

ESOPHAGEAL ADENOCARCINOMA AND BARRETT'S ESOPHAGUS RESEARCH CONSORTIUM AGREEMENT

This Esophageal Adenocarcinoma and Barrett's Esophagus Consortium Agreement (the "Agreement") is made as of the ___ day of _____, 2005, between the universities/research institutions listed in Schedule A, attached hereto and incorporated herein, as amended from time to time by the action of the Steering Committee pursuant to the Esophageal Adenocarcinoma and Barrett's Esophagus Consortium Bylaws (each hereinafter referred to individually as a "Member Institution" and collectively as "Member Institutions").

RECITALS

WHEREAS, the Member Institutions desire to develop a bank of biospecimens and data collected from individuals with esophageal adenocarcinoma, esophageal squamous cell carcinoma, or Barrett's esophagus to facilitate discovery of novel pathways involved in the neoplastic transformation from Barrett's esophagus to esophageal adenocarcinoma; discovery and development of novel biomarkers of risk, early detection, prognosis and response to treatment; discovery of novel-therapeutic and chemopreventive targets for esophageal neoplasms and the premalignant disorder of Barrett's esophagus; and discovery of improved clinical algorithms;

WHEREAS, the intent of the Esophageal Adenocarcinoma and Barrett's Esophagus Consortium ("EABEC" or "Consortium") and Member Institutions is to facilitate and enhance research for all Member Institutions; and

WHEREAS, the Member Institutions understand and agree that this collaboration is not exclusively binding on the parties, and that any situations requiring exclusivity will be specifically defined and agreed upon by the parties in a separate written agreement at the appropriate time;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties agree as follows:

1. Definitions.

1.1. **Biospecimens** shall mean the blood and tissue samples furnished to the EABEC by any Member Institution pursuant to Section 2.3 below.

1.2. **Biospecimens and Data Bank** shall mean the registry that encompasses: a) the Biospecimens tracking system developed for the EABEC, in connection with the storage, distribution, and tracking of the Biospecimens contained therein; b) any blood or tissue samples furnished by Member Institutions in connection with any Research Project(s), and/or blood or tissue samples obtained by the EABEC independent of any Research Project that it elects to contribute to such Biospecimens Bank; c) the database (including the compilation) established for the EABEC containing the Data collected in connection with Research Project(s) and any additional Data obtained by the EABEC that it elects to

contribute to such database; and d) the software, source and object code, interfaces, technology, methods, and other Intellectual Property relating to the structure, design, functionality, operation, and framework of such Biospecimens and Data Bank.

1.3. **Confidential Information** shall have the meaning set forth in Section 7.1 below.

1.4. **Consortium** shall mean the EABEC.

1.5. **Consortium Purpose** shall mean the funding and conduct of basic, translational, and/or clinical research to facilitate discovery and development of novel biomarkers of risk, early detection, prognosis and response to treatment; novel therapeutic and chemopreventive targets for esophageal neoplasms and the premalignant disorder of Barrett's esophagus; novel pathways involved in the neoplastic transformation from Barrett's esophagus to esophageal adenocarcinoma; and improved clinical algorithms.

1.6. **Data** shall refer to all human subject data, genomic data, analytic data, research data, and other data collected, developed, or derived by any Member Institution from the activities carried out under this Agreement or pursuant to any Research Project(s), including, without limitation, all research, pre-clinical, and clinical data.

1.7. **Effective Date** shall mean the date on which Mayo Clinic Rochester (the Member Institution that will serve as research base for the Consortium) and the University of Arizona have signed this Agreement.

1.8. **HIPAA** means the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder, as may be amended from time to time.

1.9. **Host Institution** means that Member Institution that serves as host for the Biospecimens and Data Bank. Mayo Clinic Rochester is designated as Host Institution.

1.10. **Intellectual Property** shall have the meaning set forth in Section 8.1.2 below.

1.11. **IRB** shall mean (a) the Institutional Review Board of each U.S. Member Institution, (b) the Research Ethics Board of each Canadian Member Institution, and (c) the equivalent ethics oversight agency or committee for any other Member Institution.

1.12. **Member Institution or Institutions** shall mean those universities, hospitals, research institutions, or other entities that enter into this Agreement.

1.13. **Principal Investigator** shall mean that scientist employed by or affiliated with a Member Institution who is either named as the Principal Investigator in a Research Project Proposal that is approved in accordance with Section 4 below or who is otherwise by mutual agreement of the EABEC and such Member Institution responsible for such Member Institution's activities within the Consortium.

1.14. **Research Project(s)** shall refer to the research work, experiments, trials, or any other activities of or under the auspices of a Member Institution or any of its personnel,

as outlined in a Research Project Proposal that has been approved in accordance with Section 4 below.

1.15. **Research Project Proposals** shall mean those proposals submitted to the Steering Committee in accordance with Section 4 below.

1.16. **Sponsored Research Project** shall have the meaning set forth in Section 5.1 below.

1.17. **Steering Committee** shall mean the decision-making body of the EABEC, which has the authority to act on behalf of the EABEC, as set forth in the EABEC Bylaws.

2. **Scope of Work and Roles of Member Institutions.**

2.1. **Establishment of EABEC's Biospecimens and Data Bank.** Member Institutions shall create and maintain a common repository for Data and Biospecimens contributed by the Member Institutions, which Data and Biospecimens shall be furnished to the Biospecimens and Data Bank and made available to Member Institutions in accordance with this Agreement, with policies and procedures to be determined by the Steering Committee from time to time, and with applicable laws related to human subject information and the transfer of human biological materials.

2.2. **Furnishing Data.**

2.2.1. *Consents and Authorizations.* Each Member Institution shall furnish all Data obtained by it to the Biospecimens and Data Bank within ninety (90) days after such Data is collected or developed. Prior to furnishing such Data, such Member Institution shall obtain from each human research subject all necessary consents (each an "Informed Consent"), including, but not limited to, an authorization containing the disclosures and other information required by HIPAA ("HIPAA Authorization"), with the understanding that the specific form of the authorization may be determined by the respective Member Institution. The HIPAA Authorization shall inform the subject that Data shall be included in the EABEC Data and Biospecimens Bank for use in Research Projects (including Sponsored Research Projects).

2.2.2. *Information Technology Infrastructure.* Each Member Institution shall, consistent with sound business practices, cooperate with the Host Institution to enable such Member Institution's Information Technology ("IT") infrastructure to furnish Data to remote EABEC databases (including the EABEC Biospecimens and Data Bank) as necessary. Each Member Institution, at its sole discretion, will decide on matters relating to the financing and implementation of any upgrades or changes to its IT system. If any Member Institution determines in its reasonable business judgment that it cannot or will not undertake the proposed upgrades or changes to its IT systems, such Member Institution shall so notify the Host Institution, and the applicable Member Institution shall make other reasonable arrangements for the transfer of such Data (on computer disc or other format

reasonably acceptable to the Host Institution) to the EABEC Biospecimens and Data Bank, in a timely manner.

