

***Via Email (eh@pricklyresearch.com)***

September 26, 2012

Edward Hammond  
3103 Powell Cir  
Austin TX 78704

***Re: September 21, 2012 Requests for Open Records***

Dear Mr. Hammond:

The Georgia Institute of Technology ("Georgia Tech") received your September 21, 2012 Open Records Act request for records. Specifically, you requested that records responsive to the following requests be produced to you electronically:

***Request No. 1.***

***The most recent complete Export Permit and complete Certificate of Origin for biological sample(s) received by Georgia Tech from Fiji in the ICBG program.***

Attached is the most recent completed export permit. Georgia Tech does not have any documents responsive to the second part of Request No. 1.

***Request No. 2.***

***The most recent annual report of the ICBG program prepared for the Fijian government.***

Georgia Tech does not have any documents responsive to Request No. 2.

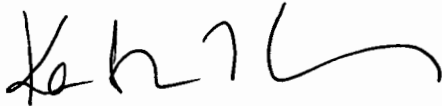
Georgia Institute of Technology  
Atlanta, Georgia 30332-0495 U.S.A.  
PHONE 404.894.4812  
FAX 404.894.3120

**Request No. 3.**

***The legally binding agreement in place among collaborating universities, the Fijian government, and Bristol Myers Squibb in the ICBG program.***

Georgia Tech's documents responsive to Request No. 3 are attached.

Regards,



Kathleen T. Gosden

Senior Attorney

*kathleen.gosden@legal.gatech.edu*

/mrr

(Attach.)

C: Mark Hay



GOVERNMENT OF FIJI  
 Ministry of Fisheries and Forests  
**FISHERIES DEPARTMENT**  
 P.O.Box 2218, Government Buildings, Suva, Fiji Islands  
 Telephone: (679) 330 1011 Facsimile: (679) 331 8769

Permit No: C647/2012

**EXPORT PERMIT**

Special Case

of

AIE Code: and TIN Code: is/are hereby authorised under  
 Section 64 of the Customs Act 1986 to export from Fiji to **United States**

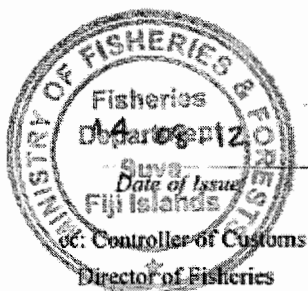
Quantity	Product Name	Description	Tariff Code	Stats Code
5 gr	Algae Extracts	Freeze Dried		
5 kg	Algae	Frozen		

This licence is not transferable and is valid only for goods to be shipped to **Atlanta**  
 on **17 August, 2012** or before **24 August, 2012**.

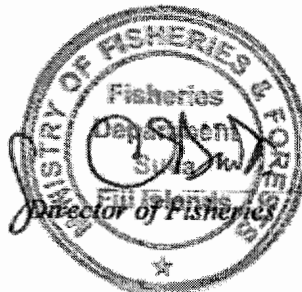
This licence is subject to the following terms or condition

**Conditions**

For research purpose: Georgia Institute  
 Technology.



File



**RESEARCH COLLABORATION AGREEMENT**

This Research Collaboration Agreement ("Agreement"), entered into this 22nd day of May 2006 ("Effective Date") is entered by and among the following Parties:

Georgia Tech Research Corporation, hereafter referred to as **GTRC**, having offices at 505 Tenth Street NW, Atlanta, GA 30332-0420

and

The Regents of the University of California  
Scripps Institution of Oceanography, University of California San Diego, hereafter referred to as **SIO**, with offices at 9500 Gilman Drive, La Jolla, CA 92093-0210

and

University of the South Pacific at Fiji, hereafter referred to as **USP**, having offices on Laucala Bay Road, Suva, Fiji

**RECITALS:**

A. Whereas GTRC:

- a) is a not-for-profit corporation research foundation and serves as the contracting entity for Georgia Institute of Technology ("GIT") and may assign all or some of its rights to GIT, and GIT is an educational institution whose mission is to carry out scientific research through its faculty, staff, and students and is committed to bringing the results of that research into widespread use to the extent it is permitted to do so by its intellectual property policy, by its agreements with sponsors of research, and by the provisions of 35 USC §§200-212 and 37 CFR §401 *et seq.* and regulations pertaining thereto, and
- b) GIT is an educational institution that employs Dr. Mark Hay as a Principal Investigator in the School of Biology

B. Whereas SIO:

- a) is a marine and earth science research center within the University of California San Diego, whose mission is to carry out scientific research and education through its faculty, staff, and students and is committed to bringing the results of that research into widespread use to the extent it is permitted to do so by its UC Patent Policy, by its agreements with sponsors of research, and by the provisions of 35 USC §§200-212 and 37 CFR §401 *et seq.* and regulations pertaining thereto, and
- b) is part of the University of California San Diego, an educational institution that employs Dr. William Fenical as a faculty member

C. Whereas USP:

- a) is an educational institution whose mission is the maintenance, advancement and dissemination of knowledge by teaching, consulting and research, and is responsive to the well-being and needs of the communities of the South Pacific
  - b) is an educational institution that employs Dr. William Aalbersberg as a faculty member,
- D. Whereas the Parties have jointly and collectively submitted a research proposal in response to NIH RFA TW-04-004 (Exhibit C) entitled "Exploration, conservation, and development of marine biodiversity in Fiji" to the Division of Research Grants of the National Institutes of Health of the United States of America; wherein the primary aims of the research are to 1) access, evaluate, identify, characterize, test and develop Chemical Entities with biomedical potential from Fijian Micro- and Macro-organisms as Products in target areas such as antibiotics, cancer, malaria, AIDS, and other diseases, especially those affecting native peoples of the South Pacific; 2) promote conservation of marine biodiversity; and 3) promote economic development within Fiji based on synergisms with biodiversity conservation.
- E. Whereas the Research describes an International Cooperative Biodiversity Group "ICBG" grant directed toward drug discovery based on natural products obtained by GIT, SIO, and/or USP and contemplates five associate programs guided by a Principal Investigator (Dr. Mark Hay of GIT) as follows:
- a) Associate Program 1 ("AP -1"): "A Microbial Diversity Approach to Drug Discovery" (SIO) (Associate Program Leader Dr. William Fenical, Professor, SIO)
  - b) Associate Program 2 ("AP-2"): "Ecological Leads for Drug Discovery from Marine Macroorganisms" (Associate Program Leader Julia Kubanek, Assistant Professor, School of Biology, GIT)
  - c) Associate Program 3 ("AP-3"): "Coral Reef Conservation in Fiji" (Associate Program Leader Terry Snell, Professor, School of Biology, GIT)
  - d) Associate Program 4 ("AP-4"): "Economic Development on the Fijian Coast" (Associate Program Leader Kirk Bowman, Associate Professor, GIT)
  - e) Associate Program 5 ("AP-5"): "South Pacific Center for Biodiversity Conservation and Drug Discovery" (Associate Program Leader William Aalbersberg, Professor, USP)
- F. Whereas the Fogarty International Center of the National Institutes of Health has issued a four-year grant award to the P.I., Dr. Mark Hay, on September 29, 2005 for project period September 29, 2005 – August 31, 2009 for the purpose of conducting the Research and all recipients of funds from this award are subject to the guidelines posted in NIH RFA TW-04-004;
- G. Whereas the Parties desire to involve mutually agreed upon industrial partner(s) in order to benefit from their drug discovery, development and commercialization capabilities and will execute agreements which contemplate the rights and management of intellectual property resulting from investigations conducted with any

mutually agreed upon industrial partners and the delivery of Materials to carry out such investigations;

- H. Whereas the aforementioned research grant awarded by NIH included an Intellectual Property Plan regarding access permits, intellectual property licensing and benefit sharing terms and conditions for any biomedical agent identified or developed as a result of the Research;

NOW THEREFORE, in consideration of the foregoing recitals and the following terms and conditions, the Parties agree as follows:

## **ARTICLE 1. PURPOSE AND MANAGEMENT**

### 1.1 The purposes of this agreement are two-fold

The primary purpose is to enable scientists from the Associate Programs to undertake research towards the discovery and development of medical agents from poorly understood micro- and macro-organisms found in Fiji whilst generating knowledge about biodiversity to promote its conservation, in-country economic and scientific development and the education of local stakeholders

The secondary purpose of this Agreement is to clearly define the provisions of intellectual property, access and benefit sharing mechanisms that the research would be subject to and that have been agreed and accepted by and between the Parties.

- 1.2 In terms of project management, it is the mutual desire of the Parties that, for the purposes of this Agreement, USP serve as a conduit for the collection and distribution of benefits to the Appropriate Providers for conservation within Fiji, and as an intermediary to secure any required permissions from the Fijian Ministry of Forestry and Fisheries for distribution of Materials beyond the Parties.

## **ARTICLE 2. DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings provided that common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the context of this Agreement requires:

- a. "Active" means having yielded positive results in the Screening and shall be used throughout this Agreement in reference to Extracts, Fractions, and/or Chemical Entities as the case may be.
- b. "Affiliate" means any person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control by any of the Parties.
- c. "Agreement Term" means the periods defined in Article 14.1.
- d. "Appropriate Providers" means any Fijian community, public or private organization, person, or entity on whose land or waters sampling of biological and genetic resources has taken place for the Research.

- e. "Chemical Entity" means any chemical or biological molecule, including without limitation, proteins, carbohydrates, secondary metabolites, genes, DNA and RNA compounds (both known and novel) isolated or obtained directly from an Extract and/or Fraction
- f. "Chemical Entity of Interest" means a designation given to a chemical or biological molecule identified during the Screening that has biological activity of interest to a Third Party.
- g. "Confidential Information" means all reports, materials, trade secrets, lists of Samples, patent prosecution information or other data or information disclosed by one Party to the other. Written information exchanged hereunder shall be considered Confidential Information for the purposes of this Agreement only if such information is clearly marked with an appropriate stamp or legend as Proprietary or Confidential. Non-written information exchanged hereunder shall only be considered Confidential Information if, at the time of such disclosure, the Information being disclosed is identified as proprietary or confidential and the disclosing party provides the receiving Party with a writing which clearly identifies the nature and content of the disclosed information within thirty (30) days after such disclosure. Confidential Information does not include the following:
  - i. data and information which the receiving Party proves by competent evidence was known to, or otherwise in the lawful possession of, the receiving Party prior to disclosure by the other Party or which is developed independently by the receiving Party; or
  - ii. data and information which is or thereafter becomes part of the public domain through no act or omission attributable to employees or agents of the receiving Party; or
  - iii. data and information which is hereby lawfully disclosed to the receiving Party by a Third Party not acquiring the information under an obligation of confidentiality to the disclosing Party, to the knowledge of the receiving Party; or
  - iv. data and information which is required to be disclosed by the receiving Party to comply with applicable laws, order of a court of competent jurisdiction or governmental regulations, on condition that the receiving Party provides prior written notice, if possible, and, if possible, provides the disclosing Party an opportunity to contest such disclosure; or
  - v. data or information that is disclosed by the receiving party to a third party with the written approval of the disclosing party without any restriction.
- h. "Extract" means the material obtained from the Samples that have been extracted in the performance of this Agreement.
- i. "Fraction" means a mixture of Chemical Entities obtained from an Extract, applying different purification or separation methods.
- j. "Invention" means any invention or discovery conceived of and/or first reduced to practice in the performance of the Research by one or more employees or agents of one or more Parties.
- k. "Isolate" means a micro- or macro-organism that has been collected, cultured, and isolated in accordance with the Work Plan.

