See Art V for licensing provisions

RESEARCH AGREEMENT

THIS RESEARCH AGREEMENT, effective as of this day of , 1 , by and between , a not-for-profit educational institution formed under the laws of the State of with offices at , ("the University") and corporation having its principal offices at ("the Company").

WITNESSETH THAT:

WHEREAS, the University is engaged in a broad program of basic research which is described in Appendix A; and

WHEREAS, the has a research program involving the

WHEREAS, the University research programs can be significantly aided by cooperation with research and production personnel and facilities available in private industry;

WHEREAS, it is necessary, in order that the public benefit fully and efficiently from the discovery of new drugs at the University, that such drugs be tested, approved, produced and distributed as quickly and broadly as is reasonable;

WHEREAS, the Company has a broad program of applied research involving the discovery and evaluation of agents, has the resources in personnel and facilities to obtain governmental regulatory approvals for the distribution of drugs throughout the world, and has the capability on a worldwide basis to produce and distribute drugs with appropriate regard to the safety of persons producing and using such drugs;

WHEREAS, the Company is able and willing to provide certain funds to the University to enhance its basic research programs and to involve Company research personnel and facilities in certain cooperative research programs with the University; and

WHEREAS, the University has determined that it is able and willing to accept such funds and cooperation on the terms set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I. DEFINITIONS:

A. "School" shall mean University

B. "Principal Investigator" shall mean the person selected by mutual agreement of the School and the Company to represent the School and the Department in the cooperative scientific relationships of the Department and the Company.

C. "Research Program" shall mean the research directed by the Participating Faculty in the field of

D. "Research Cooperation Period" shall mean the period of years beginning , 19 through 19 .

E. "Research Representative" shall mean a person having appropriate scientific qualifications and a thorough knowledge of the Company's policies and research programs who shall be appointed by the Company to represent it in all cooperative research programs involving the Company and the Department.

F. "Invention" shall mean any new or useful process, manufacture, or composition of matter and combinations thereof, or any improvement thereof, conceived, reduced to practice or demonstrated to exhibit utility by the Participating Faculty in the course of the Research Program.

G. "Patent Application" shall mean any United States or foreign patent application, including any division, continuation or continuation-in-part thereof which is owned or controlled by the University and which claims any Invention in which the University has rights by virtue of sole or joint inventorship by a Participating Faculty Member who performs any part of the Research Program.

H. "Patent" shall mean any United States or foreign patent issuing from any Patent Application, including reissue patents, patents-of-addition, extensions, confirmations and registrations thereof.

I. "Affiliate" shall mean any company fifty percent (50%) or more of whose voting stock is owned or controlled, directly or indirectly, by the Company and any company which owns or controls, directly or indirectly, fifty percent (50%) or more of the voting stock of the Company and any majority-owned subsidiary of any such company other than the Company.

J. "Participating Faculty" shall mean those individuals in of the who are signatories to the Participation Agreement (Appendix B). The Principal Investigator shall keep the list current to reflect additions to and deletions from this listing.

K. "Net Sales" shall mean the gross amount invoiced for products less all trade, quantity, and cash discounts actually allowed, credits or allowances actually granted on account of rejections, returns, billing errors, or retroactive price reductions, and duties, taxes and other governmental charges in accordance with the Company's usual practices.

ARTICLE II. FINANCIAL SUPPORT:

A. During the Research Cooperation period the Company shall provide funds to the University at times and in amounts as follows:

Date Amount

B. During the Research Cooperation Period the Company shall have the first right to provide any and all additional financial support which is intended to be solicited from any private business company, which is necessary for the conduct of the Research Program concerning compounds and processes which are not the property of a third party. Should the Company be unwilling or unable to provide the total funding reasonably required by the Participating Faculty for such Research Program Projects within a reasonable time (not more than 60 days) and pursuant to mutually acceptable terms, the University and said Participating Faculty shall be free to request the necessary funding from third party private companies to sponsor such Research Program Projects. This provision is not intended to restrict the freedom of the University and Participating Faculty to request support to investigate proprietary compounds or processes developed or owned by other third parties or to engage in personal consulting with other private companies in accordance with the University's policies.

ARTICLE III. RESEARCH COOPERATION:

A. 1. During the Research Cooperation Period the Company's Research Representative and the University's Principal Investigator shall confer at least monthly concerning the conduct of the Research Program and related research programs of the Company to the end that each program be supported and enhanced by the other to the maximum extent which is deemed feasible by each party and which is consistent with the University's functions and policies.

2. It is the intention of the parties that the intellectual resources of each party be used in a cooperative manner throughout the Research Cooperation Period to strengthen and support the research program of the other party.

To the extent deemed reasonable by each party, each party will cooperate throughout the Research Cooperation period in the utilization of its unique resources to facilitate the research program of the other. Interaction may be on a one-on-one basis, or between groups in each organization along any identified lines of mutual interest. Both groups feel that the synergy and mutual scientific stimuli of the interaction represent an important aspect of this Agreement. When such meetings and laboratory visits are conducted at the Company's facilities, the Company shall pay reasonable out-of-pocket expenses incurred by the Participating Faculty members in attending such functions.

3. This Agreement further does not preclude the possibility of cooperation by mutual agreement in areas other than .

B. The Participating Faculty and staff shall be subject to applicable rules, regulations, policies and procedures of the University. Research conducted by Participating Faculty will conform to University research and experimentation regulations and to all federal, state, and local laws applicable thereto.

C. The Participating Faculty and staff will not have their normal duties or interests encumbered, and they will remain free to consult with other companies on other projects, and receive grants from other companies or private and governmental agencies.