2.3. **Contribution of Biospecimens.**

2.3.1. *Consents and Authorizations.* Each Member Institution shall obtain and furnish to the EABEC Biospecimens and Data Bank, for use in EABEC Research Projects, the number of Biospecimens requested by the Steering Committee (but, subject to the approval of the applicable Member Institution's IRB, each such Member Institution shall use its best effort to furnish not less than three different subjects' Biospecimens per Research Project) as follows:

(a) Blood and tissue samples will be collected from subjects in accordance with the Steering Committee's requirements, such Member Institution's requirements, and applicable regulatory requirements. No Biospecimens that are furnished hereunder shall be acquired by any Member Institution from any third party other than directly from subjects without the prior written approval of the Steering Committee.

(b) Each Member Institution will support the contribution of Biospecimens by facilitating the appropriate collection of such Biospecimens, including assuring that all necessary subject consents (including but not limited to HIPAA authorizations) are obtained and that clinicians and/or clinical research coordinators participate in these efforts in accordance with such Member Institution's and the Steering Committee's policies.

(c) Each Member Institution shall be responsible for obtaining approval from the appropriate IRB of informed consent, HIPAA authorization, study advertisement (if any), and any other forms relating to the collection of Biospecimens prior to commencing the collection of Biospecimens.

(d) Each Member Institution shall be responsible for obtaining an informed consent form signed by or on behalf of each human subject and all other consents required by law, including but not limited to a HIPAA authorization.

2.3.2 *Materials Transfer.* All requests to transfer biological specimens to and from the Biospecimens Bank must be approved by the Steering Committee. The Host Institution will coordinate the negotiation of a materials transfer agreement, which must be entered prior to any such transfer. All materials transfers must be approved in advance by the Host Institution's IRB, Biospecimens Subcommittee, and as otherwise required by the Host Institution's policies. Neither the EABEC nor any Member Institution shall charge any academic institution any fees or other consideration for the use of transferred Biospecimens (other than an amount equal to the Host Institution's direct costs with respect to furnishing such Biospecimens). Charges for furnishing Biospecimens to third parties shall be determined by the Steering Committee. Each U.S. Member Institution confirms that it is a signatory to the Uniform Biological Material Transfer Agreement, and

each foreign Member Institution agrees to be bound by the terms thereof as though such Institution were a signatory thereto.

2.4. **Access to Data.** Member Institution(s) shall be permitted to view only the Data related to Biospecimens contributed by such Member Institution or to a Research Project in which the Member Institution is a participant. Notwithstanding the foregoing, each Member Institution shall be responsible for complying with National Institutes of Health (“NIH”) policies concerning the sharing of research data generated with federal assistance.

2.5. **Sharing of Biospecimens.**

2.5.1. *Recipients.* The Biospecimens furnished by a Member Institution shall be made available to Member Institutions with the Steering Committee’s approval.

2.5.2. *Compliance.* All of the Member Institutions’ obligations pursuant to this Section 2.5 are subject to HIPAA, applicable laws governing the use and transfer of human blood and tissues, and applicable research regulations, and each Member Institution agrees to implement procedures in compliance with such laws to enable it to perform its obligations hereunder to the full extent permitted by law. Each Member Institution further acknowledge that with respect to any Member Institution that is not located in the United States, such Member Institution may be subject to similar laws of other countries, and the cross-border transfer of blood and tissue samples to and from such Member Institution may be subject to additional or different laws, rules, and regulations (including, without limitation, U.S. and foreign import/export laws) which may make such transfers illegal or inconsistent with sound business practice; provided, however, that each foreign Member Institution hereby agrees to take such measures as are necessary for its performance under this Agreement to comply with HIPAA and other applicable U.S. laws to the extent that such activities (or omissions) do not cause such Member Institution to violate any law, rule, or regulation of the jurisdiction(s) in which Member Institution conducts its business.

2.6. **Personnel.**

2.6.1. *Steering Committee Representative.* Representation on the Steering Committee shall be as set forth in the EABEC Bylaws. Each Member Institution’s representative(s) to the Steering Committee shall remain, at all times, the sole responsibility of the respective Member Institution. Steering Committee decisions shall be made as set forth in the EABEC Bylaws.

2.6.2. *Principal Investigators.* Subject to the consent of the applicable personnel, each Member Institution shall make its Principal Investigators and other scientific and administrative personnel available to participate in Research Projects conducted by or under the auspices of the EABEC or another Member Institution, including, without limitation, for leadership of such projects.

2.7. **Funding.** Member Institutions will be responsible for obtaining funding from sources other than the EABEC (i.e. from government and/or third party sponsors) in connection with the Research Projects. Information concerning potential funding sources must be identified within the Research Project Proposal Form (Exhibit A) for consideration by the Steering Committee. Each Member Institution further agrees that such third party funding arrangements shall comply with all applicable laws, rules, and regulations.

2.8. **Progress Reports and Results.**

2.8.1. *Interim Progress Reports.* Each Member Institution will keep the Steering Committee informed in writing of the progress of its work in connection with each Research Project (which reports shall contain details of the research and all results) on a periodic basis (but no less frequently than semi-annually) (each an “Interim Progress Report”).

2.8.2. *Final Research Project Results.* In addition to Interim Progress Reports, each Member Institution will inform the Steering Committee of the final results from each Research Project within ninety (90) days after project completion and will provide the Steering Committee with copies of all written documentation evidencing the context for such results (the “Final Report”).

2.8.3. *Results.* All results (including, without limitation, Data, Interim Progress Reports, and Final Reports) shall be made available to the Steering Committee, and each Research Project’s Principal Investigator, and/or other individuals approved by the Steering Committee.

3. Role of Host Institution. The Host Institution shall:

3.1 Operate the Biospecimens and Data Bank in accordance with the laws and regulations in force at the Host Institution, under terms and conditions negotiated among Member Institutions by the Steering Committee, and under the oversight of the Steering Committee, and coordinate the negotiation of materials transfer agreements, which must be entered into prior to any transfer of Biospecimens to and from the Biospecimens and Data Bank.

3.2 Maintain, implement and require users to follow conditions imposed on the use of any Data or Biospecimens supplied by the donor of the Data or Biospecimens and/or as prescribed by the IRB of the donor Member Institution.