- l. "Joint Invention" means any invention or discovery conceived of and/or first reduced to practice in the performance of the Research by one or more employees or agents of more than one Party.
- m. "Macroorganism" means macroscopic organisms such as seaweeds, macroalgae, seagrasses, invertebrates, freshwater macrophytes, and aquatic vertebrates such as fishes.
- n. "Materials" means the Samples, Extracts, Fractions, and Chemical Entities
- o. "Microorganism" means microfungi or bacteria.
- p. "NAPIS" means Natural Products Information System provided to the Parties by NIH for the management of data, a subset of which will be transferred to the ICBG Global Data Center.
- q. "Net Revenues" means the gross amount received by a Party of royalties, license fees, or any other payment or compensation from the licensing of an Invention, less all reasonable and out-of-pocket costs (exclusive of sponsored Research payments, any salaries, administrative or other indirect costs) incurred by the Parties in the preparation, filing, prosecution, licensing of patent rights, litigation, and maintenance of resulting patents.
- r. "Owning Party" means the Party which holds the rights, title, and interest in the Invention.
- s. "Party" means one of GTRC, SIO, or USP, recognizing that GTRC may assign all or some of its rights to GIT.
- t. "Parties" means all of GTRC, SIO, and USP, recognizing that GTRC may assign all or some of its rights to GIT.
- u. "Product" means any commercial formulation or mixture containing or based on Materials suitable to be commercially marketed and sold. This term also includes any service making use of a Chemical Entity, such as gene therapy.
- v. "Research" means all research activities conducted by the Parties pursuant to the ICBG grant defined in Recital F.
- w. "Results" means any and all developed or acquired new information and new technology including but not limited to discoveries, know-how, ideas, notices and/or reports first made, conceived, developed or disclosed through the efforts of the Parties pursuant to this Agreement. This especially includes, but is not limited to, information or technology related to Materials and their associated biological properties.
- x. "Sole Invention" means any invention or discovery conceived of and/or first reduced to practice in the performance of the Research by one or more employees or agents of a single Party.
- y. "Samples" means any freshwater and/or marine sample of water, host plants or parts of these plants including seaweeds, any microorganism, any animal or part of an animal that lacks a notochord such as sponges, jellyfish, corals, hydroids, and snails, or any vertebrate or vertebrate part, such as fishes collected from selected areas in Fiji in accordance with the Work Plan.
- z. "Screening" means analyses and screening performed by GTRC, SIO, USP, any mutually agreed upon industrial partner, and/or other screening services or collaborators that may be added to the Agreement during the Agreement Term.
- aa. "Third Party" means any party other than GTRC, SIO, USP, or their Affiliates,



- bb. “Work Plan” means the collaboration objectives with respect to the research to be carried out by the Parties as set out and described in Exhibit A, amenable to future additions or amendments by mutual written agreement of the Parties hereto.

**ARTICLE 3. PARTIES’ GENERAL ACTIVITIES AND RESPONSIBILITIES IN ACCORDANCE WITH THE WORK PLAN**

**3.1 Joint General Activities in accordance with the Work Plan**

In terms of project management, the Parties will:

- 3.1.1 work together to have good real-time communication to share in the progress of the Work Plan, Sequencing, Evaluations and Development Efforts;
- 3.1.2 hold at least four (4) project meetings with representatives from all Parties, and NIH staff, and
- 3.1.3 schedule group communication approximately three (3) times each year and/or as otherwise needed.

The Parties shall work together to:

- 3.1.4 endeavor to accomplish the specific aims of the Work Plan as outlined in Exhibit A;
- 3.1.5 isolate and characterize Chemical Entities from the Extracts and/or Fractions of interest;
- 3.1.6 conduct phylogenetic analysis of the Microorganisms based on sequencing data;
- 3.1.7 Establish workshops and training sessions on key topics related to the research;
- 3.1.8 Establish appropriate data management and data sharing formats and conduct data analysis;
- 3.1.9 Participate in meetings organized by the ICBG program;
- 3.1.10 Make any decisions regarding the scope of the research in a participative manner;
- 3.1.11 Manage the relationship with any mutually agreed upon industrial partners and/or Third Parties in order to generate tangible and commercializable Products from the Research.
- 3.1.12 Cooperate under the leadership of USP to develop and sustain access and benefit sharing arrangements with the Fijian government and communities.
- 3.1.13 Additionally, the Parties are interested in jointly promoting scientific and education activities that can particularly benefit Fijians through activities such as: workshops, seminars or conferences, short term courses, scientific meetings, exchanges of faculty members or scientific personnel and exchanges of academic and research materials and other information.

**3.2 USP General Activities in accordance with the Work Plan,**

- 3.2.1 USP will head one of the Associate Programs: AP-5, with William Aalbersberg as Principal Investigator on the Program.

- 3.2.2 USP will endeavor to fulfill the stated objectives of AP-5, as outlined in Exhibit A.
- 3.2.3 Prior Informed Consent (PIC) and Access permits. USP will lead the Parties' effort to carry out the legal steps needed to request the appropriate access permits from the government of Fiji and traditional resource owners, which includes receiving the prior informed consent from the traditional resource owners for collection of Samples. Such requests will be in line with requirements of the "Convention on Biological Diversity". USP will abide by the terms of the negotiated PIC and Access permits.
- 3.2.4 USP serve as a conduit for the collection and distribution of benefits to the Appropriate Providers for conservation within Fiji. USP will promptly provide GTRC and SIO a copy of the agreement between USP and the Fijian government demonstrating that USP has the Fijian government's permission to serve as a conduit for the collection and distribution of financial benefits for the Fijians and the agreement will be appended to this Research Collaboration Agreement as Exhibit D.
- 3.2.5 USP will comply with all applicable U.S. Import and Export regulations, the U.S. Federal Animal Welfare Act, the NIH Guidelines for Research Involving Recombinant DNA Molecules, and the guidelines stated in the U.S. Center for Disease Control and NIH publication "Biosafety in Microbiological and Biomedical Laboratories (BMBL) related to activities hereunder.
- 3.2.6 USP will create an accessible inventory of Fijian biodiversity and voucher specimens of all collected coral reef organisms. These will be deposited at USP and at GIT.
- 3.2.7 USP will manage the data related to the Samples, Isolates, Extracts, and Fractions, pursuant to its activities under the Work Plan using its databases and the NAPIS database. USP shall also be responsible for the preparation of progress reports and shall submit a progress report to GIT on January 1 and July 1 of each year for the Agreement Term. USP shall also submit to GIT quarterly, or more frequently, all data on collections, Extracts, bioactivities and Chemical Entities for inclusion in the NAPIS database and deposition with NIH.
- 3.2.8 USP will properly upkeep and conserve the Materials collected in Fiji by any of the Parties during the Research under the terms of this Agreement and left in USP's care for evaluation or storage. Subject to Article 4 herein, USP will allow free (no cost) access to Materials to GIT and SIO for Research only.
- 3.2.9 With GIT, USP will promote conservation of natural resources in Fiji through awareness, management planning, biological monitoring and alternative income generation. USP will use gene expression profiling to identify and prioritize stressors impacting reef corals, prioritize the threats and develop management plans to address these, and use genetic connectivity analyses to identify priority areas for the location of no-take areas. USP will evaluate the impacts of initiating no-take areas, and continue developing village-based culturing of live rock as an ecologically sustainable substitute for destructive harvesting.
- 3.2.10 USP and GIT will work with the Fiji Tourism Ministry to develop coastal tourist activities and hotel "greenness" ratings that will be self-sustaining, attract a

regular flow of tourists, and improve environmentally sustainable economic options for coastal villagers.

- 3.2.11 USP shall be responsible for the management of funding for its activities under the Work Plan. William Aalbersberg, Principal Investigator for Associate Program 5, located at USP, will attend annual meetings associated with the ICBG grant.

### **3.3 GTRC and GIT General Activities in accordance with the Work Plan**

- 3.3.1 GIT will head three Associate Programs (AP-2, AP-3, AP-4) and administer the Group Plan. GIT shall coordinate the ICBG's activities and will be responsible for the research and technical activities (including data management) and for the disbursement of funds in support of the research. GTRC will be responsible for the disposition and use of funds awarded under this grant.
- 3.3.2 GIT will endeavor to fulfill the stated objectives of AP-2, AP-3, AP-4 and the Group Plan, as outlined in Exhibit A.
- 3.3.3 GIT will comply with all applicable U.S. Import and Export regulations, the U.S. Federal Animal Welfare Act, the NIH Guidelines for Research Involving Recombinant DNA Molecules, and the guidelines stated in the U.S. Center for Disease Control and NIH publication "Biosafety in Microbiological and Biomedical Laboratories (BMBL) related to activities hereunder.
- 3.3.4 GIT will manage the data related to the Samples, Isolates, Extracts, and Fractions, pursuant to its activities under the Work Plan using its databases and the NAPIS database. GIT shall also be responsible for the preparation of progress reports and each of AP-2, AP-3, and AP-4 shall submit a progress report to GIT on January 1 and July 1 of each year for the Agreement Term. All data on collections, Extracts, bioactivities and Chemical Entities will be maintained in GIT databases and the NAPIS database and deposited with NIH.
- 3.3.5 GIT will abide by the terms of PIC and Access permits in accordance with the applicable legislation.
- 3.3.6 GIT will maintain an accessible inventory of Fijian voucher specimens sent by USP scientists. Voucher specimens sent to GIT may be moved to more prominent collections at the Smithsonian Institution's National Museum of Natural History. If voucher specimens are sent by GIT to the Smithsonian Institution's National Museum of Natural History, GIT will place a label on each voucher specimen sent saying "Collected as part of the International Cooperative Biodiversity Group project that was collaborative between Georgia Institute of Technology, The University of the South Pacific, Scripps Institution of Oceanography, and the peoples of Fiji".
- 3.3.7 GIT will properly upkeep and conserve the Materials it collects in Fiji and brings back to GIT during the Research and any Materials it develops or receives from the other Parties under the terms of this Agreement. Subject to Article 4 herein, GIT will allow free (no cost) access to Materials by USP and SIO for Research only.
- 3.3.8 GIT will organize and coordinate workshops and training sessions as needed in collaboration with USP and SIO in key areas associated with the Work Plan.