D. The University shall enter into written participation Agreements with the Principal Investigator and others engaged in the Research Program in the form attached hereto as Appendix B. All conditions of appointment for the Principal Investigator and others engaged in the Research Program shall be arranged in accordance with the normal practices of the University. Individual faculty members may terminate their participation in this Agreement if they terminate University employment or if they provide the Company, through the Principal Investigator, with a one-year notice of such intent.

ARTICLE IV. PUBLICATION AND PATENTS:

A. Right to Publish

The right of scientists employed at the University to disseminate research results orally and in writing in accordance with the educational and scientific purposes and policies of the University shall not be infringed. The Principal Investigator will exercise his best efforts to submit to the Company early drafts of all manuscripts primarily authored by the Participating Faculty which involves research conducted during the Research Cooperation Period and the Company shall advise the Principal Investigator and the University as to the patentability of any inventions disclosed therein. The Company's review for patentable inventions shall not require delay of publication or submission of manuscripts for publication.

B. Patent Rights

1. The Participating Faculty and staff working or otherwise participating in the Research Program shall promptly disclose to the University (via the Office of all Inventions arising out of such Research Program in accordance with University policies. The University shall promptly advise the Company of all such Inventions. Representatives of the University and the Company shall then discuss whether Patent Applications shall be filed with respect to such Inventions and, if so, the scope of such Applications. In the event the Company and the University agree that Patent Applications should be filed, the Application shall be filed in the name of the University, at the expense of the Company and in general accordance with this Agreement as consistent with University policies and procedures. In the event the Company is not interested in having Patent Applications filed with respect to a particular Invention, it shall advise the University of such fact within ninety (90) days of being advised of the Invention by the University and the University shall be free to prosecute patent protection at its own expense or otherwise dispose of the patent rights to such Invention, or release them to the inventor, as it deems fit without obligation to or further consideration by the Company.

2. All costs of mutually agreed-upon prosecution, maintenance, working and defense of Patents licensed exclusively to the Company shall be borne by the Company. In any case where the Company is granted only a nonexclusive license, the Company and will share the costs of mutually agreed-upon patent prosecution, maintenance, working and defense.

3. The University shall cooperate with the Company, at the expense of the Company, towards the maintenance, working and prosecution of any Patent Application or Patent licensed to the Company hereunder.

4. The parties recognize that Inventions, as defined in Article IG, are likely to arise from research sponsored in whole or in part by agencies of the federal government or other sponsors. The provisions of the University's agreements with such agencies and other sponsors generally describe the rights of the parties concerning inventions and patents; there is no intent that this Agreement be inconsistent with or have precedence over those agreements or to restrict the University's negotiations and acceptance of such agreements. In particular, the provisions of Public Law 96-517, as implemented by OMB Circular A-124, and as amended during the term of this Agreement, will govern the University's rights to and licensing of inventions arising from public funds. The University shall be responsible for reporting inventions to such federal agencies and other sponsors and maintaining patent administration liaison with such sponsors for patent prosecution, licensing and related matters.

ARTICLE V. LICENSES AND DEVELOPMENT EFFORTS:

A. (1) Subject to the provisions of Paragraph B of Article IV above, the University shall and hereby does grant to the Company and its Affiliates, a royalty-bearing license throughout the world, with right to sublicense, under the Patents and Patent Applications, to make, have made, use and sell Inventions which are in the field of the

(2) The University shall and hereby does grant to the Company and its Affiliates the right of first refusal to a royalty-bearing license on terms and conditions to be determined by mutual agreement under the Patents and Patent Applications to make, have made, use and sell inventions made by Participating Faculty outside the field of the

B. The license granted pursuant to Paragraph A(1) above shall be exclusive for the life of the Patent, whenever possible, and when that is not possible, then the most favorable license obtainable. The license offered to the Company under Paragraph A(2) shall be the most favorable license reasonable under the circumstances in cases wherein the Company has the technical and marketing competence to develop and commercialize the Invention. It is understood and agreed that any license granted to the Company under this Agreement is subject to the prior obligations of the University to third party sponsors of the Research Program and that with respect to any Invention conceived prior to the effective date of this Research Agreement as to which any third party may have rights, any license to the Company with respect to such Invention may be subject to such third party rights.

C. (1) The Company shall consult with the Principal Investigator concerning the selection of Inventions for commercial development and shall give prompt notice to the University of each Invention under consideration for development and of the selection of any Invention for development. The Company, in consultation with the Principal Investigator, shall prepare and provide to the University a plan for the development, production, testing, NDA filing and approval and worldwide marketing of Inventions selected for development. The plan may be revised by the Company in consultation with the Principal Investigator in response to information acquired during the course of development. The Company shall use all reasonable efforts to carry out the plan and shall from time to time advise the University through the Principal Investigator of progress in executing the plan. The Company or one of its Affiliates shall commence marketing Inventions promptly after receiving necessary governmental approvals.

(2) If the Company, after having done substantial work in accordance with the plan for the development of an Invention, shall cease to proceed with the development of that Invention according to that plan or a substitute plan for any country or after having been marketing in any country, shall cease to meet the reasonable public need in such country for the licensed product, then the University, after having given ninety days prior written notice to the Company, shall have the right to convert the exclusive license to the Invention for any such country to a nonexclusive license unless the Company during such ninety-day period demonstrates to the University reasonable grounds for the deviation from such plan. The Company and the University shall consult concerning licensing conditions which will both (a) enable the University to obtain a license to continue development and (b) recognize investments already made by the Company.

D. In the event that the Company, either directly or through an Affiliate or sublicensee, does not begin actual commercial development of any Invention (i.e., prepare a development plan, conduct investigations and trials of the Invention with a bona fide intention to market products as soon as possible) licensed or sublicensed to the Company under this Agreement within one year after the date of filing of the Patent Application with respect hereto, any license or sublicense granted to the Company hereunder for such Invention shall, after ninety days prior written notice to the Company, be convertible by the University to a nonexclusive license unless the Company during such ninety-day period demonstrates to the University reasonable grounds for delay of such development. The Company and the University shall consult concerning licensing conditions which will both (a) enable the University to obtain a license to continue development and (b) recognize investments already made by the Company.