3.3 Manage, oversee and train appropriate others in electronic clinical data transfer to facilitate the operation of the Biospecimens and Data Bank and store Data and Biospecimens de-identified, that is, without the possibility of identifying the human individuals to whom they relate.

3.4 Recover its costs of maintaining and providing Data and Biospecimens to users authorized by the Steering Committee by means of user charges. The Steering Committee shall approve such user charges; such approval shall not be unreasonably withheld.

4. **Research Projects.**

4.1. **Research Project Proposals.** Principal Investigators may propose specific research activities that are consistent with the Consortium Purpose, to be conducted as part of the Consortium. All such proposals shall be submitted to the Steering Committee for its review exclusively using the EABEC Research Project Proposal form, attached hereto as Exhibit A. Each Research Project Proposal shall describe the respective roles and contributions of individuals, laboratories, Principal Investigator(s), commercial third parties, and other parties named in the proposal. Each Research Project Proposal shall designate a Principal Investigator and detail its aims, objectives, and budget. Each Research Project Proposal (including those for Sponsored Research Projects) shall be subject to the approval of the Steering Committee.

4.2. **Project Lead Institution.** The Steering Committee may designate a “Project Lead Institution” for a particular Research Project. The Project Lead Institution would take responsibility for collaborating with the Host Institution to provide administrative functions for a particular Research Project, including maintaining financial records as well as contract negotiation with sponsors and, as appropriate, subcontracting with other Member Institutions with respect to their financial and other contributions to the Research Project. In reaching its decision on a Project Lead Institution, the Steering Committee will consider the Member Institution that has access to funds that may be used for the Research Project, and the extent to which the Member Institution’s space will be used and to which that Member Institution’s Principal Investigator will participate in the Research Project.

4.3. **Cost Recovery.** It is acknowledged by each Member Institution that the indirect cost recovery rate associated with each Research Project must be approved by the Steering Committee as part of the Research Project Proposal.

4.4. **Research Projects Subject to Agreement and Proposal.** All Research Projects shall be subject to the terms and conditions of this Agreement, as well as the provisions of the Research Project Proposal as approved pursuant to Section 4.1 above. Each Member Institution shall require its Principal Investigators and others involved in any Research Project to act in accordance with the terms and conditions set forth in this Agreement and the approved Research Project Proposal and shall require that such Principal Investigators and others involved in any Research Project ensure that the laboratories used for any such Research Project are run in accordance with all applicable federal, state, and local laws. Each Member Institution shall notify the Steering Committee of the participation in any Research Project by any researchers or others who are not obligated to assign Intellectual Property to such Member Institution prior to such individual participating in such Research Project in any way.

4.5. **Departure of Principal Investigator.** In the event that a Principal Investigator conducting a Research Project under this Agreement leaves the Member Institution, the Steering Committee shall determine whether the Research Project will continue to be conducted by the individual at a different institution or will remain at the Member Institution under the direction of a new Principal Investigator.

4.6 **Removal of Principal Investigator.** The Steering Committee may remove a Principal Investigator from a Research Project for good cause. The Member Institution involved must promptly provide a suitable replacement Principal Investigator.

5. **Research Support Agreements.**

5.1 **Sponsored Research Projects.** The parties anticipate that the EABEC will present the research capabilities of the Consortium to commercial third parties. If the Research Project Proposal with respect to research related to the Consortium Purpose, involves funding from a commercial third party, such Research Project shall be deemed to be a “Sponsored Research Project.” Any specific research program offered by the EABEC to a company for research support, including without limitation the budget for the anticipated research effort, must first be approved by the Steering Committee and any Member Institution that is anticipated to be a participant in the offered research. In addition, necessary budgetary and other approvals shall be obtained by each Member Institution prior to participating in a Sponsored Research Project. Any use of Biospecimens by an entity other than a Member Institution in connection with a Sponsored Research Project must be approved by the Steering Committee.

5.2 **Negotiations with Research Project Sponsors.**

5.2.1 *Coordinated Efforts.* The Member Institutions that are intended to participate in any Sponsored Research Project under this Agreement shall coordinate their efforts in negotiating the terms of any such Sponsored Research Project agreement in order to streamline and expedite the negotiation with the third party. The Research Base, as designated in the EABEC Bylaws, shall serve as the lead negotiator for all contracts with sponsors of Sponsored Research Projects. Each participating Member Institution’s Steering Committee representatives shall provide the lead negotiator with any information that may be germane to the negotiating effort, including, without limitation, any language the Member Institution requires or is required to include or it prohibits or is prohibited from including in any research support agreement with a commercial third party.

5.2.2 *Authority of Research Base.* The Research Base will have full authority to negotiate terms related to the disposition of Intellectual Property and other non-budgetary matters on behalf of all participating Member Institutions to the extent such terms do not violate any governmental regulations, policies of the participating Member Institutions, or pre-existing obligations (including third party rights), of which each participating Member Institution will keep the lead negotiator at the Research Base reasonably apprised. Unless otherwise agreed to by the participating Member Institutions in writing, each participating Member Institution will have input (through its Steering Committee representatives) on such matters that relate to their own policies as regards any language (including without limitation provisions for insurance and indemnification) the Member Institution requires or is required to include or it prohibits or is prohibited from including in any commercial research agreement. All Sponsored Research Project

agreements must be approved by the Steering Committee prior to being signed by the participating Member Institutions. Unless the participating Member Institutions agree otherwise, each participating Member Institution will be a signatory to any Sponsored Research Project agreement, which signature shall not be unreasonably withheld or delayed.

6. Compliance.

6.1. Use and Disclosure of Subject Information by Member Institutions. Each Member Institution located in the U.S. shall comply with applicable laws regarding the transfer and use of human and blood tissue and with HIPAA, as well as any other applicable federal, state, and local laws relating to the use or disclosure of subject information and to the protection of the privacy and confidentiality of such information, including, but not limited to, the obligation to obtain HIPAA Authorizations and other applicable legal permissions prior to using or disclosing any such information. Each Member Institution located outside the U.S. shall also comply with HIPAA and other applicable laws with respect to use and disclosure of Data and Biospecimens, as well as any other applicable laws relating to the use or disclosure of subject information and to the protection of the privacy and confidentiality of such information.

6.2. Human Subject Protection Certification. Human Subject Protection Certification (or the foreign equivalent for foreign Member Institution personnel) is required for all personnel involved with human subject research at any Member Institution as required by NIH policy. The certification requires completion of an authorized educational program on the protection of human research participants, as outlined by NIH policy.

6.3. Safeguards. Each Member Institution will implement appropriate safeguards to prevent use or disclosure of subject information other than as permitted pursuant to this Agreement. In addition, each Member Institution agrees to mitigate, to the extent practicable, any harmful effect that is known to it of a use or disclosure of subject information in violation of the requirements of this Agreement.