- 3.3.9 GIT will work with USP and the Fiji Tourism Ministry to develop coastal tourist activities and hotel "greenness" ratings that will be self-sustaining, attract a regular flow of tourists, and improve environmentally sustainable economic options for coastal villagers.
- 3.3.10 GIT will, in conjunction with others, develop an enduring non-profit entity associated with the Adopt-a-Coral/Adopt-a-Mangrove Program to enhance reef education and conservation.
- 3.3.11 GIT will coordinate the annual meetings in order to review progress, plan and design research and technical activities, and establish priorities; in addition to the educational and training sessions for the ICBG, all in close collaboration with USP and SIO.
- 3.3.12 GTRC and GIT will carry out the administration of funds provided under the grant, shall establish a central operations office for the research, will coordinate the reporting and deposit of data in the ICBG Global Data Center as appropriate and in accordance with the confidentiality terms herein, complying with NIH policies and will communicate with the U.S. Program Director (administration, funding, and policy) and the Government Coordinator (Advisory Committee Chairperson) appointed by the Technical Advisory. The said Director and Coordinator will be part of the annual meetings. The following NIH requirements will be complied with:
  - a. Bi-annual technical progress reports prepared by the Parties including elements such as scientific publications, new species, new Chemical Entities, new analytical or production methods and approaches including those that increase the efficiency of natural products drug discovery, patents, trainees, courses, local income-generating activities, institutional capacity development and conservation or health policy impacts.
  - b. Cooperation with ICBG Global Data Center provided that the information transferred is treated as proprietary and confidential of the Parties by NIH.
- 3.3.13 GTRC will be responsible for establishing and maintaining the prime agreement with NIH and subsequent arrangements with the Associate Programs for transferring the funds.

#### **3.4 SIO General Activities in accordance with the Work Plan**

- 3.4.1 SIO will head one of the Associate Programs: AP-1, with William Fenical as Principal Investigator on the Program.
- 3.4.2 SIO will endeavor to fulfill the stated objectives of AP-1 as outlined in Exhibit A.
- 3.4.3 SIO will comply with all applicable U.S. Import and Export regulations, the U.S. Federal Animal Welfare Act, the NIH Guidelines for Research Involving Recombinant DNA Molecules, and the guidelines stated in the U.S. Center for Disease Control and NIH publication "Biosafety in Microbiological and Biomedical Laboratories (BMBL) related to activities hereunder.
- 3.4.4 SIO will assign a unique identification number (that shall coordinate with the USP code) to each of the Materials obtained from USP, and to the resulting Chemical Entities to ensure traceability by the Parties.

- 3.4.5 SIO will abide by the terms of PIC and Access permits in accordance with the applicable legislation.
- 3.4.6 SIO will manage the data related to the Samples, Isolates, Extracts, Fractions, pursuant to its activities under the Work Plan using its databases and the NAPIS database. SIO shall also be responsible for the preparation of progress reports and shall submit a progress report to GIT on January 1 and July 1 of each year for the Agreement Term. SIO shall also submit to GIT quarterly, or more frequently, all data on collections, Extracts, bioactivities and Chemical Entities for inclusion in the NAPIS database and deposition with NIH.
- 3.4.7 SIO shall be responsible for the management of funding for its activities under the Work Plan. William Fenical, Principal Investigator for Associate Program 1, will attend annual meetings associated with the ICBG grant.
- 3.4.8 SIO will properly upkeep and conserve the Materials it collects in Fiji and brings back to SIO during the Research and any Materials it develops or receives from the other Parties under the terms of this Agreement. SIO will allow free (no cost) access to Materials by GIT and USP for Research only.

#### **ARTICLE 4. MATERIAL TRANSFER**

- 4.1 The Parties may use the Materials solely for Research during the term of this Agreement as defined by Article 14.1.b. Any Party may provide Materials to Third Parties only for the purpose of contracting research to be performed on a fee-for-service basis without prior approval from or notification to the other two Parties, so long as there is no expectation or accrual of intellectual property by those Third Parties.
- 4.2 Transfer of Materials to Third Parties for any other purpose than specified in Article 4.1 is prohibited without written authorization by the Party(ies) which own(s) the Material.
- 4.3 Transfer of Materials for any other Purpose than specified in Article 4.1 will be done using a material transfer agreement executed by the provider Party and the recipient Third Party.
- 4.4 In the case of transfer of Materials by a Party for any other purpose than specified in Article 4.1, notification of such transfer will be made to the other Parties in writing prior to the transfer.
- 4.5 The above notwithstanding, before any transfer of Materials to any Third Party for any purpose, the providing Party(s) must secure permission from the Fijian Ministry of Forestry and Fisheries to distribute Materials to the recipient Third Party.
- 4.6 All Materials transferred during the ICBG planning grant phase of the Research (September 30, 2003 – September 29, 2005) shall also be subject to the terms of this Article 4.
- 4.7 Upon termination of this Agreement, any Party may request the return of their Materials from any other Party, or establish a separate Material Transfer Agreement to cover the continued use of their Material by the other Party.

#### **ARTICLE 5. DISCLOSURE OF INVENTIONS**

The determination of the rights of ownership and disposition of Inventions resulting from the performance of the work under this Agreement and the administration of such Inventions shall be in accordance with DHHS policy (Exhibit B).

**5.1 Disclosure of Inventions**

- 5.1.1. To satisfy the benefit sharing and data sharing requirements of the NIH ICBG RFA (Exhibit C), the recipient technology transfer office or similar office responsible for intellectual property shall, in a timely manner, send to named co-inventing Party(ies) a copy of any Invention disclosed to it. Such disclosure will be subject to Article 8 herein, or a separate formal non-disclosure agreement if so required by the disclosing Party,.
- 5.1.2. Each Party will be responsible for directly reporting its Inventions to NIH in accordance with applicable U.S. federal law and regulations, as appropriate with each Party's obligations to the U.S. Federal Government under the provisions of the grant.

**ARTICLE 6. OWNERSHIP OF INTELLECTUAL PROPERTY AND APPLICATIONS FOR PATENTS**

6.1 Ownership. Inventorship for Inventions shall be determined in accordance with U.S. patent law and any other applicable law relating to the joint creation of non-patentable intellectual property, trade secret rights and any other type of intellectual property rights now or hereafter recognized in any form in any jurisdiction in the world. Each of the Parties shall cause, in accordance with its own institutional procedures, all right, title and interest to all Inventions which are made or developed by employees of any single Party to be assigned to that Party. Sole Inventions shall be owned solely by that Party that employed the inventors. Joint Inventions shall be owned jointly by those Parties, respectively, that employed the named inventors.

6.2 Applications for patents.

6.2.1 Sole Inventions. A Party that is the owner of any Sole Invention shall, at its sole option and expense, prepare, file, prosecute, and maintain any corresponding patent applications and patents covering Sole Inventions throughout the world in countries of its choice.

6.2.2 Joint Inventions. The Parties to whom the right and title to Joint Inventions have been assigned shall designate one Party among themselves to administer and manage the Joint Invention, on behalf of all the owning Parties ("Patent Administrator"). The obligations and responsibilities of the Patent Administrator to the other Owing Party(ies) shall be determined promptly among the Owing Parties. Such obligations and responsibilities will include, but will not necessarily be limited to, expenses for any patent applications covering Joint Inventions, provision to the other owning Parties copies of all applications, including copies of all office actions, responses, all other patent office communications, and copies of all patents issued covering Joint Inventions.



## **ARTICLE 7. LICENSING**

- 7.1 **Sole Inventions.** A Party that is the owner of any Sole Invention shall, at its option and expense, license and administer licenses to that Sole Invention, subject to the provisions of this Agreement.
- 7.2 **Joint Inventions.** The Parties that are the owners of any Joint Invention shall designate one Party among themselves ("License Administrator") to license and administer licenses to such Joint Invention, subject to the provisions of this Agreement. The obligations and responsibilities of the License Administrator to the other owning Parties shall be determined promptly among the owning Parties.
- 7.3 All license agreements for Inventions shall expressly reserve to the Parties the right to use Inventions, whether Sole or Joint Inventions, and associated technology for their non-commercial educational and research purposes.
- 7.4 All license agreements for Inventions shall expressly reserve to the United States government, pursuant to Public Laws 96-517, 97-256, 98-260, codified at 35 U.S.C. 200-212 (together with its corresponding regulations, the "Bayh-Dole Act"), a non-exclusive, non-transferable, irrevocable, fully paid-up license to practice and have practiced the Invention on behalf of the United States government. Furthermore, all license agreements shall be expressly subject to all applicable United States government rights as provided by the Bayh-Dole Act and any regulations issued under the Act, as may be amended from time to time.

## **ARTICLE 8. CONFIDENTIALITY**

- 8.1 For a period of five (5) years from the initial date of disclosure, each Party shall keep secret any Confidential Information disclosed to it by another Party, shall not disclose it to Third Parties without the express written consent of the disclosing Party and shall use it only for the purposes of this Agreement, provided however that nothing contained herein will prevent a Party from disclosing data and information to governmental agencies to the extent necessary to secure essential or desirable authorizations, privileges or rights; in such event the receiving Party will provide written notice of such disclosure to the disclosing Party and will take reasonable and lawful actions to avoid and/or minimize the degree of such disclosure. Once consent from the disclosing Party is received, a Party may disclose Confidential Information obtained from disclosing Party to a Third Party who accepts in writing the obligation to treat such Confidential Information with the same degree of confidence as set forth herein.

The exclusive points of contact with respect to the transmission and control of Proprietary Information exchanged between USP, SIO and GTRC hereunder are designated by the respective parties as follows:

<b>SIO:</b>	<b>USP:</b>	<b>GTRC:</b>
William Fenical	Bill Aalbersberg	Mark Hay
CMBB	Institute of Applied Science	School of Biology
Scripps Institution of Oceanography, UCSD	University of the South Pacific	Georgia Institute of Technology
9500 Gilman Drive La Jolla CA 92093-0204	Laucala Bay Road, Suva, Fiji	Atlanta, GA 30332-0420
Ph: 858-534-2133 Fax: 858-558-3702	Ph: 679-323-2964 Fax: 679-323-1534	Ph: 404-894-8429 Fax: 404-385-4440
<a href="mailto:wfenical@ucsd.edu">wfenical@ucsd.edu</a>	<a href="mailto:aalbersberg@usp.ac.fj">aalbersberg@usp.ac.fj</a>	<a href="mailto:mark.hay@biology.gatech.edu">mark.hay@biology.gatech.edu</a>
<b>OR</b>	<b>OR</b>	<b>OR</b>
Nancy Wilson	Kevin Davis	Liz McCarty
Ofc of Contract and Grant Admin., SIO, UCSD	Office of Vice Chancellor	GTRC
9500 Gilman Drive	University of South Pacific	505 Tenth St. NW
La Jolla CA 92093-0210	Laucala Bay Road, Suva, Fiji	Atlanta, GA 30332-0420
Ph: 858-534-4571 Fax: 858- 534-9642	Ph: 679-323-2054 Fax: 679-330-0164	Ph: 404-894-6930 Fax: 404-385-7219
<a href="mailto:nwilson@ucsd.edu">nwilson@ucsd.edu</a>	<a href="mailto:Davis_k@usp.ac.fj">Davis_k@usp.ac.fj</a>	<a href="mailto:Liz.mccarty@osp.gatech.edu">Liz.mccarty@osp.gatech.edu</a>

Either party may change its point of contact upon written notice to the other party.

