIE MELLON, CARNEGIE MELLON agrees to submit to MEMBER a copy of any such reports or papers for review and comment prior to submission for publication. MEMBER can then request deletion from the publication of any MEMBER Confidential Information or can request a delay in publication for sixty (60) days to allow time for filing of patent/copyright protection of MEMBER Confidential Information. Such delay shall not, however, be imposed on the filing of any student thesis or dissertation.

15.0 Use of the Name of CARNEGIE MELLON or MEMBER

Each Party agrees not to use the name of the other Party or any persons or its staff in sales promotion work or advertising, or in any other form of publicity without the written permission of the other Party.

16.0 Excusable Delay

- 16.1 Except for any payment obligation hereunder, neither Party shall be liable for delay in performance due to fire, flood, strike, or other labor difficulty, act of God, act of any governmental authority, acts or omissions of the other party, riot, fuel or energy shortage, or due to any other cause beyond the Party's reasonable control.
- 16.2 In the event of delays in performance due to any such cause, the dates for performance will be postponed by a period of time equal to the delay period.

17.0 No Warranties; Limitation as to Types of Damages

ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT ARE

GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. CARNEGIE MELLON MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, AND ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CARNEGIE MELLON DOES NOT MAKE ANY WARRANTY OF ANY KIND RELATING TO EXCLUSIVITY, INFORMATIONAL CONTENT, ERROR-FREE OPERATION, RESULTS TO BE OBTAINED FROM USE, FREEDOM FROM PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT AND/OR FREEDOM FROM THEFT OF TRADE SECRETS. MEMBER IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED WARRANTY TO ANY THIRD PARTY ON BEHALF OF CARNEGIE MELLON RELATING TO ANY MATTER, INCLUDING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED FROM THE INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY OR OTHER PROPERTY OR RIGHTS GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT.

CARNEGIE MELLON SHALL NOT BE LIABLE TO MEMBER OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT) FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF CARNEGIE MELLON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

18.0 Indemnification

MEMBER shall defend, indemnify, and hold harmless CARNEGIE MELLON and its trustees, officers, employees, attorneys and agents from and against any liability, damage, loss or expense (including attorneys' fees and expenses) incurred by or imposed upon any of CARNEGIE MELLON and/or its trustees, officers, employees, attorneys and agents in connection with any claim, suit, action or demand arising out of or relating to any exercise of any right or license granted or provided to MEMBER under this Agreement under any theory of liability (including without limitation, actions in the form of tort, warranty, or strict liability, or violation of any law, and regardless of whether such action has any factual basis).

19.0 Notice and Other Addresses

19.1 Any notice to either party hereunder must be in writing signed by the party giving it, and shall be served either personally or by registered or certified mail addressed as follows:

Carnegie Mellon University

Associate Vice Provost, Technology

MEMBER

Transfer and Enterprise Creation _____
Carnegie Mellon University _____
5000 Forbes Avenue _____
Pittsburgh, Pennsylvania 15213 _____
Fax: 412-268-6247 Fax: _____

19.2 Other key addresses are as follows:

Program Director:

Prof. Krzysztof Matyjaszewski,
Department of Chemistry
Mellon Institute, Carnegie Mellon University
4400 Fifth Avenue, Pittsburgh, PA 15213-2683
Telephone: (412) 268-3209; Fax : (412) 268-6897
email : km3b@andrew.cmu.edu

Program Consultant:

Dr. James Spanswick
Associate Director
Center for Macromolecular Engineering
Department of Chemistry
Mellon Institute, Carnegie Mellon University
4400 Fifth Avenue, Pittsburgh, PA 15213-2683
Telephone: (412) 268-9088; Fax: (412) 268-6897
email: jspan@andrew.cmu.edu

20.0 Academic Collaboration; Government Sponsored Research

- 20.1 Nothing contained in this Agreement shall prevent either MEMBER or CARNEGIE MELLON from entering into research projects with third parties which are similar to the activities under this Agreement (“Consortium Activities”), or from independently developing (either through third parties or through the use of its own personnel), or from acquiring from third parties, technologies or products which are similar to and competitive with intellectual property resulting from Consortium Activities.
- 20.2 Nothing herein shall be construed to grant either party any rights in any such technologies or products so developed or acquired as described in subparagraph 20.1, or any rights to the revenues or any portion thereof derived by the other from the use, sale, lease, license or other disposal of any such technologies or products. Furthermore, nothing herein shall preclude either party from transferring any such technologies or products to others including to users of the intellectual property resulting from said Consortium Activities.

- 20.3 CARNEGIE MELLON may collaborate with other academic institutions when researchers at such institutions can assist the CRP Consortium. Intellectual Property will be protected, when possible, in these collaborations.
- 20.4 CARNEGIE MELLON may continue to seek funding from Government-related organizations which may result in additional CRP Technologies available to MEMBER.

21.0 Validity

If any portion of this Agreement shall be finally determined by any court or governmental agency of competent jurisdiction to violate applicable law or otherwise not to conform to requirements of law then the remainder of this Agreement shall not be affected thereby; provided, however, that if any provision hereof is invalid or unenforceable, then a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be valid and enforceable, the intent and purpose of this Agreement including the invalid or unenforceable provision.

22.0 Paragraph Headings

The paragraph headings herein are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.

23.0 Benefit; Entire Agreement

- 23.1 This Agreement is binding upon and shall inure to the benefit of the Parties hereto, and their representatives, successors and permitted assigns. No failure or successive failures on the part of either Party, its successors or permitted assigns, to enforce any covenant or agreement, and no waiver or successive waivers on its or their part of any condition of this Agreement, shall operate as a discharge of such covenant, agreement, or condition, or render the same invalid, or impair the right of either Party, its successors and permitted assigns, to enforce the same in the event of any subsequent breach or breaches by the other Party, its successors or assigns.
- 23.2 This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements and understandings relating to the subject matter hereof. The Agreement may not be altered, amended, or modified except by a written instrument signed by the duly authorized representatives of both Parties.

24.0 Governing Law; Disputes

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to conflict of law principles in that or any other jurisdiction. All claims and/or controversies of every kind and nature arising out of or relating to this Agreement, including any questions concerning its

existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled (a) at CARNEGIE MELLON'S election, by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case (i) the arbitration proceedings shall be conducted before a panel of three arbitrators, with each Party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (ii) each Party shall bear its own cost of arbitration, (iii) all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, and (iv) the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court of before any administrative tribunal with respect to any claim or controversy arising out of or relating to this Agreement and which is arbitrable as provided in this Agreement, provided that either Party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in any intellectual property and/or confidential or proprietary information as described in this Agreement, or (b) in the event that CARNEGIE MELLON does not elect binding arbitration as permitted in point (a) above, exclusively in the U.S. District Court for the Western District of Pennsylvania or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania and each Party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

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The Parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the date and year last written below.

Carnegie Mellon University

MEMBER

By: _____
(Signature)

By: _____
(Signature)

Robert A. Wooldridge, Associate Vice
Provost, Technology Transfer and Enterprise
Creation

Name/Title: _____

(Date)

(Date)