6.4. Notice of Applicable Law. Each Member Institution shall give the Steering Committee and other Member Institutions timely notice of any federal, state, local, or foreign laws, rules, regulations, and governmental guidelines that apply or may apply to such Member Institution's participation in the EABEC (or to other Member Institutions as a result of such Member Institution's participation in the EABEC), including, without limitation, those affecting research, the transfer or use of Biospecimens, or the use or disclosure of Data. The Member Institution shall make reasonable efforts to comply with such laws, rules, regulations, and guidelines of other jurisdictions to the extent necessary to enable all Member Institutions to participate in the Consortium and obtain the benefits of participation therein.

6.5. **Biohazards.** Each Member Institution shall comply with all NIH guidelines and other applicable law, rules, and regulations regarding safeguards and disclosure obligations relating to potential biohazards.

6.6. **Bayh-Dole Act.** Each Member Institution shall comply with the Bayh-Dole Act, 35 U.S.C. § 200 *et seq.*, with respect to inventions made with federal assistance.

7. **Confidential Information, Publication, and Publicity.**

7.1 **Confidential Information.** The Member Institutions shall treat all information that is provided by any of them to any other under this Agreement and that consists of confidential or proprietary materials or information not generally available to the public as being "Confidential Information." For clarity, the parties shall mark any such information "Confidential Information." No party shall disclose the Confidential Information provided by any other party nor use the Confidential Information of another party for any purpose other than as required in the performance of its duties under this Agreement. For purposes of this section 7.1, the party receiving the other party's Confidential Information is the "Recipient," and the party disclosing such information is the "Disclosing Party." It is understood and agreed that Confidential Information does not include information that:

7.1.1. is generally known to the public at the time of disclosure or which becomes generally known through no wrongful act of the Recipient;

7.1.2. is in the Recipient's possession at the time of disclosure otherwise than as a result of any prior confidential disclosure by the Disclosing Party or another party or the Recipient's breach of any legal obligation;

7.1.3. becomes known to the Recipient through disclosure by sources other than the Disclosing Party having no duty of confidentiality with respect to such Confidential Information, whether to the Disclosing Party or another party and having the legal right to disclose such Confidential Information;

7.1.4. is independently developed by the Recipient without reference to or in reliance upon the Confidential Information; or

7.1.5. is required to be disclosed by the Recipient to comply with applicable laws or governmental regulation, provided that the Recipient provides, to the extent practical, prompt written notice of such requirement to the Disclosing Party in order to permit the Disclosing Party to take reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

7.2 **Termination of Confidentiality Obligations.** Notwithstanding anything to the contrary in this Agreement, Recipient's obligations as to confidentiality set forth in this Agreement, unless sooner terminated by one or more of the exceptions set forth in Items 7.1.1 through 7.1.5 above, shall terminate seven (7) years from the date of disclosure of Confidential Information by the Disclosing Party.

7.3 Publication of Findings. The Member Institutions and Principal Investigators will collaborate to ensure that the findings from any Research Project can be published as soon as possible, consistent with academic standards and with due consideration to the protection of intellectual property rights and applicable NIH guidelines. Publications shall be joint to the extent necessary to reflect authorship and contribution of scientific insights following the norms for authorship in scholarly publications.

7.4 Acknowledgements. Principal Investigators and Member Institutions shall ensure that publications give acknowledgement of the collaboration and role of each Member of the EABEC and other Principal Investigators.

7.5 Advance Copies of Publications. Principal Investigators and Member Institutions shall submit, and shall cause any collaborating researcher and collaborating institution to submit, to the Steering Committee an advance copy of any proposed publication, including oral presentation materials such as slides, for prior review within agreed time frames that shall in all cases be not less than thirty (30) days prior to publication. The Steering Committee may require Confidential Information to be removed, may request changes, and may require a further delay of publication of up to sixty (60) days when a Research Project sponsor's conditions relating to intellectual property are engaged.

7.6 Co-Publication. The Steering Committee may propose arrangements for co-publication and/or individual publications among Principal Investigators and other researchers.

7.7. Confidentiality Obligations under Federal Law. Notwithstanding the foregoing, each Member Institution shall be responsible for complying with 35 U.S.C. § 205 with respect to inventions made with federal assistance.

8. Intellectual Property.

8.1. Definitions.

8.1.1. *Inventor and Inventorship.* For purposes of this Article 8, “inventor” and “inventorship” and “invention” shall be construed consistently with U.S. law, and inventorship shall be determined in accordance with applicable U.S. patent law.

8.1.2. *Intellectual Property.* “Intellectual Property” means any intellectual property, including, without limitation, any inventions, innovations, know-how, improvements, discoveries, designs, processes, ideas, methodologies, databases, reports, documentation, works, materials, and data made, developed, created or conceived in the course of research conducted under a Research Project, whether or not protectable by patent, trade secret or copyright, and all applications or registrations relating to the foregoing.

8.2. Disclosure Obligations.

8.2.1. *Background IP, Member IP, and Third-Party IP.* Each Member Institution that submits a Research Project Proposal to the Steering Committee

pursuant to Section 4 shall disclose, in writing as part of such proposal, detailed specifications and descriptions of:

(a) Any patents or other Intellectual Property that were created, invented or first reduced to practice by such Member Institution either prior to the commencement of the proposed Research Project or arising outside the scope of the such Research Project that are reasonably expected by the Member Institution to be useful or necessary in the research undertaken for or the practice of the results of such Research Project and related Research Project invention(s) (“Background IP”);

(b) Any patents or other Intellectual Property and inventions owned or controlled by any Member Institution that are reasonably expected by the proposing Member Institution to be useful or necessary in the research undertaken for or the practice of the results of such Research Project and related Research Project invention(s) (“Member IP”); and

(c) Any patents or other Intellectual Property and inventions owned or controlled by any party other than a Member Institution that are reasonably expected by the proposing Member Institution to be useful or necessary in the research undertaken for or the practice of the results of such Research Project and related Research Project invention(s) (“Third-Party IP”).

8.2.2. *Obligations to Third Parties.* Disclosures made pursuant to Section 8.2.1 shall include, to the best of the proposing Member Institution’s knowledge, obligations to any third parties that would preclude the ability of such Member Institution to license or practice such Background IP, Member IP or Third-Party IP for purposes of performing the Research Project or practicing the results of such Research Project and Research Project inventions.

8.2.3. *Additional IP.* In the event that additional Background IP, Member IP or Third-Party IP is identified during the Steering Committee’s consideration of the Research Project Proposal or during the performance of the Research Project, the proposing Member Institution shall notify the Steering Committee in writing of the intent to use such additional Intellectual Property at the earliest practical time.