- 8.2 Each Party agrees that it will restrict disclosure of Confidential Information received from the other Party to those persons having a need to know it for the purpose of this Agreement and shall be bound by the obligations of confidentiality and non-use set forth herein. The obligations of each party receiving Confidential Information shall extend for **five (5) years** from the initial date of disclosure hereunder. Notwithstanding the foregoing, GTRC is a cooperative organization of the Georgia Institute of Technology ("GIT") and may disclose Proprietary Information to GIT provided that GIT is obligated to GTRC under terms at least as restrictive as those contained in this Agreement.
- 8.3 Upon request of the disclosing party, the receiving Party shall return all tangible Confidential Information (including unused Materials) to the disclosing Party within sixty (60) days, except the receiving Party shall have the right to retain one (1) record copy of written Confidential Information for its legal files, from which to ascertain its continuing obligation to the disclosing Party hereunder, or unless other arrangements are mutually defined and accepted.
- 8.4 Any Confidential Information included in a progress report to be submitted to the NIH should be clearly marked as such.

## **ARTICLE 9. PUBLICATIONS**



- 9.1 Each Party may catalog and place reports of the Research in their respective libraries where the Results are available to the interested public and they may issue publications based on the Research and use any Results non-proprietary to each of the other Parties in their research and educational programs.
- 9.2 The Parties recognize that the Results of the Research must be publishable and agree that staff members engaged in the Research shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, thesis or dissertations, or otherwise of their own choosing, Results of the Research, provided, however, that:
- i. Each of the other Parties and the government scientific coordinator for this ICBG project shall have been furnished copies of any proposed publication at least thirty (30) days in advance of the proposed submission of such publication to a journal, editor or other third party to review such publication; and,
  - ii. Each of the other Parties and the government scientific coordinator for this ICBG project shall have been furnished copies of any proposed presentation that includes use of a material obtained from NIH at least five (5) days in advance of such presentation, and will not make such proposed presentation until approval is received from the government coordinator; and
  - iii. Each of the other Parties may request the publishing Party to delete any reference to each of the other Parties intellectual property and Confidential Information included in the publication. In the event a Party identifies patentable subject matter which needs protection and notifies the publishing Party, the publishing Party agrees to cooperate to allow the appropriate Party to file patent applications on any patentable subject matter contained in the proposed submission. In no event will confidentiality concerns of any Party unduly restrict publication.
- 9.3 Publications or oral presentations of work done under this agreement will require appropriate acknowledgment of joint support from the NIH, NSF and the USDA under the ICBG RFA, TW-04-004.

#### **ARTICLE 10. FINANCIAL BENEFIT SHARING**

- 10.1 Associated with the rights and responsibilities outlined in Article 10.2 and 10.3 the Parties will, under the leadership of USP, develop a formal benefit-sharing plan in accordance with Fijian law and customs and the objectives of the ICBG program (Exhibit C) and the UN Convention on Biodiversity. It is anticipated that this formal benefit sharing plan will be completed by September 1, 2006.

- 10.2 Sole Inventions. Fifty percent (50%) or a fair and equitable portion as determined in good faith by the Parties involved of all Net Revenues received under any and all license agreements and any other payments received in connection with, based on or related to Materials shall be distributed by the Owning Party to the Appropriate Providers in Fiji in order to support biodiversity conservation activities and as an economic incentive to motivate conservation in areas from which these Products are derived. USP will serve as a conduit for such distribution between the Owning Party and the Appropriate Providers, as outlined in Article 1.2 and Article 3.2.4. USP envisions that funds will be placed in a trust fund to be utilized in line with the objectives of the Convention on Biological Diversity and USP.
- 10.3 Joint Inventions. All Net Revenues received under any and all license agreements and any other payments received in connection with, based on or related to Materials shall be divided and distributed by the License Administrator among the Parties in the following manner:
- a. Fifty percent (50%) or a fair and equitable portion as determined in good faith by the Parties involved of all Net Revenues received under any and all license agreements and any other payments received in connection with, based on or related to Materials shall be distributed to the Appropriate Providers in Fiji in order to support biodiversity conservation activities and as an economic incentive to motivate conservation in areas from which these Products are derived. USP will serve as a conduit for such distribution between the License Administrator and the Appropriate Providers, as outlined in Article 1.2 and Article 3.2.4. USP envisions that funds will be placed in a trust fund to be utilized in line with the objectives of the Convention on Biological Diversity and USP.
  - b. The remaining portion of Net Revenues will be distributed among each of the Owning Parties based on each Party's relative contribution to the Joint Invention.
- 10.4 The Parties shall be solely responsible for calculating and distributing to their respective inventors any share of Net Revenues due in accordance with their institutional policies.

#### **ARTICLE 11. RECORDS AND REPORTS**

- 11.1 GTRC shall keep complete, true and accurate accounts of all expenses and of all proceeds received by it from any Third Party and shall permit SIO or USP to allow its agents or a certified public accounting firm, which is reasonably acceptable to GTRC, to examine its books and records in order to verify the payments due or owing under this Agreement until three (3) years termination of this Agreement. Any such audit shall be with thirty (30) days prior written notice to GTRC and shall be done during GTRC's regular business hours and shall be conducted in such a manner as to not interfere with GTRC's conduct of its business and shall be in accordance to any GTRC security requirements.

Each of SIO or USP shall request no more than one (1) examination per year and shall pay the cost of each examination it requests.

- 11.2 SIO shall keep complete, true and accurate accounts of all expenses and of all proceeds received by it from any Third Party and shall permit and of GTRC or USP to allow its agents or a certified public accounting firm, which is reasonably acceptable to SIO, to examine its books and records in order to verify the payments due or owing under this Agreement until three (3) years termination of this Agreement.. Any such audit shall be with thirty (30) days prior written notice to SIO and shall be done during SIO's regular business hours and shall be conducted in such a manner as to not interfere with SIO's conduct of its business and shall be in accordance to any SIO security requirements. Each of GTRC or USP shall request no more than one (1) examination per year and shall pay the cost of each examination it requests.
- 11.3 USP shall keep complete, true and accurate accounts of the amounts – under this Agreement – that it must transfer to the Appropriate Providers. USP shall permit GTRC or SIO to allow its own agents or a certified public accounting firm, which is reasonably acceptable to USP, to examine its books and records in order to verify the payments made or owing to the Appropriate Providers under this Agreement until three (3) years after termination of this Agreement. Any such audit shall be with thirty (30) days prior written notice to USP and shall be done during USP's regular business hours and shall be conducted in such a manner as to not interfere with USP's conduct of its business and shall be in accordance to any USP security requirements. Each of SIO or GTRC shall request no more than one (1) examination per year and shall pay the cost of each examination it requests.

## **ARTICLE 12.**

- 12.1 Each Party hereto shall be responsible for its own acts and/or omissions and the results thereof. Neither Party shall be responsible for the acts or omissions or any other party.

## **ARTICLE 13. WARRANTIES**

- 13.1 EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT ARE WITHOUT ANY WARRANTY OF OUTPUTS AND EACH PARTY IS ONLY OBLIGATED TO USE REASONABLE EFFORTS TO SUCCESSFULLY PERFORM TASKS AND ACHIEVE SUCCESSFUL RESULTS.
- 13.2 ALL MATERIALS PROVIDED UNDER THIS AGREEMENT ARE "AS IS" AND NEITHER PARTY WILL INCUR LIABILITY FOR THE STORAGE, PACKAGING OR SHIPMENT OF THE MATERIALS. ALL MATERIALS ARE UNDERSTOOD TO BE EXPERIMENTAL IN NATURE. USP WILL TAKE NO RESPONSIBILITY WHATSOEVER FOR ANY DAMAGES, RESULTING FROM MATERIAL(S), E.G. BY MISUSE OR NEGLECTFUL HANDLING.

## **ARTICLE 14. TERM AND TERMINATION**

- 14.1 This Agreement is in full force and effect as follows:
- a For the purposes of collaborating as a consortium to undertake the research set forth in the ICBG grant: from the Effective Date to ninety (90) days past the date of termination of the ICBG grant unless otherwise terminated by operation of law or by the acts of the Parties in accordance with the terms of this Agreement
  - b For the purposes of publication, the use and transfer of Materials, and protecting intellectual property and all associated benefits: from the Effective Date to two (2) years past the termination date of the ICBG grant unless otherwise terminated by operation of law or by the acts of the Parties in accordance with the terms of this Agreement.
- 14.2 Any party may terminate its involvement in the Research by giving each of the other Parties sixty (60) days' written notice with a justification which any of the remaining Parties may choose to object. In the latter case, termination will be effective once the remaining Parties are in agreement. Termination as to such Party shall not affect warranties, pre-existing rights or obligations with respect to confidentiality, ownership, milestone payments, or royalties for any Invention.
- 14.3 SURVIVORSHIP. The provisions of Articles 5, 6, 7, 8, 10, 12, 13, 14, 16, and 17.4 shall survive any expiration or termination of this Agreement and remain in full force and effect regardless of the cause of termination.

**ARTICLE 15. UNDERSTANDING**

- 15.1 This Agreement and its Exhibits constitutes the entire understanding between the Parties hereto regarding the subject matters hereof and supersedes and replaces any prior promises, agreements, understandings, writings, letters of intent and discussion either written or verbal between the Parties as to the said subject matter. This Agreement may be modified or supplemented only by an instrument in writing duly executed by authorized representatives of the Parties hereto.

**ARTICLE 16. NOTICES**

All notices required or permitted hereunder will be sufficient if in writing, addressed to the attention of the addressee shown below at the respective addresses set forth herein (or to such other address or addresses as to which the addressor has received actual notice from the addressee), and sent by any method capable of providing reasonable proof. All notices shall be deemed effective upon receipt by the addressees.