E. The University and the Participating Faculty shall retain, institutionally and individually, respectively, the right to make and use, but not to sell commercially to third parties, any and all products, materials, substances, and processes covered by the Patent Applications and Patents licensed hereunder for their own internal research and educational purposes.

ARTICLE VI. ROYALTIES:

A. In consideration of the licenses granted, the Company shall pay or cause to be paid to the University, when the license is exclusive, royalties on the Net Sales of the Company, its Affiliates and sublicensees of each product sold in any country wherein the manufacture use or sale of such product would, except for the license granted by this Agreement, infringe a valid and enforceable claim of a Patent, at royalty rates as follows:

The royalty rate shall be % of the rates specified above in any case wherein the Company is not the University's sole commercial licensee in the field of , and a reasonable royalty to be determined by mutual agreement for licenses in other fields.

B. If a patent or patents of a third party should exist during the term of any license granted under the Agreement in any country and if it should prove in the Company's judgment impractical or impossible for the Company's or its Affiliates or sublicensees to continue the activity or activities licensed hereunder without obtaining a royalty-bearing license from such third party under such patent or patents, then the Company shall be entitled to a credit against the payments due hereunder of an amount equal to the royalty paid to such third party not to exceed percent (%) of the patent royalty payment due under this Agreement.

C. With respect to any Patent as to which the Company and its Affiliates are not the only licensees, the royalty burden on the Company and its designated

licensee shall be no less favorable than the royalty burden on any other non-governmental licensee under such Patent.

ARTICLE VII. REPORTS AND PAYMENTS:

A. Within ninety (90) days after the close of each calendar quarter of each year during the term of this Agreement (including the last day of any such calendar quarter following the expiration date of this Agreement), the Company shall report to the University all payments actually accruing under Article VI during such calendar quarter. Such quarterly reports shall indicate for such calendar quarter the Net Sales of the products sold by the Company and its Affiliates and sublicensees with respect to which payment is due and the amount of such payment. In case no payment is due for any such period, the Company shall so report. The Company shall keep, and it shall cause its Affiliates and sublicensees to keep, accurate records in sufficient detail to enable the aforesaid payments due or credited under Article VI to be determined. Upon the request of the University, the Company and its Affiliates and sublicensees shall permit at the University's expense an independent certified public accountant selected by the University, except one to whom there shall be some reasonable objection by the Company or its Affiliate or sublicensee in question, to have access, once in each calendar year during regular business hours and upon reasonable notice to the Company to such of the records of the Company and its Affiliates and sublicensees as may be necessary to verify the accuracy of the reports made during the previous calendar year, but said accountant shall not disclose to the University any information except that which should properly have been contained in such reports.

B. Payments shown to have accrued by each of the quarterly reports provided for under Paragraph A above shall be due and payable or credited on the date such report is due. Payments due shall be paid in U.S. Dollars. All royalties paid in currency other than United States Dollars shall be converted to United States Dollars on the basis of the official commercial rate of exchange in effect for such transfers in New York City, New York on the date of actual conversion. The Company or its Affiliate will deduct or withhold from such payments and pay to the proper taxing authority all taxes or fees required by law or regulation to be

deducted or withheld with respect to such payments and proof of payment secured and sent to the University as evidence of such payment. If at any time conditions or legal restrictions exist in any country which prevent the prompt remittance of the same, the University agrees that the Company may make such payments by depositing the amount thereof in United States Dollars to the University's account in a bank or other depository in such country. Any foreign withholding taxes due or payable with respect to royalties due from sales in any foreign country shall be for the account of the University.

C. In order to facilitate payments from countries other than the United States, the University shall, whenever requested by the Company enter into direct agreements with such designated affiliate companies whereby said affiliate company will be obligated to remit its payment due for sales in such country directly to the University and the University shall execute such formal direct agreement documents as the Company may request which may be necessary to effect such purposes. Such formal direct agreement documents shall provide generally for the same terms as this agreement insofar as such terms are lawful under the applicable laws and regulations of the particular country.

ARTICLE VIII. INFRINGEMENT:

If at any time during the term of any license granted hereby the Company shall become aware of any infringement or threatened infringement of any licensed Patent, the Company shall forthwith give notice thereof to the University and shall submit to the University its analysis of the legal and commercial implications of such infringement and a plan for dealing with that infringement. If such analysis indicates that a suit is appropriate, then the Company will assume responsibility to prosecute such suit at its expense where its license is exclusive. The Company or its Affiliate, after giving ( ) months written notice of its intention to do so, may at its or their expense take such proceedings, and in such case any damages recovered shall belong to the Company or the Affiliate of the Company taking the proceedings. For the purpose of such proceedings, the University shall permit, if legally necessary, the use of its name and shall execute such documents and do such acts as may be necessary. The Company shall keep the University informed of the progress of such proceedings, and the Uni-

versity shall be entitled to separate counsel in such proceedings, but at its own expense.

ARTICLE IX. TERM AND TERMINATION:

A. This Agreement shall be effective as of , 1 and shall continue in effect throughout the Research Cooperation Period or in the case of existing licenses until the expiration of the last to expire of the Patents licensed hereunder whichever shall last occur.

B. Failure by the Company or the University to comply with any of the obligations and conditions contained in this Agreement shall entitle the other party to give to the party in default notice requiring it to make good such default. If such default is not made good within ninety (90) days after the receipt of such notice, the notifying party shall be entitled (without prejudice to any of its other rights conferred on it by this Agreement) to terminate this Agreement by giving notice to take effect immediately. The right of either party to terminate this Agreement, as hereinabove provided, shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous default.