8.2.4. *Research Project Inventions.* With respect to any Research Project performed under this Agreement, the Member Institution(s) involved shall disclose to the Steering Committee, in writing at the earliest practical time, all inventions that are invented in performance of such Research Project (“Research Project inventions”), using the form on Exhibit B, attached hereto and incorporated herein by reference.

8.3. **Ownership of Intellectual Property.**

8.3.1. *Research Project IP.* Subject to the provisions herein and to the terms and conditions of any applicable sponsored Research Project agreement, title to any

Intellectual Property created during performance of the Research Project shall remain with the inventing or creating Member Institution(s).

8.3.2. *Background, Member, and Third-Party IP.* All Background IP, Member IP and Third-Party IP is and shall remain the separate Intellectual Property of the Member Institution, or a third party, respectively, and shall not be affected by this Agreement. No Member Institution shall have any claims to or rights in the Intellectual Property of another Member Institution except for rights and licenses granted pursuant to or under this Agreement, or under a separate agreement specifying such Intellectual Property and the terms of its use. This Agreement shall not be construed as implying that any Member Institution shall have the right to use Intellectual Property of another Member Institution in connection with this Agreement except as otherwise provided herein.

8.3.3. *Joint Research Project IP.* Member Institutions jointly performing a Research Project shall mutually agree on which Member Institution (“managing Member Institution”) shall protect and manage Research Project inventions on behalf of such Member Institution(s), including without limitation the provision of regular reports to the Steering Committee and the other Member Institution(s) involved.

8.3.4. *Assigning Rights.* Title to any Research Project invention shall remain with the inventing institution(s) of the applicable Research Project. Such inventing institution(s) may file patent applications on Background IP, Member IP, or Research Project inventions owned by it/them at its or their sole cost and expense. Each Member Institution shall ensure that all persons employed by it, performing research, or working under it pursuant to Research Projects pursuant to this Agreement shall assign or be obligated to assign all rights in Research Project inventions to such Member Institution. The Member Institution shall notify the Steering Committee in advance if any party other than the foregoing personnel shall or might participate in the Research Project unless such party is employed by another Member Institution.

8.3.5. *Member Institution Patent Applications.* The Member Institution shall promptly evaluate any Research Project inventions disclosed pursuant to Section 8.2.4 for which it is responsible to determine whether it elects to have any patent applications filed in any given country or jurisdiction. The Member Institution may file patent applications on any Research Project invention to which it has sole title. If more than one Member Institution has title to a Research Project invention, the managing Member Institution designated under Section 8.3.3 shall notify the Steering Committee immediately of its decision whether or not to pursue protection through patent applications or other appropriate forms of legal protection of the Research Project invention, and upon receipt of such notice, the Steering Committee and Member Institutions participating in the applicable Research Project agree to keep confidential the Research Project invention and related materials for such time period as is necessary for the owning Member Institution(s) to file a provisional or utility patent application for such Research

Project invention, provided, the managing Member Institution shall diligently pursue such protection and notify the other Member Institutions when it is no longer legally necessary to keep such information confidential for purposes of pursuing patent protection. Each Member Institution with a named inventor in such application shall cooperate with the managing Member Institution in the preparation and execution of documents reasonably required to prepare, file, prosecute, maintain, assign and record ownership, or otherwise to obtain or hold patent protection. The Steering Committee and any Member Institution having joint ownership of a Research Project invention shall have the right and opportunity to review and comment on any patent application prepared in connection with a Research Project invention, and such comments shall be considered by the managing Member Institution seriously and in good faith.

8.3.6. *Notification of Forfeiture or Abandonment.* No existing patent, patent application, or other form of intellectual property protection for a Research Project invention shall be forfeited or abandoned by a managing Member Institution without first notifying in writing the Steering Committee and the other Member Institution(s), if any, holding title thereto. In the case of abandonment of a patent application, such notification must be provided at least thirty (30) days prior to the last date when action could be taken to keep the application active. In the case of abandonment of an existing patent, such notification must be provided at least thirty (30) days prior to the next maintenance fee due date.

8.3.7. *Infringement on Third-Party IP.* If, during the term of a Research Project, any Member Institution is notified by a third party of the existence of Third-Party IP that the third party alleges is infringed by the conduct of a Research Project being conducted at the Member Institution, it shall promptly notify the Steering Committee and the other Member Institutions participating in the Research Project. Each Member Institution that is participating in the Research Project shall have the right to elect to discontinue participation in such Research Project.

8.3.8. *Reporting.* Each Member Institution shall be responsible for reporting Research Project inventions on behalf of Member Institutions to government and other sponsors as may be required by applicable law; or contracts, as well as to the Steering Committee in accordance with Section 8.2.4.

8.3.9 *Federal Assistance.* Each Member Institution shall be responsible for complying with 35 U.S.C. §§ 202 and 203 with respect to inventions made with federal assistance.

8.3.10 *Notice of NIH Assistance.* Each Member Institution shall be responsible for complying with 37 C.F.R. § 401.14(f)(4), which requires that the following clause be used in applications for patent: “This invention was made with government support under (identify grant, contract, or cooperative agreement) awarded by (identify the Institute or Center), National Institutes of Health. The government has certain rights in the invention.”

8.4. **Licenses and Commercialization of Intellectual Property**

8.4.1. *Research Cross-License.* Each Member Institution participating in a Research Project hereby grants to the other Member Institutions participating in the Research Project, if any, a paid-up and nonexclusive research cross-license to its Background IP solely for purposes of performing research pursuant to such Research Project. Upon completion of such Research Project, such research cross-license shall terminate.

8.4.2. *Research License to EABEC Member Institutions.* Each Member Institution hereby grants to the other Member Institutions an irrevocable non-exclusive perpetual worldwide royalty-free license (with the right to grant royalty-free, non-transferable and non-sublicensable sublicenses to academic or not-for-profit research entities and their researchers) to use the Intellectual Property, Research Project Inventions, any information in the Biospecimens and Data Bank, work product, and results related to this Agreement for academic and non-commercial research uses, subject to the rights of the owner of the Intellectual Property, and in accordance with this Agreement.

8.4.3. *Commercialization of Inventions.* Subject to approval of the Steering Committee, which approval will not be unreasonably withheld, and to the provisions of this Agreement, the Member Institution that owns a patentable Research Project invention may commercialize such Research Project invention. The Member Institutions shall have responsibility for licensing their Intellectual Property. Each of the Member Institutions hereby agrees to use its reasonable efforts to license or otherwise commercialize the Intellectual Property in a manner intended to bring methods and products of the Research Project inventions available to the public as soon as possible.