Scientific Notices to USP:  
University of South Pacific  
Dr. Bill Aalbersberg  
Institute of Applied Science  
University of the South Pacific  
Laucala Bay Road  
Suva, Fiji

Contractual Notices to USP:  
University of South Pacific  
Mr. Kevin Davis  
Office of the Vice Chancellor  
University of the South Pacific  
Laucala Bay Road  
Suva, Fiji

Scientific Notices to GIT:

Dr. Mark Hay  
School of Biology  
Georgia Institute of Technology  
310 Ferst Drive  
Atlanta, GA 30332-0230

Contractual Notices to GTRC:

Liz McCarty  
Office of Sponsored Programs  
Georgia Tech Research Corporation in IBB  
315 Ferst Drive  
Atlanta, GA 30332-0363

Scientific Notices to SIO:

Dr. William Fenical  
Center for Marine Biotechnology and Biomedicine  
Scripps Institution of Oceanography  
9500 Gilman Drive # 0204  
La Jolla, CA 92093-0204

Contractual Notices to SIO:

Nancy Wilson  
Office of Contract and Grant Administration  
Scripps Institution of Oceanography, UCSD  
9500 Gilman Drive, #0210  
La Jolla CA 92093-0210

**ARTICLE 17. MISCELLANEOUS**

- 17.1 **Assignment** No Party may assign any of its rights or obligations hereunder without the prior written consent of the other Parties hereto. Notwithstanding the foregoing, the parties hereto expressly acknowledges that GTRC may assign some or all of its obligations and rights to GIT. Subject to the above limitations on assignment, this Agreement shall be binding upon and inure to the benefit of said successors in interest and assignees of the Parties.
- 17.2 **No waiver**. No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees, except by an instrument in writing expressly waiving such provisions and signed by the waiving Party.
- 17.3 **Independent Contractors**. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee or joint venture relationship between the Parties. All activities by USP, GTRC, and SIO hereunder shall be provided as independent contractors. No Party shall incur any debts or make commitments for the other, except to the extent, if at all, specifically provided herein.
- 17.4 **Use of Name**. Each Party agrees not to authorize or commission the publication of any promotional materials containing any reference to the other party without the prior written approval of the other party; provided however, that each Party may include the names of the Principal Investigator and Associate Program Leaders and Research Project title in published listings of research sponsors. The provisions of this Section shall survive termination of this Agreement. No Party shall use the name of any other Party or any adaptation thereof in any commercial or non-commercial advertising without the prior written approval of a duly authorized officer of the Party hereto or individual whose name is planned to be used.
- 17.5 **Safety**. If during the Agreement Term, any Party obtains or develops any information regarding hazards associated with Samples, Fractions or Products or any substances or compounds contained in them or any requirements for special handling, it shall promptly inform the other Party.
- 17.6 **Severability**. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, all other provisions shall, nevertheless, continue in full

force and effect. The Parties hereto shall replace the invalid or unenforceable provision with a provision reflecting the intentions of the Parties hereto at the time of signing this Agreement.

- 17.7 **Amendments.** This Agreement may be amended in writing if agreed to and signed by all the Parties.
- 17.8 **Force majeure.** No Party shall be liable for non-performance in so far and to the extent that such non-performance or delay in performance is due to a cause beyond reasonable control of the Party invoking this provision, including but not limited to, acts of God, acts or omissions of any government, any rules, regulations, requests or orders of governments or governmental agencies, riot or civil commotion, sabotage, strikes, lockouts or other labor troubles, accidents, fire, flood, storm, earthquake, explosion, damage to facilities, restrictions or absence of normal means of communication or transportation. In the event that a force majeure situation continues to exist for a period exceeding six (6) months, the affected Party shall be entitled to terminate this Agreement, forthwith by written notice to the other Parties.
- 17.9 **Article and Section Titles.** The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

IN WITNESS THEREOF, each Party has caused this Agreement to be executed, in triplicate originals and as of the Effective Date, by its duly authorized representatives.

Effective Date: \_\_\_\_\_

*J. Duane Hutchison*  
 \_\_\_\_\_  
 for Jilda D. Garton  
 General Manager, GTRC

*Kevin Davis*  
 \_\_\_\_\_  
 Kevin Davis  
 Director of Finance, USP

\_\_\_\_\_  
 Nancy A.F. Wilson  
 Director, Office of Contract and Grant Administration, SIO

**EXHIBITS**

**EXHIBIT A**  
*Work Plan*

written approval of the other party; provided however, that each Party may include the names of the Principal Investigator and Associate Program Leaders and Research Project title in published listings of research sponsors. The provisions of this Section shall survive termination of this Agreement. No Party shall use the name of any other Party or any adaptation thereof in any commercial or non-commercial advertising without the prior written approval of a duly authorized officer of the Party hereto or individual whose name is planned to be used.

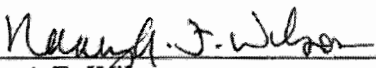
- 17.5 **Safety.** If during the Agreement Term, any Party obtains or develops any information regarding hazards associated with Samples, Fractions or Products or any substances or compounds contained in them or any requirements for special handling, it shall promptly inform the other Party.
- 17.6 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, all other provisions shall, nevertheless, continue in full force and effect. The Parties hereto shall replace the invalid or unenforceable provision with a provision reflecting the intentions of the Parties hereto at the time of signing this Agreement.
- 17.7 **Amendments.** This Agreement may be amended in writing if agreed to and signed by all the Parties.
- 17.8 **Force majeure.** No Party shall be liable for non-performance in so far and to the extent that such non-performance or delay in performance is due to a cause beyond reasonable control of the Party invoking this provision, including but not limited to, acts of God, acts or omissions of any government, any rules, regulations, requests or orders of governments or governmental agencies, riot or civil commotion, sabotage, strikes, lockouts or other labor troubles, accidents, fire, flood, storm, earthquake, explosion, damage to facilities, restrictions or absence of normal means of communication or transportation. In the event that a force majeure situation continues to exist for a period exceeding six (6) months, the affected Party shall be entitled to terminate this Agreement, forthwith by written notice to the other Parties.
- 17.9 **Article and Section Titles.** The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

IN WITNESS THEREOF, each Party has caused this Agreement to be executed, in triplicate originals and as of the Effective Date, by its duly authorized representatives.

Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Jilda D. Garton  
General Manager, GTRC

\_\_\_\_\_  
Kevin Davis  
Director of Finance, USP

  
\_\_\_\_\_  
Nancy A.F. Wilson  
Director, Office of Contract and Grant Administration, SIO



**MATERIAL TRANSFER AGREEMENT**

THIS AGREEMENT entered this 28 day of March, 2005, by and between **Georgia Tech Research Corporation**, with offices located at 505 Tenth Street, Atlanta, Georgia 30332-0415 ("GTRC") and **Bristol-Myers Squibb Company**, with offices located at Route 206 and Province Line Road, Princeton, NJ 08543-4000 ("Recipient").

WHEREAS, GTRC and RECIPIENT are collaborating to further the goals of the award sponsored by the National Institutes of Health ICBG Project: "Marine Biodiversity, Conservation and Drug Discovery in Fiji;"

WHEREAS, GTRC has executed a memorandum of understanding related to the use and transfer of the Materials with the Government of Fiji and the Ministry of Fisheries and Forests (hereinafter the "Fiji MOU");

NOW THEREFORE, in consideration of the obligations contained herein, GTRC and RECIPIENT hereby agree as follows:

1. GTRC agrees to provide the following proprietary compound(s) to Recipient:  
**Bromophycolides A, B, C, D, E, F, G, H, I and debromophycolide A and Compounds of the ICBG43AC series.** Such material and any related biological material or associated know-how and data that will be received by Recipient from GTRC; and any substance that is replicated or derived therefrom are covered by this Agreement. All such materials shall hereinafter be referred to as the "Material(s)". The above list of Materials may be updated by mutual agreement of the parties in writing from time to time to include additional Materials provided to Recipient by GTRC.
2. The Materials will be used by Recipient in connection with the research described in Appendix A and for internal research purposes only. The Materials shall not be used in research that is subject to consulting or licensing obligations to another institution, corporation or business entity, unless written permission is obtained in advance from GTRC.  
GTRC represents to Recipient that GTRC has the right or has obtained the right to provide the Materials for use by Recipient in accordance with the terms of this Agreement and the Fiji MOU
3. Recipient shall not distribute, release, or disclose the Materials to any other person or entity, other than employees, agents and contractors working on the specified scope of work in Appendix A at facilities owned or controlled by Recipient, and who are bound to the terms of this agreement, and shall ensure that no one will be allowed to take or send the Materials to any other location, unless written permission is obtained in advance from GTRC. Recipient agrees to maintain the confidentiality of any proprietary information of GTRC regarding the Materials pursuant to the non-disclosure agreement between GTRC and Recipient dated 28 day of March, 2005 and attached hereto as Exhibit A.
4. The Materials are supplied solely for scientific research purposes, *in vitro*. **THE MATERIALS SHALL NOT BE USED IN HUMANS OR IN ANIMALS WITHOUT PRIOR APPROVAL OF GTRC.**
5. No right or license is granted under this Agreement either expressly or by implication. It is understood that any and all proprietary rights, including but not limited to patent rights, in and to the Materials shall be and remain in GTRC and, as applicable, the Government of Fiji.
6. Recipient agrees to provide GTRC with an advance copy of any proposed publication that makes reference to the Materials. If in the opinion of GTRC any such publication describes a patentable development, GTRC shall have an opportunity to request that Recipient delay publication until after a U.S.



patent application has been filed. In no event shall the delay be unreasonable. If a publication does result from work using the Materials, Recipient agrees to acknowledge GTRC and/or give credit to GTRC scientists, as scientifically appropriate, based on any direct contribution they may have made to the work.

7. Recipient agrees not to sequence, clone, reverse engineer, or modify any Material provided by GTRC without the written permission of GTRC.

8. In the event that use of the Materials directly results in an invention, improvement or substance, whether or not patentable ("Developed Technology"), Recipient agrees to disclose promptly to GTRC all such inventions, improvements or substances.

9. Recipient and GTRC agree that inventorship of Developed Technology shall be determined in accordance with U.S. patent law, and ownership shall follow inventorship. Recipient and GTRC agree to cooperate in obtaining patent protection for jointly owned Developed Technology. Notwithstanding the outcome of any such inventorship or ownership determination, Recipient agrees that in accordance with the terms of the Fiji MOU any commercialization of Developed Technology or data generated by the Research shall provide a definite benefit sharing to the customary fishing right owners and the Fisheries Department and the country of Fiji as a whole and that such benefit sharing will be negotiated in good faith and on reasonable terms.

10. Recipient agrees to execute, acknowledge and deliver all such further papers as may be necessary to perform its obligations under this Agreement.

**11. RECIPIENT ACKNOWLEDGES THAT THE MATERIALS ARE PROVIDED WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. GTRC MAKES NO REPRESENTATION THAT THE USE OF THE MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT.**

12. In no event shall GTRC be liable for any use of the Materials by Recipient. Recipient hereby agrees to defend, indemnify and hold harmless GTRC, its officers, directors, employees and agents from any loss, claim, damage, expense or liability, of whatsoever kind or nature (including attorney's fees), which may arise from or in connection with the Agreement or in the use, handling or storage of the Materials.

13. Recipient shall report to GTRC at least once every twelve (12) months a summary of the results of Recipient's work utilizing the Materials. Furthermore, GTRC shall have the right to share such reports with Government of Fiji's Ministry of Fisheries and Forests. The summary should be mailed to:

Mark Hay  
School of Biology  
Georgia Institute of Technology  
Atlanta, GA 30332-0230

14. Data generated by the Research shall be solely owned by Recipient. Recipient will provide data to GTRC for internal research purposes only unless written permission is obtained from Recipient to use the data for any other purpose. Notwithstanding the foregoing, GTRC may provide the data generated by the Recipient to the National Institutes of Health in order to meet their obligations/deliverables to the sponsor of this research and GTRC may incorporate such data into any GTRC patent application related to the Materials.