ARTICLE X. ASSIGNMENT:

The Company may assign its rights and obligations under this Agreement to any Affiliate, provided, however, that any assignment by the Company shall not be effective unless accompanied by a guaranty by the Company of the performance of its assignee hereunder.

ARTICLE XI. USE OF NAME:

Except for publication in recognized research journals and for research dissemination purposes with customary authorship credits, neither party shall employ or use the name of the other party in any publication or promotional materials or in any other form for public distribution without the express written permission of said other party in each instance.

ARTICLE XII. NOTICES:

All notices to the Company under this Agreement shall be deemed effective if made in writing and deposited in the United States Post Office, postage prepaid, addressed as follows:

All notices to the University under this Agreement shall be deemed effective if made in writing and deposited in the United States Post Office, postage prepaid, addressed as follows:

ARTICLE XIII. GOVERNING LAW:

This Agreement will be governed by and construed in accordance with the laws of the State of

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

DATED: , 1 By

DATED: , 1 By

MODEL COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

Note to preparer of CRDA

This model cooperative research and development Agreement (CRDA) is presented in order to aid laboratory commanders/directors in complying with the Federal Technology Transfer Act of 1986 (15 United States Code (USC) Sec. 3710a). Requests for assistance regarding the preparation of CRDA's should be directed to the servicing SJA or HQ USAF/JACP (including JACPB or JACPD) at the following addresses:

HQ USAF/JACP, 1900 Half Street SW, Washington, D.C. 20324-1000;
HQ USAF/JACPB, 424 Trapelo Road, Waltham, MA 02154-6362; or
HQ USAF/JACPD, Wright-Patterson AFB, Dayton, Ohio 45433-5000.

This Cooperative Research and Development Agreement ("CRDA"), dated as of _____, is entered into by and between the ABC Company, Inc., a Corporation hereinafter referred to as "ABC" located at _____, and the

United States of America, as represented by the Department of the Air Force, (fill in specific command, laboratory and location) hereinafter referred to as "AFLAB."

A. Whereas, the Congress in enacting the Federal Technology Transfer Act of 1986, Public Law No. 99-502, October 20, 1986, (Title 15, Chapter 63, United States Code), has found that Federal laboratories' developments should be made accessible to private industry, state and local Governments, and has declared that one of the purposes of such Act is to improve the economic, environmental and social well being of the United States by stimulating the utilization of Federally-funded technology developments by such parties;

B. Whereas, the Federal Technology Transfer Act of 1986 among other technology transfer improvements has provided each Federal agency with the authority to permit the Director of Government-operated Federal laboratories to enter into cooperative research and development agreements (CRDA) with Federal or non-Federal entities;

C. Whereas, AFLAB has performed substantial research and development with respect to (fill in area of technology) ("the Technology");

D. Whereas, AFLAB possesses certain advanced scientific skills, facilities, personnel, special equipment, information, computer software and know-how pertaining to the Technology;

E. Whereas, AFLAB desires to pursue the further development of the Technology;

F. Whereas, ABC is interested in the further development of the Technology;

G. Whereas, ABC desires to provide resources for the further development of the Technology;

H. Whereas, AFLAB views its cooperation with ABC to develop the Technology to be in the furtherance of the public interest;

Now, therefore, the parties hereto agree as follows:

Article 1. Definitions

As used in this Agreement, the following terms shall have the following meanings and such meanings should be equally applicable to both the singular and plural forms of the terms

defined:

1.1 "Cooperative research and development program" means the research and development work as defined in the Obligation of the Parties in Article 2.

1.2 The term "invention" means any invention or discovery (including software-related invention) which is or may be patentable or otherwise protected under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 7321 et seq.).

1.3 The term "made" in relation to any invention means the conception or first actual reduction to practice of such invention.

1.4 The term "net royalties or other income" means amounts received from any transaction less sales and/or use taxes actually paid, import and/or export duties actually paid, transportation or shipping costs prepaid or allowed, amounts allowed or credited due to returns, outside sales commissions, if any, discounts allowed and taken, transportation insurance, if any, and reasonable costs incurred in the original prosecution of a patent

application or in registering a copyright. Such costs are limited to costs directly related to the transaction.

1.5 The term "effective date" means the date the last signature is affixed to this Agreement.

1.6 The term "proprietary information" means information which embodies trade secrets or which is confidential technical, business or financial information provided that such information:

i) is not generally known, or is not available from other sources without obligations concerning its confidentiality;

ii) has not been made available by the owners to others without obligation concerning its confidentiality;

iii) is not already available to the public without obligation concerning its confidentiality, or

iv) cannot lawfully be withheld from disclosure from the Freedom of Information Act, 5 U.S.C. 552.

1.7 The term "created" in relation to any copyrightable software work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. 101.

Article 2. Cooperative Research and Development Program

2.1 Obligation of the Parties. The cooperative research and development program performed under this Agreement shall be performed in accordance with the Obligation of the Parties (OP) attached hereto as Appendix A. The utilization of AFLAB's personnel, resources, facilities, equipment, skills, know-how, computer software and information (but not funds) will be consistent with its own policies, missions and requirements. Any modifications of the OP shall be by mutual agreement between the parties and shall be incorporated herein by a formally executed written amendment to this Agreement.

2.2 Review of Work. Periodic conferences (specify) shall be held between (insert individuals names) personnel of the AFLAB and ABC for the purpose of reviewing the progress of work defined in the OP of paragraph 2.1.