8.4.4. *Commercialization of Portfolios.* Within a portfolio of Intellectual Property to be commercialized, if individual Research Project inventions are owned by different Member Institutions, such Member Institutions shall reach agreement as to which Member Institution shall direct the commercialization effort for such portfolio, and other details of commercialization, including but not limited to details of cost sharing or allocation, preferred route(s) for commercialization, proportions of revenue or equity share to be attributed to the individual Member Institutions, and royalty and assignment conditions.

8.4.5. *License to Background IP.* Subject to third party obligations, each of the Member Institutions shall use reasonable efforts to license its Background IP on commercially reasonable terms with a Research Project invention if the Background IP is necessary and/or useful to the practice of the Research Project invention. Member Institutions must notify the Steering Committee in writing of any Background IP licenses that may present freedom to operate issues for Research Projects.

8.4.6. *Notification of Steering Committee.* Each Member Institution shall keep the Steering Committee informed, on a regular basis, of its licensing efforts and shall notify the Steering Committee in advance of the material terms of all proposed grants, licenses or uses of any Intellectual Property or results of research performed pursuant to a Research Project hereunder. The Member Institution shall provide the Steering Committee with one true copy of each signed license relating to Research Project inventions.

8.4.7. *License Agreement Provisions.* In each license agreement of a Research Project Invention, the licensing Member Institution(s) shall consult with the Steering Committee and shall include essentially the following provisions:

(a) The Member Institution shall cause its licensee to indemnify, defend and hold harmless the other Member Institutions that participated in the applicable Research Project and their respective trustees, officers, independent contractors, medical and professional staff, employees, and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the Indemnitees, or any one of them, in connection with any claims, suits, actions, demands, or judgments (i) arising out of the design, production, manufacture, offer for sale, sale, use in commerce, lease, or promotion by the licensee or by a sublicensee, affiliate or agent of licensee, of any product, process or service or (ii) arising out of any other activities to be carried out pursuant to the agreement between such Member Institution and its licensee.

(b) The licensee shall, at its own expense, provide attorneys reasonably acceptable to the participating Member Institutions and the Steering Committee to defend against any actions brought or filed against any party indemnified hereunder with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought.

(c) If any such action is commenced or claim made or threatened against any Indemnitees which the licensee is obligated to indemnify or hold harmless, the affected Indemnitees shall promptly notify the licensee of such event. The licensee shall assume the defense of, and may settle, that part of any such claim or action commenced or made against the Indemnitees which relates to the licensee's indemnification and the licensee may take other steps as may be necessary to protect it.

(d) At such time as any product, process or service relating to, or developed pursuant to, this Agreement is being commercially distributed or sold by a licensee of a Member Institution, the licensee shall be required to obtain and maintain comprehensive general liability insurance in amounts not less than \$2,000,000 per incident and \$2,000,000 annual aggregate, and the Indemnitees shall be named as additional insureds on such policy (policies). The licensing Member Institution shall cause its licensee to provide it with written proof of

insurance upon the request of the Steering Committee. Such licensee shall provide the Steering Committee with written notice of at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance. If the licensee does not obtain replacement insurance providing comparable coverage within such fifteen (15) day period, the Member Institution shall have the right to terminate the license agreement effective at the end of such fifteen (15) day period without any notice or additional waiting periods.

(e) The Member Institution shall cause its licensee to maintain such comprehensive liability beyond the expiration or termination of this Agreement during the period that any product, process, or service, relating to, or developed pursuant to, this Agreement is being commercially distributed or sold by such licensee or by its sublicensee, affiliate or agent of such licensee.

(f) The licensee shall require any affiliate or sublicensee(s) to indemnify, hold harmless and defend the Member Institution under the same terms as set forth in this Section.

8.4.8. *License to Research Project Inventions.* In the event that a Member Institution obtains a patent for a Research Project invention, such Member Institution shall offer to other Member Institutions, subject to its legal right to do so, a license to the Research Project invention and relevant Background IP and/or Member IP, subject to commercially reasonable terms to be negotiated in good faith and reduced to a separate agreement.

8.4.9. *Net Proceeds.*

(a) The Member Institution(s) owning patentable Research Project invention may retain forty percent (40%) of the net royalties generated from such Research Project invention. In the case of joint ownership, the owning Member Institutions shall share such forty percent (40%) as determined by such Member Institutions, taking into consideration the contributions of each. All Member Institutions that participated in the Research Project shall each be given a pro rata portion of the remaining net royalties generated from any patentable Research Project invention arising out of such joint Research Project.

(b) Pursuant to the Bayh-Dole Act, royalties for NIH-supported inventions must be shared with the inventors, and the balance of any royalties or income earned, after payment of expenses, including payment to inventors and payment of expenses incidental to the administration of subject inventions, must be utilized for the support of scientific research or education.

8.4.10 *Government License.* Licenses to inventions made with federal assistance will reserve a royalty-free, non-exclusive license to the U.S. government for the use of the technology for governmental purposes. Such licenses will also reserve the option to allow private or public educational institutions to use the technology for non-commercial purposes in research and education on a royalty-free basis,

subject to confidentiality requirements.

8.4.11 *Patentable Unpatented Intellectual Property.* The terms of any license to an invention that is made with federal assistance and is patentable but unpatented, must be no more restrictive than they would have been if the invention had been patented.

8.5. **Financial Records.** Member Institutions agree to: (i) maintain, and cause any subcontractors to maintain, independent and adequate financial records of the costs and revenues associated with any patentable Research Project invention, and (ii) allow verification of and compliance by such Member Institutions with the agreed division of proceeds and the other terms of this Agreement. On an annual basis, other Member Institutions shall be given a reasonable opportunity to examine the financial records for verification purposes.

8.6. **Effect of Withdrawal.** On withdrawal from the Consortium by any Member Institution pursuant to Section 9.2, the following additional provisions shall apply: (i) research cross-licenses granted to the withdrawing Member Institution under Section 8.4.1 shall terminate; (ii) the withdrawing Member Institution's obligation to share proceeds pursuant to Section 8.4.9 shall survive; and (iii) any rights of non-withdrawing Member Institutions to obtain a license to Research Project Inventions, Background IP, or Member IP from the terminating Member Institution shall survive.

9. **Term and Termination.**

9.1. **Term.** This Agreement shall be effective on the Effective Date, as defined in Section 1.7. This Agreement shall continue in effect for an initial term of one (1) year after the Effective Date unless earlier terminated pursuant to Section 9.2 or 9.3 below. Thereafter this Agreement shall be reviewed annually by the parties and shall automatically renew for successive terms of one (1) year unless earlier terminated pursuant to Section 9.2 or 9.3 below.