Further notwithstanding, Recipient recognizes that publication is of fundamental importance to GTRC and agrees that GTRC shall be permitted to publish data generated by Research; provided however, that Recipient will have been furnished copies of any proposed publication at least thirty (30) days in advance of submission of such proposed publication for presentation or to a peer-reviewed journal. Recipient will have thirty (30) days, after receipt of said copies, to notify GTRC that such proposed publication discloses subject matter which needs patent protection. In the event that Recipient so notifies GTRC, GTRC shall delay publication up to an additional thirty (30) days to allow Recipient to seek protection of patentable information. In any event, no later than sixty (60) days after submitting a proposed publication to Recipient for review, GTRC shall be free to publish.

15. Upon the request of GTRC, Recipient shall promptly return to GTRC the Materials furnished to Recipient under this Agreement.

16. Recipient agrees to comply with all government and National Institutes of Health regulations and guidelines which are applicable to the Recipient's use of the Materials.

17. This Agreement is not assignable, whether by operation of law or otherwise, without the prior written consent of GTRC.

18. The Effective Date of this agreement shall be March 28, 2005.

19. The term of this Agreement shall be **five (5) years** from the Effective Date.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be executed by their respective duly authorized representatives.

**GEORGIA TECH RESEARCH CORPORATION**

By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: September 2, 2005

**BRISTOL-MYERS SQUIBB COMPANY**

By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
**JACK GELTOSKY, Ph.D.  
VICE PRESIDENT  
EXTERNAL SCIENCE, TECHNOLOGY  
& LICENSING**

## **APPENDIX A**

**Recipient will use Materials in connection with the collaborative research undertaken by GTRC and Recipient relating to testing pharmaceutical activities related to cancer in furtherance of the goals of the National Institutes of Health ICBG Project: "Marine Biodiversity, Conservation and Drug Discovery in Fiji."**

## Exhibit A

### NONDISCLOSURE AGREEMENT BETWEEN BRISTOL-MYERS SQUIBB AND THE GEORGIA TECH RESEARCH CORPORATION

This Agreement is effective the 28 day of March, 2005, ("Effective Date") by and between Bristol-Myers Squibb (hereinafter referred to as the "COMPANY") and Georgia Tech Research Corporation (hereinafter referred to as "GTRC"). Whereas COMPANY desires to evaluate certain GTRC Technology and whereas GTRC or the Georgia Institute of Technology (hereinafter referred to as "GIT") may disclose to COMPANY Proprietary Information to facilitate such evaluation, now, therefore, in consideration of the foregoing and the mutual promises contained herein, COMPANY and GTRC hereby agree as follows:

#### 1. Definitions

(a) Trade Secrets - As used in this Agreement the term "Trade Secrets" shall mean any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in that it is not generally known in the industry in the areas in which it is utilized.

(b) Confidential Information - As used in this Agreement the term "Confidential Information" shall mean any data or information having commercial value which may include but not be limited to data, data bases, product plans, strategies, forecasts, research procedures and development, marketing techniques procedures and materials, customer names and other information related to customers, price-lists, pricing policies and financial information which the parties consider sensitive and which is not generally known to the public.

(c) Proprietary Information - As used in this Agreement the term "Proprietary Information" shall mean Trade Secrets and Confidential Information, as defined above.

2. Company agrees to hold Proprietary Information received hereunder in confidence and to utilize its best efforts to avoid disclosure of such Proprietary Information to any person, firm, corporation or individual other than Company employees or agents who must have access to such Proprietary Information in order to evaluate it for internal purposes only and who have signed appropriate agreements to protect the confidentiality of the Proprietary Information. Company shall have no obligation of confidentiality with respect to information received hereunder, which:

(a) is already known to Company at the time of disclosure as evidenced by written records of the Company produced for GTRC's inspection within 14 days of disclosure of the information; or

(b) is or becomes publicly known without the wrongful act or breach of this Agreement; or

(c) is rightfully received by Company or any of its affiliates on a non-confidential basis from a third party with a lawful right to disclose; or

(d) is approved for release to a third party by the written authorization of GTRC.

3. Neither party shall be liable to the other for the disclosure of Proprietary Information that is obligated to be disclosed by order of a court of competent jurisdiction.

4. Any information pertaining natural products or compounds derived therefrom isolated by GTRC from marine or freshwater plants and animals collected in Fiji and other islands in the South Pacific, including but

not limited to information pertaining to compounds extracted from *Callophycus serratus* disclosed in Georgia Institute of Technology Record of Invention 3428, "**Callophycus Natural Products**," which is disclosed by GTRC or GIT to Company shall be treated as Proprietary Information. All other information disclosed by GTRC or GIT to Company shall not be considered Proprietary Information unless GTRC indicates to Company at the time of such disclosure that the information is Proprietary and within thirty (30) days of such disclosure provides Company with an appropriately marked writing which sets forth such Proprietary Information. Notwithstanding the foregoing, any Proprietary Information disclosed to Company prior to the date of last signature below shall be reduced to writing, marked as confidential, and provided to Company within 30 days of the date of last signature below.

5. Nothing in this Agreement shall be construed to grant Company any right, title or license in any Proprietary Information received hereunder other than the right to evaluate such Proprietary Information for the purpose of sponsoring a research project at GIT involving such Proprietary Information, and/or for the purpose of acquiring a license thereto.

6. Company agrees to provide GTRC with the results of any tests or analyses conducted by Company of Proprietary Information received hereunder within fourteen (14) days of completion of such tests or analyses. GTRC shall have the right to disclose such results to third parties. GTRC agrees not to disclose Company's name as the source of such results without Company's permission.

7. Company agrees to return all Proprietary Information received under this Agreement to GTRC within fourteen (14) days of the completion of the evaluation or sixty (60) days from the date of this Agreement, whichever is earlier, except that Company may retain one copy thereof for the sole purpose of determining its continuing confidentiality obligations hereunder..

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

9. The term of this Agreement shall be two years from the effective date of this Agreement provided that the term of confidentiality with respect to Confidential Information received by Company hereunder shall be five (5) years from the date of disclosure. The term of confidentiality with respect to Trade Secrets received by Company hereunder shall be perpetual.

GEORGIA TECH RESEARCH CORPORATION


BY 

TYPED NAME JILDA D'ELIA-CARSON  
GENERAL MANAGER

TITLE \_\_\_\_\_

DATE September 2, 2005

BRISTOL-MYERS SQUIBB COMPANY

BY 

TYPED NAME JACK GILTOSKY  
VICE PRESIDENT  
EXTERNAL SCIENCE, TECHNOLOGY & LICENSING

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

**JACK GILTOSKY, Ph.D.**  
**VICE PRESIDENT**  
**EXTERNAL SCIENCE, TECHNOLOGY**  
**& LICENSING**

## COLLABORATION & MATERIALS TRANSFER AGREEMENT

THIS AGREEMENT ("Agreement") entered into as of the 1st day of July, 2007 ("Effective Date"), by and between Georgia Tech Research Corporation, with offices located at 505 Tenth Street, Atlanta, Georgia 30332-0415 ("GTRC") and Bristol Myers Squibb Company, with offices located at Route 206 and Province Line Road, Princeton, NJ 08543-4000 ("BMS").

WHEREAS, GTRC has been granted an award, number 1401TW007401-01, by the National Institutes of Health entitled "Marine Biodiversity, Conservation and Drug Discovery in Fiji" (hereinafter the "ICBG Project") and is required to adhere to the terms and conditions of that award set forth in the National Institutes of Health INTERNATIONAL COOPERATIVE BIODIVERSITY GROUPS RFA Number: RFA-TW-04-004 attached hereto as Exhibit 1 (hereinafter "ICBG Project RFA").

WHEREAS, the University of the South Pacific at Fiji ("USP"), The Regents of the University of California on behalf of its San Diego Campus ("UCSD"), and GTRC, (hereinafter collectively the "ICBG Partners"), have executed a Research Collaboration Agreement ("RCA") to further the goals of the ICBG Project; and

WHEREAS, GTRC has executed memoranda of understanding with the Government of Fiji and the Ministry of Fisheries and Forests covering the use and transfer of the Materials (hereinafter the "Fiji MOUs"); and

WHEREAS, the Materials were collected by the ICBG Partners under the terms of the ICBG Project and the Fiji MOUs; and

WHEREAS, BMS wishes to collaborate with ICBG Partners to support the goals of the ICBG Project; and

WHEREAS, BMS possesses scientific expertise in cancer biochemical and biological screens, assays and tests and wishes to receive Materials (defined below) for the purpose of such testing;

NOW THEREFORE, in consideration of the obligations contained herein, GTRC and BMS hereby agree as follows:

### **Section 1. Definitions.**

1.1 "Background Intellectual Property" means GTRC and BMS Intellectual Property conceived or first reduced to practice either prior to or outside the scope of this Agreement.

1.2 "BMS Intellectual Property" means individually and collectively Intellectual Property, solely attributable to employees of BMS.

1.3 "Intellectual Property" means any inventions, improvements and discoveries protectable by patent, which are conceived and reduced to practice under this Agreement.

1.4 "Joint Intellectual Property" means individually and collectively Intellectual Property, jointly attributable to GTRC employees and employees of BMS.

1.5 "Materials" shall mean any proprietary materials collected, isolated, extracted, or generated under the ICBG Project by GTRC and transferred to BMS by GTRC during the term of this Agreement. Such material and any GTRC material or associated know-how and data that will be received by BMS during the term of this

Agreement and any substance that is replicated therefrom by BMS are covered by this Agreement. All such materials shall hereinafter be referred to as the "Material(s)". For tracking purposes, a cumulative list of Materials transferred under this Agreement shall be included with each shipment to BMS, with such list (as it is updated from time to time) being incorporated herein by reference as Appendix B.

1.6 "Research" shall refer to the performance of the Statement of Work attached hereto as Appendix A and incorporated herein by reference.

1.7 "GTRC Intellectual Property" means individually and collectively Intellectual Property solely attributable to GTRC employees.

## **Section 2. Limitations on Use of Materials and Obligation of the Parties.**

2.1 GTRC shall from time to time, at its sole discretion, transfer Materials to BMS for use in the Research. It is understood that any and all proprietary rights, including but not limited to patent rights, in and to the Materials, shall be and remain in GTRC or, as appropriate, the Government of Fiji. Except as provided in paragraph 5.2 b, GTRC reserves the right to use Materials for its own purposes and to provide the Materials to others.

2.2 BMS will use the Materials solely in connection with Research and only for internal research purposes unless prior written approval is obtained from GTRC. BMS shall not use the Materials in research with other institutions, corporations or business entities, unless written permission is obtained in advance from GTRC.

2.3 BMS agrees not to sequence, clone, analyze, reverse engineer, otherwise attempt to determine the chemical nature, composition or structure of the Materials or synthesize derivatives or analogs, or make modifications of the Materials without the prior written permission of GTRC.