Article 3. Reports

3.1 Written progress reports shall be prepared and submitted by (ABC, AFLAB or both, as appropriate) every (six) months, and a final report shall be submitted within (forty-five (45)) days after the conclusion of the Agreement, or early termination of the Agreement. The formats for these reports will be coordinated between the individuals of AFLAB and ABC set forth in Article 2.2.

Article 4. Equipment, Maintenance, and Other Support (if applicable)

4.1 AFLAB agrees to make the property listed in Appendix B available to ABC for use in the performance of the cooperative research and development program of this Agreement.

4.2 All government property is to be furnished "as is". The government makes no warranty, express or implied, whatsoever, regarding its property.

4.3 ABC may inspect government property prior to use. Such property may be repaired or modified at ABC's expense only after obtaining the written approval of AFLAB. Any repair or modification of the property shall not

affect the title of the Government. ABC shall, at no expense to AFLAB, return any modified property to the condition in which it was received, unless AFLAB agrees otherwise.

4.4 ABC assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, AFLAB property upon its delivery to ABC. However, ABC is not responsible for reasonable wear and tear to AFLAB property, or for AFLAB property properly consumed in the performance of this Agreement.

Article 5. Term

5.1 The term of this Agreement is for a period of _____ months, commencing on the effective date of this Agreement.

Article 6. Financial Obligation (if applicable)

6.1 ABC will pay AFLAB the amount of $_____ at the time of execution of this Agreement by ABC to cover the initial year of the program. Payments (establish amounts) for subsequent years, for which ABC will receive separate billings, will become due on _____, etc. Payments by ABC to AFLAB shall be made payable to the AFLAB.

6.2 If during the performance of this Agreement, ABC fails to make timely payments to AFLAB, then AFLAB may immediately stop performance of this Agreement and terminate pursuant to Article 12.

Article 7. Publicity/Use of Name Endorsement

7.1 (a) ABC shall not use the name of AFLAB on any product or service which is directly or indirectly related to either this Agreement or any patent license or assignment Agreement which implements this Agreement without the prior approval of AFLAB. (b) By entering into this Agreement AFLAB does not directly or indirectly endorse any product or service provided, or to be provided, by ABC, its successors, assignees, or licensees. ABC shall not in any way imply that this Agreement is an endorsement of any such product or service.

Article 8. Publication

8.1 AFLAB and ABC agree to confer and consult with each other prior to publication or other public disclosure of the results of work under this Agreement to ensure that no proprietary information or military critical technology is released. Furthermore, prior to submitting a

manuscript for publication or before any other public disclosure, each party will offer the other party ample opportunity to review such proposed publication or disclosure, to submit objections, and to file applications for letters patent in a timely manner.

Article 9. Patents

9.1 Rights in Inventions Made Solely by ABC Personnel. ABC shall have the option to retain title to any invention made pursuant to this Agreement solely by ABC personnel. With respect to any such invention to which ABC retains title, the U.S. Government shall have a nonexclusive, irrevocable, worldwide, royalty-free license to practice and have practiced for or on its behalf the invention. ABC shall provide AFLAB with a duly executed instrument confirmatory of such license. ABC shall indicate its intention to exercise its option to retain title to such inventions by giving written notice to AFLAB of its intent within _____ months after disclosure or identification of the invention pursuant to paragraph 9.4.

9.2 Rights in Inventions made jointly by ABC and AFLAB Personnel.

ABC and the U.S. Government as represented by the Secretary of the Air Force shall co-own any inventions under this Agreement made jointly by ABC and AFLAB personnel. With respect to any such joint inventions, ABC shall have the option to obtain from the U.S. Government an exclusive or nonexclusive license under 15 USC 3710a (b)(2) with respect to the Government's rights in the joint invention at a reasonable royalty rate. ABC shall indicate its intention to exercise its option to obtain an exclusive or nonexclusive license for such an invention by giving written notice to AFLAB of its intent to enter into such a license agreement within _____ months after disclosure or identification of the invention pursuant to paragraph 9.4. The specific royalty rate and other terms and conditions of the license agreement shall be negotiated promptly after notice is given. This license is subject to reservation by the U.S. Government of a royalty-free right to practice and have practiced the licensed invention for governmental purposes on behalf of the U.S. Government and on behalf of any foreign government or international organization pursuant to any existing or future treaty or Agreement with the United States.

9.3 Rights in Inventions Made Solely by AFLAB Employees. The U.S. Government as represented by the Secretary of the Air Force, may retain title to any invention pursuant to this Agreement solely by AFLAB employees. With respect to any such invention, AFLAB grants ABC an option to obtain an exclusive or nonexclusive license on the terms and conditions comparable with the provisions of paragraph 9.2.

9.4 Invention Disclosures. ABC shall disclose to AFLAB, in writing, each invention made pursuant to this Agreement, within three (3) months after its existence becomes known. ABC will exercise reasonable diligence to identify any and all such inventions. ABC and AFLAB will jointly cooperate to identify any and all joint inventions made as a consequence of this Agreement.

9.5 Filing of Patent Applications. ABC shall prepare, file and prosecute ("file") a patent application in the U.S. Patent and Trademark Office for any invention made pursuant to this Agreement for which it gives notice, pursuant to paragraph 9.1 or 9.2, of its intention to either retain title to such an invention or to enter into a license agreement. In the event that ABC fails to give timely notice, or clearly renounces its option, or fails to file such a patent application within nine (9) months after disclosure of the invention to AFLAB, AFLAB may elect to

file a patent application for such invention. In any event, the party not filing will fully cooperate with the other, including executing all necessary documents and obtaining the cooperation of its employees in executing such documents, in the preparation and filing of any patent application based upon an invention made as a consequence of this Agreement. In any event ABC shall exercise its best efforts to file a patent application or to allow the U.S. Government to file a patent application before any time bar prescribed by Title 35 of the United States Code.