9.2. **Termination without Cause.** The EABEC Steering Committee may terminate this Agreement as it applies to any particular Member Institution(s), and each Member Institution may terminate this Agreement as it applies to itself, for convenience without cause at any time upon ninety (90) days' written notice to the other parties, regardless of whether any Research Project being conducted by, at, or under the auspices of the applicable Member Institution has been completed; provided, however:

9.2.1. *Termination by Member Institution.* If the Agreement is terminated for convenience by a Member Institution, the following provisions shall apply notwithstanding any such termination:

(a) If any Research Project, other than a Research Project that originated solely with such leaving Member Institution, has been approved to be conducted at or under the auspices of such Member Institution but has not been commenced, the Steering Committee shall have the option to relocate such Research Project (including all funding relating thereto) to another Member Institution.

(b) Such Member Institution shall return or destroy all Confidential Information furnished by the EABEC or any other Member Institution(s) (as directed by the Disclosing Party), and return all unused Biospecimens to the EABEC Biospecimens and Data Bank; provided, however, that such Member Institution may retain one copy of written Confidential Information solely for archival and compliance purposes and subject to all of the terms and conditions herein.

(c) Section 8.6 herein shall apply.

(d) Notwithstanding any such termination, such Member Institution will perform all of its obligations and commitments with respect to any and all previously approved Research Projects in which it agreed to participate unless otherwise agreed to by the EABEC Steering Committee and the other participating Member Institutions.

9.2.2. *Termination by the EABEC Steering Committee.* If this Agreement is terminated as to any Member Institution for convenience by the EABEC Steering Committee, the following provisions shall apply:

(a) If a Research Project at or under the auspices of such Member Institution that has been approved by the EABEC has been commenced but has not been completed as of the effective date of the termination, provided that the Member Institution continues to perform all of its obligations with respect to such Research Project, EABEC shall continue rendering its customary support services in connection therewith as set forth in the approved Research Project Proposal for such Research Project.

(b) If no Research Project is then being conducted at such Member Institution as of the date of such notice of termination, the EABEC's obligations (and the obligations of other Member Institutions) to the leaving Member Institution with respect to any Research Project(s) that have not yet commenced shall automatically terminate as of the date of such notice, and this Agreement, as it pertains to the affected Member Institution, shall automatically terminate at the end of the ninety (90) day notice period.

(c) Such Member Institution shall return or destroy (as directed by the Disclosing Party) all Confidential Information furnished by the EABEC or any other Member Institution(s), and return all unused Biospecimens to the EABEC Biospecimens and Data Bank.

(d) Section 8.6 herein shall apply.

9.3. **Termination for Breach.** In the event of a material breach of this Agreement by a Member Institution, the non-breaching party or parties shall give the breaching party written notice specifying the nature of the breach, and the breaching party shall have

thirty (30) days from its receipt of such notice to cure such breach (if curable). If such breach is not curable, or if curable the breaching party has not cured or has not taken steps in a good faith effort to cure within the aforesaid period, the non-breaching party or parties may terminate this Agreement immediately upon written notice to the breaching party, or may, at its or their discretion, attempt to continue to resolve such breaches to the satisfaction of all parties, provided, any such election to continue attempting to resolve such breach shall not prejudice the non-breaching party's or parties' right to terminate this Agreement if the parties are unable to agree upon a resolution. Upon any termination pursuant to this provision, the breaching Member Institution shall return or destroy (as directed by the Disclosing Party) all Confidential Information and other materials, Data, and/or equipment furnished by or at the direction of the EABEC or any other Member Institution(s), and return to the Biospecimens and Data Bank all unused Biospecimens.

9.4. **Transition Duties.** Each Member Institution agrees that in the event of any termination of this Agreement as it applies to it, it shall not act or authorize its personnel to act in any manner that would impede the continuation of any Research Project or other EABEC research. At the EABEC Steering Committee's request, such Member Institution shall cooperate and cause its Principal Investigator(s) to cooperate with the EABEC Steering Committee in order to effect a smooth transition of any research conducted by such Member Institution as part of the Consortium to a new institution. However, nothing shall preclude Principal Investigator(s) from continuing to pursue the same or similar research independent of the Consortium.

9.5. **Remaining Member Institutions.** The termination of this Agreement as it applies to any Member Institution shall not affect or diminish the validity or enforceability of this Agreement as between and among the remaining Member Institutions.

10. **Disclaimer, Indemnification, and Insurance.**

10.1. **No Warranty for Biological Material.** Member Institutions acknowledge that any biological material provided and shared under this Agreement may have unknown characteristics and risks. Any biological material shared is shared without any warranty of any kind.

10.2. **Indemnification.** Except as otherwise provided herein, to the full extent permitted by applicable law, each party (each an "Indemnifying Party") shall, at its expense, indemnify, hold harmless and, at each other party's (the "Indemnified Party" or "Indemnified Parties") written request, defend the Indemnified Party/Parties, its/their officers, trustees, agents, employees, representatives, parent companies, related and affiliated companies and their respective officers, directors, successors and assigns, from and against any third party claims and any and all loss, cost, liability or expense of a third party claim (including costs and reasonable fees of attorneys and other professionals) which the Indemnified Party/Parties suffer(s) resulting from such third party claim that are directly attributable to the Indemnifying Party's gross negligence or willful misconduct. The Indemnified Party/Parties shall notify the Indemnifying Party of any third party claim made against it within ten (10) days of knowledge of the claim if the

Indemnified Party/Parties intend(s) to seek indemnity with respect to such claim under this paragraph. The Indemnifying Party shall have the right to undertake, conduct and control, through counsel of its own choosing, the defense and settlement of any such claim. The Indemnified Party/Parties shall have the right to be represented by counsel of its own choosing, but at its/their own expense. So long as the Indemnifying Party is contesting any such claim in good faith, the Indemnified Party/Parties shall not pay or settle such claim. The Indemnified Party/Parties shall provide reasonable assistance to the Indemnifying Party in the defense of such claim or action at the Indemnifying Party's request and reasonable expense.

10.3. Authority to Enter Agreement. Each party represents and warrants to the other parties that it has the power to enter into this Agreement and to perform its obligations, and that it has taken necessary action for the execution of this Agreement to constitute a binding obligation enforceable against it.