2.4 The Materials are supplied solely for scientific research purposes. **BMS SHALL NOT USE THE MATERIALS IN HUMANS WITHOUT PRIOR WRITTEN CONSENT OF GTRC.**

2.5 BMS shall not distribute, release, or disclose the Materials to any other person or entity other than employees or agents working on the Research at facilities owned or controlled by BMS and who are bound to the terms of this Agreement, and shall ensure that no one will be allowed to take or send the Materials to any other location, unless written permission is obtained in advance from GTRC.

2.6 The parties agree to confer from time to time for the purpose of discussion of Research Results (defined in Section 3.1 below) and to receive BMS' report of such Research Results in writing at intervals to be mutually agreed upon, but no less than every six (6) months from the date of BMS' receipt of a Material

2.7 Not later than the date which is six (6) months after receipt of a particular Material by BMS (such six-month period, the "Evaluation Period"), BMS shall notify GTRC in writing of its continuing interest in a particular Material and a desire to negotiate terms of a license with respect to such Material ("Notification of Interest") at which time BMS' option to negotiate for a license shall commence pursuant to Section 5.2. Should BMS require additional time to evaluate a particular Material and provide written notification of such to GTRC prior to the end of the Evaluation Period, GTRC shall extend the Evaluation Period for an additional six (6) months. Subsequent six (6) month extended Evaluation Period(s) will be granted upon mutual consent of GTRC and BMS. Such 6 month extension(s) shall commence as of the date that BMS has or is provided with sufficient quantities of the Materials to conduct further evaluations. In the event that GTRC does not receive a

Notification of Interest from BMS prior to the end of the Evaluation Period or the extended Evaluation Period, or the parties are unable to agree on licensing terms, BMS shall at GTRC's direction, return or destroy any remaining samples of such Material, and GTRC will have no further obligation to BMS with respect to such Material. For clarity, a request for further purification of a particular Material shall not constitute a Notification of Interest.

2.8 Each party agrees not to authorize or commission the publication of any promotional materials containing any reference to the other party without the prior written approval of the other party.

### **Section 3. Ownership and Use of Data and Scientific Publications.**

3.1. All data relating to the Materials generated by BMS during the Research ("Research Results") shall belong to BMS; provided, however, BMS shall, in accordance with Section 2.6 above, promptly provide to GTRC a copy of any such Research Results. ICBG Partners may use such Research Results for internal educational and research purposes and in scientific publications and reports relating to the Materials.

3.2. Section 3.1 and Section 6 notwithstanding, BMS agrees that any ICBG Partner may include the Research Results in such ICBG Partner's patent application relating to the Materials, Background Intellectual Property or Intellectual Property. Research Results may be disclosed to GIT, the National Institutes of Health, the sponsor of the ICBG Project, and the government of Fiji Ministry of Fisheries and Forests in compliance with the Fiji MOUs.

3.3. Further notwithstanding Section 3.1 and Section 6, BMS recognizes that publication is of fundamental importance to the ICBG Partners and agrees that any ICBG Partner shall be permitted to use Research Results in any ICBG Partner's publication; provided however, that BMS will have been furnished copies of any such proposed publication at least thirty (30) days in advance of submission of such proposed publication for presentation or to a peer-reviewed journal. BMS will have thirty (30) days, after receipt of said copies, to notify GTRC that such proposed publication discloses patentable subject matter, which needs patent protection. In the event that BMS so notifies GTRC, GTRC shall delay publication up to an additional thirty (30) days to allow for patent filing to protect patentable information disclosed in such proposed publication. In any event, no later than sixty (60) days after submitting a proposed publication to BMS for review, GTRC shall be free to publish. Any publication incorporating Research Results shall, in accordance with scientific custom, reference BMS' contributions through acknowledgement or co-authorship, as appropriate, unless BMS requests the exclusion of any such acknowledgement.

3.4. BMS shall furnish to GTRC copies of any proposed publication at least thirty (30) days in advance of submission of such proposed publication for presentation or to a peer-reviewed journal. GTRC will have thirty (30) days, after receipt of said copies, to notify BMS that such proposed publication discloses patentable subject matter which needs patent protection. In the event that GTRC so notifies BMS, BMS shall delay publication up to an additional thirty (30) days to allow for filing of patent protection on patentable information disclosed in such proposed publication. In any event, no later than sixty (60) days after submitting a proposed publication to GTRC for review, BMS shall be free to publish. Any publication incorporating Research Results shall, in accordance with scientific custom, reference GTRC's contributions through acknowledgement or co-authorship, as appropriate, unless GTRC requests the exclusion of any such acknowledgement.

The parties understand and acknowledge that this Agreement is intended to address the objectives of the ICBG Project RFA and Fiji MOUs to widely disseminate the transfer of Material to third parties for public use and good. Therefore, the parties agree that if any clause contained herein contradicts with the terms and conditions



of the ICBG Project RFA and/or the Fiji MOUs, the terms of the ICBG Project RFA and/or Fiji MOUs shall take precedence over any term contained herein.

#### **Section 4. Compliance with Laws.**

4.1 BMS agrees to comply with all government and National Institutes of Health regulations and guidelines including but not limited to those set forth in the ICBG Project RFA which are applicable to BMS's use of the Materials.

4.2 BMS shall comply with all U.S. Export Control laws and regulations, and/or U.S. International Traffic in Arms Regulations.

**4.3 BMS WARRANTS THE MATERIALS SHALL ONLY BE USED IN ANIMALS PURSUANT TO BMS' APPROVED PUBLIC HEALTH SERVICE ANIMAL WELFARE ASSURANCE.**

#### **Section 5. Intellectual Property.**

5.1 Intellectual Property Rights.

a. **Background Intellectual Property** All Background Intellectual Property is the separate intellectual property of BMS or GTRC, respectively, and is not affected by this Agreement. This Agreement shall not be construed as implying that either party hereto shall have the right to use Background Intellectual Property of the other in connection with this Agreement. No right or license is granted to BMS under this Agreement either expressly or by implication to GTRC Background Intellectual Property, except the right to use the Materials for the performance of the Research, and no right or license is granted to GTRC under this Agreement either expressly or by implication to BMS Background Intellectual Property.

b. **GTRC Intellectual Property.** All right, title and interest to all GTRC Intellectual Property shall be owned solely and exclusively by and vest entirely in GTRC. GTRC shall have the sole right to file patent applications on GTRC Intellectual Property.

c. **BMS Intellectual Property.** All right, title and interest to all BMS Intellectual Property shall be owned solely and exclusively by and vest entirely in BMS. BMS shall have the sole right to file patent applications on BMS Intellectual Property.

d. **Joint Intellectual Property.** All right, title and interest to all Joint Intellectual Property shall be jointly owned by GTRC and BMS. Prior to either party filing a patent application on any Joint Intellectual Property, the parties agree to discuss in good faith the disposition of such Joint Intellectual Property, including which party will assume responsibility for filing patents and patent applications in the names of all inventors.

e. Either party will promptly notify the other party of any Joint Intellectual Property. The abovenotwithstanding, BMS shall provide GTRC with all information related to BMS Intellectual Property that is required for GTRC to fulfill its reporting requirements under Public Laws 96-517, 97-256, 98-260, codified at 35 U.S.C. 200-212 (together with its corresponding regulations, the "Bayh-Dole Act").

f. Inventorship will be determined in accordance with United States patent law.

g. Notwithstanding the outcome of any inventorship or ownership determination, BMS agrees that; in

accordance with the terms of the Fiji MOUs, ICBG Project, and the RCA, any commercialization of Research Results, BMS Intellectual Property, or BMS' rights in Joint Intellectual Property shall provide for a definite fair and equitable sharing of benefits with the customary fishing right owners and the Fisheries Department in Fiji and the country of Fiji as a whole and that such benefit sharing will be negotiated in good faith and on reasonable terms.

h. In no event shall BMS file any patent application(s) claiming the Materials without the prior written consent of GTRC. Further in no event shall BMS file any patent application(s) claiming the use of the Materials, GTRC Background Intellectual Property or GTRC Intellectual Property.

i. BMS shall not invoke the CREATE Act to overcome any prior art rejection without obtaining the prior written consent of GTRC.

## 5.2. Licensing Rights of Intellectual Property.

a. GTRC grants to BMS, for a period of ninety (90) days from the date of GTRC's receipt of a Notification of Interest (such ninety-day period, the "Negotiation Period") to conclude negotiations with respect to a non-exclusive, fee-bearing, internal research license, to use the Material for further research, screening and development purposes in the field of cancer therapeutics.

b. Also, to the extent legally able, GTRC grants to BMS the first right to negotiate an exclusive license, subject to BMS' agreement to cover the cost of filing patents and patent applications, to GTRC rights in any Joint Intellectual Property in the field of cancer therapeutics. Any such license shall be negotiated in good faith by GTRC and BMS on fair and reasonable terms consistent with industry standards.

BMS expressly understands and acknowledges that in order to abide by the terms and conditions of the ICBG Project RFA and/or the Fiji MOUs, GTRC has and will continue to distribute the material to other third parties for collaboration and testing outside the field of cancer therapeutics. If BMS provides a list of other fields of interest outside of cancer therapeutics with a Notification of Interest ("Expanded Field") and GTRC does not have an obligation prohibiting it from doing so, GTRC agrees to consider such Expanded Field in the license rights contemplated in Paragraph 5.2 (a) and 5.2 (b).

c. The option for any exclusive license shall commence upon receipt by BMS of GTRC's invention disclosure and extend for a period of ninety (90) days. The parties shall have an additional ninety (90) days from the date BMS elects to promptly, and in good faith, conclude a license agreement under fair and reasonable terms consistent with industry standards. The Negotiation Period may be extended by mutual agreement of the parties.

d. In any license granted, GTRC shall retain for itself, GIT, and the ICBG Partners a non-exclusive, fully-paid license, to use all licensed Intellectual Property for academic research and education purposes. Further, any license granted shall be expressly subject to all applicable United States government rights, including as provided by the Bayh-Dole Act and any regulations issued under the Act, as may be amended from time to time.

e. BMS shall grant to ICBG Partners a fully paid-up, royalty-free, non-exclusive license under any BMS Intellectual Property to use such BMS Intellectual Property solely for its academic and research purposes.

## Section 6. Confidentiality.

6.1 Subject to Section 3, the parties agree that all non-public information exchanged between GTRC and BMS will be maintained in confidence by the recipient, provided that such information is clearly marked as confidential (“Confidential Information”). Confidential Information orally disclosed shall only be considered Confidential Information if, at the time of such disclosure, the information being disclosed is identified as confidential and the disclosing party provides the receiving party with a written statement within thirty (30) days of the initial disclosure that is marked Confidential Information and clearly identifies the nature and content of such information that is deemed to be Confidential Information.