9.6 Transfer of Non-Elected Inventions by ABC. In the event that ABC fails to give timely notice of its intention, or clearly renounces its option, to either retain title or to enter into a license agreement or to file a patent application within 9 months after disclosure of the invention to AFLAB for an invention, it agrees to convey to the U.S. Government as represented by the Secretary of the Air Force, upon written request, its entire title to such subject invention. ABC shall retain a nonexclusive, revocable, worldwide, royalty-free license to practice and have practiced for or on its behalf any such subject invention in which the U.S. Government obtains title. This royalty-free license may be revoked by the U.S. Government

if an application by another for an exclusive license is received and ABC has not commercialized the invention.

9.7 Patent Expenses and Copies. All the expenses attendant to the filing of any patent application shall be borne by the party filing the patent application. Any post filing and post patent fees, shall also be borne by that party. Each party shall provide the other party with a copy of each patent application it files on inventions made as a consequence of this Agreement along with the power to inspect and make copies of all documents retained in the official patent application files of ABC and AFLAB.

Article 10. Copyrights and Proprietary Information

10.1 ABC shall own the copyright, shall mark with an appropriate copyright notice and, when appropriate, mark with a proprietary notice, showing ABC as the author or co-author, and shall, in its reasonable discretion, determine whether to file applications for registration of copyright or opt to pursue other reasonable measures for protection of proprietary information, all software (including modifications and enhancements thereto), documentation, or other works created in whole or in part by ABC under this Agreement, which is subject to being copyrighted under

Title 17, United States Code. AFLAB agrees to use reasonable measures to protect the confidentiality of all appropriately marked proprietary information, unless otherwise required by law.

10.2 ABC agrees to grant to the U.S. Government, solely for U.S. Government purposes, a nonexclusive, irrevocable, paid-up, worldwide license (hereinafter referred to as Government Purpose License) in all copyrighted software or other works, and proprietary information. The Government Purpose License (GPL) conveys to the Government the right to use, duplicate or disclose the copyrighted software or other works, and proprietary information in whole or in part, and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use the copyrighted software or other works, and proprietary information for commercial purposes. The GPL will expire on a date certain, as negotiated by the parties. After such date certain, the Government will no longer protect the copyrighted software or other works, and proprietary information from disclosure.

10.3 ABC will clearly mark all copyrighted software or other works, and proprietary information subject to the GPL with: the name of the person or entity asserting GPL protections; the words "Government Purpose License"; and, the date certain on which the GPL expires.

10.4 The parties agree to cooperate on removing or remarking any information marked as proprietary information which ceases to be proprietary, for reasons set forth in Article 1.6 or because the information was publicly disclosed in a patent, or as may be required by law.

10.5 ABC shall furnish AFLAB at no cost to AFLAB one copy of each software, documentation or other work developed in whole or in part by ABC under this Agreement, subject to the terms and conditions of the GPL granted to AFLAB at paragraph 10.2.

Article 11. Copyright Royalties

11.1 ABC shall pay to AFLAB (fifty percent (50%)) of any net royalties or other income received by ABC or its affiliates from the licensing, assignment, sale, lease and/or rental (hereinafter "disposition") of any copyrighted work created under this Agreement in which there is an AFLAB co-author

or other AFLAB contribution; except where such disposition is made to the U.S. Government. Payments by ABC to AFLAB shall be made payable to and submitted not later than (sixty (60)) days after the calendar year ending December 31st in which ABC receives the royalties or other income.

11.2 Concurrently with each payment of royalties as required in paragraphs 11.1 of this Agreement, or at such other time as payments are due, ABC shall submit a written report setting forth for the period for which the payment is made, the amount and a description of the copyrighted works upon which a royalty is payable as provided at paragraph 11.1, the net sales and other income received therefrom by ABC, and the amount of royalties due thereon. If no royalties are due ABC for any report period, the report shall so state. The reports required under Article 11 shall also be made within 30 days of the termination of this Agreement. ABC agrees to keep records showing the sales or other dispositions of the copyrighted works upon which royalties are due under the provisions of paragraph 11.1 in sufficient detail to enable the royalties payable hereunder by ABC to be determined, and further agrees to permit its books and records to be examined from time-to-time during its ordinary business hours and not more often than once a

year to the extent necessary to verify the reports provided for in Article 11, such examination to be made at the expense of AFLAB by any auditor appointed by AFLAB who shall be acceptable to ABC.

Article 12. Term, Termination and Disputes

12.1 This Agreement shall expire as specified in paragraph 5.1 unless both parties hereto agree in writing to extend it further. However, either party may terminate this Agreement upon delivery of notice at least (ninety days) prior to such termination. Should ABC terminate this Agreement, then the AFLAB will deduct the following amounts from the funds deposited pursuant to Article 6: (a) all direct costs incurred up to the date of receipt of the termination notice; (b) all direct costs incurred in restoring AFLAB property to its pre-Agreement condition as discussed in Article 4; and (c) other costs resulting from the termination. Any funds in excess of these amounts will be returned to ABC. If AFLAB terminates this Agreement it shall not be liable for any costs, resulting from or related to the termination, including but not limited to, consequential damages or any other costs experienced by third parties, ABC, its contractors or subcontractors.

12.2 All disputes arising out of, or related to, this Agreement shall be resolved in accordance with this Article. Any dispute arising out of or related to this Agreement, which is not disposed of by agreement of the parties shall be decided by the Reviewing Official, who shall reduce his decision to writing within 60 days and mail or otherwise furnish a copy of the decision to the parties.