10.4. Disclaimer of Warranties. EACH PARTY ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO PARTY NOR ANY OF THEIR PARENTS, SUBSIDIARIES OR AFFILIATES MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY BLOOD, TISSUES, RESULTS, PROJECT INVENTIONS OR PATENT RIGHTS OR AS TO THE ORIGINALITY OR ACCURACY OR VALIDITY OF A JOINT RESEARCH PROJECT, INTELLECTUAL PROPERTY, INVENTIONS, PATENTS, OR PRODUCTS ARISING UNDER THIS AGREEMENT OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF A JOINT RESEARCH PROJECT, INTELLECTUAL PROPERTY, INVENTIONS OR PRODUCTS ARISING THEREFROM.

10.5. Limited Damages. EXCEPT AS MAY BE AWARDED IN CONNECTION WITH A CLAIM FOR WHICH INDEMNIFICATION IS PROVIDED UNDER A PROJECT, NO PARTY SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY ANY OTHER PARTY TO THIS AGREEMENT OR BY ANY OTHERS RESULTING FROM THE USE OF THE RESULTS OF A RESEARCH PROJECT, INTELLECTUAL PROPERTY, INVENTIONS, OR PATENTS.

10.6. Notification of Limitations on Indemnification. If any party's indemnification obligation under Section 10.2 is unenforceable based on sovereign immunity or if there are any legal limitations (statutory or common law) applicable to such party's indemnification (e.g., a limitation on the scope of such indemnification or a financial cap on the amount of the indemnification), the indemnification of such party by the other parties shall be similarly limited.

10.7. Insurance. Each party shall maintain insurance or a program of self-insurance that is sufficient and available to provide coverage for its obligations and indemnifications hereunder.

11. Disputes and Arbitration.

11.1. Reasonable Best Efforts. The parties agree to use reasonable best efforts to resolve amicably among themselves, through their representatives on the Steering Committee, any dispute arising out of this Agreement.

11.2. Mediation Committee. If the parties are unable to resolve a dispute amicably, the parties shall establish a mediation committee of at least three persons. Each party to a dispute shall appoint one committee member, and an additional neutral member shall be appointed by the agreement of the parties' appointees (with the understanding that if the dispute involves any patent issues, such neutral member shall be a patent attorney with experience in the relevant science or technology). Each party shall make its appointment within thirty (30) days of receipt of a mediation notice, and such appointees shall mutually designate an additional neutral member within thirty (30) days thereafter. No party shall be permitted to appoint to the mediation committee any person who has not agreed to perform his/her mediation obligations in the manner set forth in this Article 11. Where a mediation committee is established, the parties shall share in equal amounts the costs associated with such committee.

11.3. Recommendation of Mediation Committee. The neutral member of the mediation committee shall call and chair a meeting of all of the appointees for the purpose of reviewing the issues in dispute, and then the committee shall make a non-binding recommendation to the parties as to settlement of the issues in dispute within thirty (30) days. The parties then have thirty (30) days in which either to accept the recommended non-binding proposal of the mediation committee or to seek whatever legal or administrative remedies may be available.

11.4. Claims Relating to Intellectual Property. Notwithstanding anything herein to the contrary, none of the parties has any obligation to mediate any claims relating to the infringement or violations of Intellectual Property or to any indemnification obligation hereunder. Such party may assert any such infringement claims relating to its owned or controlled Intellectual Property or any indemnification obligation in any court of competent jurisdiction in the United States of America.

12. General.

12.1. Notices. Any notice or document required under this Agreement shall be in writing and shall be sent by prepaid courier, delivered personally, or sent by facsimile transmission to the address of each of the Parties set out on Schedule A.

12.2. Assignment. This Agreement shall not be assignable by any party without the prior written consent of the other parties. Any and all assignments not made in accordance with this section shall be void.

12.3. Independent Contractor Relationship. Each party shall be deemed to be an independent contractor and not an agent or employee of the other parties. No party shall have the authority to make any representations or commitments of any kind that are

binding on another party, except as may be provided for in this Agreement or authorized by the other party or parties in writing.

12.4. **Use of Names.** Member Institutions shall not use the names or trademarks of any other party or any other party's personnel, officers, directors, employees or students or any adaptation thereof in any advertising, promotional or sales literature, or related non-scientific publications, publicity or in any document used to obtain funds without the prior written approval of the party or individual whose name is to be used. Such approval shall not be unreasonably withheld or delayed. Each party shall give the others written notice at least thirty (30) days prior to any advertising or promotion of the Consortium or Research Projects, which notification shall include a copy of the material for release, as well as details of the information to be disclosed and of the time, place and manner of the disclosure. Notice of publication of results in scientific venues shall be governed by the provisions of Section 7.5 of this Agreement.

12.5. **Survival.** The terms of Sections 1, 6, 7, 8, 9, 10, 11, and 12 shall survive any termination or expiration of this Agreement.

12.6. **Headings.** The headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement. Any reference in this Agreement to an article, sub-section, Schedule, or Exhibit refers to the specified article, sub-section, Schedule, or Exhibit to this Agreement.

12.7. **Amendment and Waiver.** No amendment or waiver of any provision of this Agreement shall be binding on any of the parties unless consented in writing by all parties to this Agreement. No waiver of any provision of this Agreement shall constitute a waiver of any other provisions, nor shall any waiver constitute a continuing waiver so as to impair any party's rights unless otherwise expressly provided in writing.

12.8. **Severability.** Each provision of this Agreement is separate, severable and distinct. If any provision is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions.

12.9. **Cooperation.** Each of the parties shall execute such agreements and take such steps as may be reasonably requested by the other parties in order to give effect to this Agreement.

12.10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document.

12.11. **Entire Agreement.** This Agreement, together with the Schedules and Exhibits, constitutes the entire Agreement between the parties with respect to its subject matter and supersedes all prior agreements, negotiations and discussions, whether written or oral. There are no conditions, agreements, representations, warranties or other provisions relating to the subject matter except as provided in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives.

Mayo Clinic Rochester

By: _____
Name: _____
Title: _____

Mayo Clinic Jacksonville

By: _____
Name: _____
Title: _____

Mayo Clinic Scottsdale

By: _____
Name: _____
Title: _____

M.D. Anderson Cancer Center

By: _____
Name: _____
Title: _____

Johns Hopkins University

By: _____
Name: _____
Title: _____

University of Arizona

By: _____
Name: _____
Title: _____

University of North Carolina at Chapel Hill

By: _____
Name: _____
Title: _____

Vanderbilt University

By: _____

Name: _____

Title: _____

McMaster University

By: _____

Name: _____

Title: _____

Schedule A

Member Institutions and Contact Information

Mayo Clinic Rochester

Mayo Clinic Jacksonville

Mayo Clinic Scottsdale

M.D. Anderson Cancer Center

Johns Hopkins University

University of Arizona

University of North Carolina at Chapel Hill

Vanderbilt University

McMaster University

Exhibit A

EABEC Research Project Proposal Form