6.2 Confidential Information does not include information which:

- a. is published or is otherwise in the public domain through no fault of the receiving party; or
- b. prior to disclosure hereunder, can be demonstrated by the receiving party to have been in its possession prior to receipt under this Agreement; or
- c. is properly obtained by the receiving party without restriction from a third party; or
- d. is independently developed by or for the receiving party without reliance, direct or indirect, on such information; or
- e. is disclosed by the receiving party to a third party with the written approval of the disclosing party.

6.3 GTRC and BMS agree to use reasonable care to hold in confidence and not disclose any and all Confidential Information disclosed by either party hereunder. The obligations of the party receiving Confidential Information shall extend for seven (7) years from the initial date of disclosure hereunder, unless prior written permission is obtained from the disclosing party, and shall be considered satisfied if the party uses the same degree of care to protect and avoid disclosure of Confidential Information it receives hereunder as the receiving party uses to protect and avoid disclosure of its own Confidential Information but in no event less than a reasonable standard of care. Subject to Section 3, each party shall use the Confidential Information only for and to the extent required to perform the Research and the parties shall only disclose the Confidential Information to those employees that have a legitimate need for such information and only for and to the extent required to perform the Research.

6.4 Neither party shall be liable to the other for the disclosure of Confidential Information that is obligated to be disclosed by order of a court of competent jurisdiction.

6.5 The parties do not anticipate the need to disclose technical data that is subject to control under the EAR or ITAR (collectively “export controlled information”). BMS agrees that it shall not provide any export controlled information to GTRC.

## **Section 7. Term and Termination.**

7.1 The term of this Agreement shall begin on the Effective Date and shall cease upon termination of the ICGB Project unless terminated sooner as provided for hereunder. Notwithstanding the foregoing, the obligations of the parties under Articles 2.8, 3.1, 3.2, 5.1, 6, 7, 8 shall survive any termination of this Agreement.

7.2 GTRC or BMS may terminate this Agreement for any reason upon ninety (90) days written notice to other party.

7.3 Upon termination of this Agreement or upon the request of GTRC, BMS shall promptly return to GTRC or destroy the Materials furnished to BMS under this Agreement.

**Section 8. DISCLAIMER, WARRANTY AND LIMITATION OF LIABILITY**

8.1 BMS ACKNOWLEDGES THAT THE MATERIALS ARE PROVIDED WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. GTRC AND THE OTHER ICBG PARTNERS MAKE NO REPRESENTATION THAT THE USE OF THE MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT.

8.2 In no event shall the ICBG Partners be liable for any use of the Materials by BMS. BMS hereby agrees to defend, indemnify and hold harmless the ICBG Partners, their officers, directors, employees and agents from any loss, claim, damage, expense or liability, of whatsoever kind or nature (including attorney's fees), which may arise from or in connection with this Agreement or in the use, handling or storage of the Materials.

**Section 9. Miscellaneous.**

9.1 All notices and other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed effective upon (a) personal delivery, (b) confirmed transmission of facsimile, (c) five (5) days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, or (d) one (1) day after deposit with any reputable express courier for overnight delivery, and addressed to the parties at their respective addresses set forth below unless by such notice a different person or address has been designated.

To GTRC for administrative matters:

Georgia Tech Research Corporation  
505 Tenth Street, N.W.  
Atlanta, Georgia 30332-0415  
Attn: Director, Office of Technology  
Licensing  
Phone: 404-894-6287  
FAX: 404-894-9728

To BMS for administrative matters:

Bristol-Myers Squibb Company  
P.O. Box 4000  
Route 206 & Province Line Road  
Princeton, NJ 08543-4000  
Attn: Vice President, Alliance Management and Partnering  
Telephone: 609-252-6818  
Facsimile: 609-252-7235

with copy to:

Bristol-Myers Squibb Company  
P.O. Box 4000  
Route 206 & Province Line Road  
Princeton, New Jersey 08543-4000  
Attention: Vice President & Senior Counsel, Corporate and  
Business Development

To GTRC for technical matters:

Georgia Institute of Technology  
Atlanta, Georgia 30332-0230  
Attn: Mark Hay, Ph.D.

To BMS for technical matters:

Bristol-Myers Squibb Company  
Princeton, NJ 08543-4000  
Attn: Craig Fairchild, Ph.D.

Title: Professor  
Phone: 404-894-8429  
FAX: 404-385-4440  
E-mail: [mark.hay@biology.gatech.edu](mailto:mark.hay@biology.gatech.edu)

Title: Principal Scientist  
Phone: 609-252-3273  
FAX: 609-252-6051  
E-mail: [craig.fairchild@bms.com](mailto:craig.fairchild@bms.com)

9.2 The parties shall remain independent contractors and nothing herein shall be construed to create a partnership, agency or joint venture between the parties. Each party shall be responsible for wages, hours and conditions of employment of its personnel during the term of, and under, this Agreement.

9.3 All questions concerning the validity, operation, interpretation and construction of this Agreement will be governed by and determined in accordance with the laws of the State of California.

9.4 No waiver by a party of any breach of any provision of this Agreement shall constitute a waiver of any other breach of that provision or any other provision.

9.5 This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them; and neither party shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein. This Agreement may not be modified or altered except in writing by an instrument duly executed by authorized officers of each party.

9.6 This Agreement is not assignable, whether by operation of law or otherwise, without the prior written consent of the other party, except in connection with a merger or sale of all or substantially all of the assets or voting stock of a party. Notwithstanding, it is expressly understood by the parties that this Agreement may be assigned to the Georgia Institute of Technology or the Board of Regents of the University System of the State of Georgia.

(Signature page to follow)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers the day and year set forth below.

GEORGIA TECH RESEARCH CORPORATION

BRISTOL-MYERS SQUIBB COMPANY

By: Marie Christine Reames  
Typed Name: Marie-Christine Reames  
Title: Assistant Director - OTL  
Date: 8/14/07

By: [Signature]  
Typed Name: \_\_\_\_\_  
Title: VP Biology Drug Disc  
Date: APPROVED AUG 16 2007

By: G. Duane Hutchison  
Typed Name: \_\_\_\_\_  
Title: G. DUANE HUTCHISON  
ASST. SECRETARY & ASST. TREASURER  
Date: 8.14.07

Approved As To Form Only  
BMS Legal Dept.  
By: JBS

READ AND UNDERSTOOD

By: Mark Hay  
Name: Mark Hay, Ph.D.  
Date: 8/13/07

By: Julia Kubanek  
Name: Julia Kubanek, Ph.D.  
Date: 8/13/07

By: Terry W. Snell  
Name: Terry Snell, Ph.D.  
Date: 8-13-07

By: Kirk Bowman  
Name: Kirk Bowman, Ph.D.  
Date: 8/14/07

## APPENDIX A

- (1) Materials shall be provided to BMS in accordance with Section 2.1 of this Agreement. Such Material shall be used by BMS in biochemical and biological screens, assays, and tests for the preliminary identification of anti-cancer activity.
- (2) BMS will provide the results of such screening assays and tests to GTRC in a form mutually agreeable to Dr. Mark Hay.
- (3) GTRC will isolate the active molecules from identified Materials of interest and send to BMS for confirmation of potential anti-cancer activity in bioassays.
- (4) Compounds of interest may be produced by GTRC for secondary testing by BMS, such as *in vivo* anti-cancer assays in mice.
- (5) The results of such secondary testing shall be provided by BMS to GTRC.

## **APPENDIX B**

**Inventory of Materials transferred to BMS to be updated with each shipment of Materials to BMS.**

Initial Transfer on \_\_ / \_\_ / \_\_\_\_ of the following Materials:



## Gosden, Kathleen T

---

**From:** Hay, Mark <mark.hay@biology.gatech.edu>  
**Sent:** Monday, September 24, 2012 8:55 AM  
**To:** Kathleen T Gosden  
**Subject:** Re: [asklegal] Georgia Open Records Act Request

that is fine. i should be in my office (404-894-8429), if that fails, call my cell (770-329-4204).

mark

----- Original Message -----

**From:** "Kathleen T Gosden" <kathleen.gosden@legal.gatech.edu>  
**To:** "Mark' 'Hay" <mark.hay@biology.gatech.edu>  
**Sent:** Monday, September 24, 2012 8:32:36 AM  
**Subject:** RE: [asklegal] Georgia Open Records Act Request

I have a meeting at 10:00. How about we talk by phone at 11:00?

-----Original Message-----

**From:** Hay, Mark [mailto:mark.hay@biology.gatech.edu]  
**Sent:** Saturday, September 22, 2012 7:40 AM  
**To:** Kathleen T Gosden  
**Subject:** Re: [asklegal] Georgia Open Records Act Request

finally back with my calendar - if 10:00 AM does not work for you, almost any time on monday will work for me. my office? yours? phone?

mark

----- Original Message -----

**From:** "Kathleen T Gosden" <kathleen.gosden@legal.gatech.edu>  
**To:** "Mark' 'Hay" <mark.hay@biology.gatech.edu>, "Mary Ruth Raskind" <mary.raskind@legal.gatech.edu>  
**Sent:** Friday, September 21, 2012 3:53:02 PM  
**Subject:** RE: [asklegal] Georgia Open Records Act Request

Hi Mark:

Do you have some time on Monday that we could discuss?

Thanks, Kathleen

Kathleen T. Gosden  
Senior Attorney  
Georgia Institute of Technology

Office of Legal Affairs  
760 Spring Street, Suite 324  
Atlanta, Georgia 30332-0495  
404.894.4812

Please note that most communications to and from Georgia Tech employees are a public record and available to the public and media upon request under Georgia's broad open records law. Therefore, this email communication and any reponse may be subject to public disclosure.

-----Original Message-----

From: Hay, Mark [mailto:mark.hay@biology.gatech.edu]  
Sent: Friday, September 21, 2012 2:04 PM  
To: Mary Ruth Raskind  
Cc: Kathleen T Gosden  
Subject: Re: [asklegal] Georgia Open Records Act Request

mary and kathleen,

see below for some comments from me (IN CAPS WITHIN HIS MESSAGE). i'll follow your lead on what to do.

----- Original Message -----

From: "Mary Ruth Raskind" <mary.raskind@legal.gatech.edu>  
To: "Mark Hay" <mark.hay@biology.gatech.edu>  
Cc: "Kathleen T Gosden" <kathleen.gosden@legal.gatech.edu>  
Sent: Friday, September 21, 2012 1:26:29 PM  
Subject: FW: [asklegal] Georgia Open Records Act Request

Hello, Mark.

This file has been assigned to Kathleen T. Gosden, Senior Attorney, for handling. Our file no. is ORA-154.

-MR-

-Mary Ruth Raskind-  
Legal Services Coordinator  
Georgia Institute of Technology  
Office of Legal Affairs  
raskind@gatech.edu

Please note that most communications to or from Georgia Tech employees are public record and available to the public and the media upon request under Georgia's broad open records law. Therefore, this e-mail communication and any response to it may be subject to public disclosure.

-----Original Message-----

From: asklegal-request@lists.gatech.edu  
[mailto:asklegal-request@lists.gatech.edu] On Behalf Of Edward Hammond  
Sent: Friday, September 21, 2012 1:11 PM