12.3 The decision of the Reviewing Official shall be final and conclusive unless, within 30 days from the date of receipt of such copy, ABC mails or otherwise furnishes to the Reviewing Official, a written appeal addressed to the Secretary of the Air Force. The decision of the Secretary, or his duly authorized representative, on the appeal shall be final and conclusive. In connection with any appeal under this Article, ABC shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

12.4 Pending the resolution of any dispute under this Article, work under this Agreement will continue as elsewhere provided herein.

12.5 Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement. No termination of this Agreement, however effectuated, shall release the parties hereto from their rights, duties and obligations under Articles 3, 4, 6, 7, 8, 9, 10 and 11.

Article 13. Independent Contractors

13.1 The parties to this Agreement are independent contractors and are not agents of each other, joint venturers, partners or joint parties to a formal business organization of any kind. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty or representation as to any matter and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.

Article 14. Representations and Warranties

14.1 Representations and Warranties of AFLAB. AFLAB hereby represents and warrants to ABC as follows:

14.1.1 Mission. The performance of the activities specified by this Agreement are consistent with the mission of AFLAB.

14.1.2 Authority. All prior reviews and approvals required by regulations or law have been obtained by AFLAB prior to the execution of the Agreement. The AFLAB official executing this Agreement has the requisite authority to do so.

14.1.3 Statutory Compliance. AFLAB, prior to entering into this Agreement, has (1) given special consideration to the entering into CRDAs with small business firms and consortia involving small business firms; (2) has given preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development Agreement or produced through the use of such inventions will be manufactured substantially in the United States and; (3) in the event this Agreement is made with an industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development Agreements and licensing Agreements with such foreign country.

14.2 Representations and Warranties of ABC. ABC hereby represents and warrants to AFLAB as follows:

14.2.1 Corporate Organization. ABC, as of the date hereof, is a (corporation) duly organized, validly existing and in good standing under the laws of the State of (insert state), and (if applicable) is a wholly owned subsidiary of Y, Inc., a (insert state) corporation.

14.2.2 Statement of Ownership. ABC is neither foreign owned nor a subsidiary of a foreign owned entity.

14.2.3 Power and Authority. ABC has the requisite power and authority to enter into this Agreement and to perform according to the terms thereof.

14.2.4 Due Authorization. The Board of Directors and stockholders of ABC (modify if necessary) have taken all actions required to be taken by law, ABC's Certificate or Articles of Incorporation, its bylaws or otherwise, to authorize the execution and delivery of this Agreement.

14.2.5 No Violation. The execution and delivery of this Agreement does not contravene any material provision of, or constitute a material default under any material Agreement binding on ABC or any valid order of any court, or any regulatory agency or other body having authority to which ABC is subject.

Article 15. Disposal of Toxic or Other Waste

15.1 ABC shall be responsible for the removal from AFLAB property of any and all toxic or other material used, provided, or generated in the course of performing this Agreement. ABC shall obtain at its own expenses all necessary permits and licenses as required by local, state, and federal law and shall conduct such removal in a lawful and environmentally responsible manner.

Article 16. Liability

16.1 Property. The U.S. Government shall not be responsible for any property of ABC consumed, damaged or destroyed in the performance of this Agreement.

16.2 ABC's Employees. ABC agrees to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind involving an employee of ABC arising in connection with this Agreement, except to the extent that such loss, claim, damage or liability arises solely from the negligence of AFLAB or its employees. ABC shall be solely responsible for the payment of all claims for the loss of property, personal injury or death, or otherwise arising out of any negligent act or omission of its employees in connection with the performance of work under this Agreement.

16.3 No Warranty. EXCEPT AS SPECIFICALLY STATED IN ARTICLE 14, AFLAB MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITIONS OF THE RESEARCH OR ANY INVENTION OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, MADE, OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY INVENTION OR PRODUCT.

16.4 Indemnification. ABC holds the U.S. Government harmless and indemnifies the Government for all liabilities,

demands, damages, expenses and losses arising out of the use by ABC, or any party acting on its behalf or under its authorization, of AFLAB's research and technical developments or out of any use, sale or other disposition by ABC, or others acting on its behalf or with its authorization, of products made by the use of AFLAB's technical developments. This provision shall survive termination of this Agreement.

Article 17. Force Majeure

17.1 Neither party shall be liable for any unforseeable event beyond its reasonable control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civic disturbance or disobedience, strikes, labor dispute, or failure, threat of failure, or sabotage, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the party

unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

Article 18. Miscellaneous

18.1 No Benefits. No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, nor to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

18.2 Governing Law. The construction, validity, performance and effect of this Agreement for all purposes shall be governed by the laws applicable to the Government of the United States.

18.3 Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof and supersedes any prior understanding or written or oral Agreement relative to said matter.

18.4 Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of references only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

18.5 Waivers. None of the provisions of this Agreement shall be considered waived by any party hereto unless such waiver is given in writing to all other parties. The failure of any party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.

18.6 Severability. The illegality or invalidity of any provisions of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

18.7 Amendments. If either party desires a modification in this Agreement, the parties shall, upon reasonable notice of the proposed modification by the party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the parties

hereto by their representatives duly authorized to execute such amendment.

18.8 Assignment. Neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party.

18.9 Export Controls. Information and/or products developed pursuant to this Agreement may contain information for which export is restricted by the Arms Control Act (22 USC 2571 et seq.) or the Export Administration Act (50 USC 2401 et seq.). Nothing in this Agreement shall be construed to permit any disclosure in violation of those restrictions.

Article 19. Notices

19.1 Notices, communications, and payments hereunder shall be deemed made if given by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, communication or payment at the address given below, or such other address as may hereafter be designated by notice in writing.

A. Formal notices under this Agreement shall be addressed as follows:

AFLAB:

ABC:

B. Correspondence relating to technical matters should be addressed as follows:

AFLAB:

ABC:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate by their duly authorized representatives as follows:

For ABC:

	NAME
Date	TITLE

For AFLAB, U.S. Government

	NAME
Date	TITLE

Air Force, U.S. Government:

Reviewing Official	NAME
Date	TITLE

Appendix A

Obligation of the Parties

Lic. No. GN-001

LICENSE AGREEMENT

THIS AGREEMENT is entered into between the National Technical Information Service (hereinafter "NTIS"), an agency of the United States Department of Commerce, having offices at 425 Thirteenth Street, N.W., Washington, D.C. 20004; and Merck & Co., Inc., having a place of business at 126 East Lincoln Avenue, Rahway, New Jersey 07065 (hereinafter "Merck").

WHEREAS, the United States of America as represented by the Secretary of the Department of Health, Education and Welfare has sponsored and is the owner by assignment of certain valuable patent rights relating to Australia antigen and its utilization as a vaccine for hepatitis as defined in United States Patent No. 3,636,191, issued January 8, 1972, and

WHEREAS, by inter-agency assignment dated July 10, 1975, custody of the entire right, title, and interest to United States Patent No. 3,636,191, with the authority to grant licenses, has been transferred to the Secretary of Commerce as represented by NTIS; and

WHEREAS, NTIS desires to grant and Merck desires to receive a non-exclusive license under United States Patent No. 3,636,191, subject to the terms and conditions hereof,

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

Definitions

1.1 "Licensed Vaccine" shall mean the Hepatitis B vaccine described and claimed in United States Patent No. 3,636,191.

1.2 "Net Sales" means the amount billed or invoiced on sales of Licensed Vaccine less:

(a) customary trade, quantity or cash discounts and non-affiliated brokers' or agents' commissions actually allowed and taken;

(b) amounts repaid or credited by reason of rejections or returns or because of Government-required retroactive price reductions;

(c) five percent (5%) of the amount billed or invoiced to cover taxes, transportation, insurance and duties.

1.3 "Affiliate" shall mean any company, corporation, or business in which Merck or an affiliate of Merck owns at least a fifty (50%) percent financial interest.

1.4 "Patent Rights" shall mean the unexpired, judicially uninvalidated claims of United States Patent No. 3,636,191, or any reissue thereof.

1.5 "Combination Product" shall mean any product sold by Merck or an Affiliate which includes Licensed Vaccine and one or more other biologically active components. Net Sales of a Combination Product shall be the net sales price of the Combination Product multiplied by a fraction, the numerator of which shall be

Merck's or its Affiliate's current retail price for a single dose vial of Licensed Vaccine being sold without other biologically active components and the denominator of which shall be the current retail price for a single dose vial of the Combination Product, provided that said fraction shall not be less than one-half (1/2).

In the event Licensed Vaccine is not being sold without another biologically active component, Net Sales shall be the net sales price multiplied by a fraction, the numerator of which shall be the cost of the Licensed Vaccine included in the product and the denominator of which shall be the cost of Combination Product, the cost in each case being the inventory cost determined in accordance with Merck's regular accounting method, on the condition, however, that such fraction shall not be less than one-half (1/2).

ARTICLE II

Grant

2.1 NTIS hereby grants to Merck and its Affiliates, subject to the terms and conditions hereof, a non-exclusive, revocable license under Patent Rights to manufacture, have manufactured, use and sell the Licensed Vaccine. In the event of revocation of this license by NTIS for a reason other than breach by Merck or an Affiliate, the provisions of Paragraph 8.3 shall apply.

ARTICLE III

Payment

3.1 Merck agrees to pay NTIS upon execution of this Agreement the sum of twenty thousand ($20,000) dollars, no part of which shall be refunded, and ten thousand ($10,000) dollars of which shall be credited against the royalty provided for in Paragraph 3.2.

3.2 Merck agrees to pay NTIS during the life of this Agreement, a royalty determined by one of the following rates:

A) two (2%) percent of the Net Sales of all Licensed Vaccine sold by Merck or an Affiliate in the United States utilizing Patent Rights; and

B) one (1%) percent of the Net Sales of all Licensed Vaccine manufactured in the United States by Merck or an Affiliate utilizing Patent Rights and sold by Merck or an Affiliate outside the United States.

3.3 Sales of Licensed Vaccine directly to the Government of the United States by Merck or an Affiliate shall not include royalty, nor shall royalty be payable to NTIS on such sales.

3.4 All payments due NTIS hereunder shall be payable in United States Dollars. In the event payment is to be accounted by foreign currency, such exchange conversions into U.S. dollars as may be necessary shall be made at the rate in the U.S. on the

last business day of the applicable royalty period for purchase of U.S. dollar bank wire transfers for settlement of royalty obligations.

3.5 Merck shall pay all necessary expenses for commercialization of Licensed Vaccine.

ARTICLE IV

Markings

Merck or an Affiliate may, at its option, identify Licensed Vaccine sold with the marking "Licensed Under U.S. Pat. No. 3,636,191". Merck or an Affiliate shall not (a) use the name of any inventor of Licensed Vaccine, (b) the name of any agency of the United States Government, or (c) any adaptation thereof in any promotional activity without prior written approval from NTIS.

ARTICLE V

Reports

5.1 Merck agrees to submit to NTIS within sixty (60) days after the calendar half-year ending June 30th or December 31st, as the case may be, a report setting forth the amount of Licensed Vaccine sold together with the Net Sales price thereof and the royalty due thereon, and with each such report to pay the royalty due. If no royalties are due to NTIS for any report period, the written report shall so state.

5.2 Merck shall, consistent with its overall research program, exercise its best efforts to commercialize Licensed Vaccine. Annually until Merck effects commercialization of Licensed Vaccine, and upon the written request of NTIS, Merck shall report on its progress in the commercialization effort.

ARTICLE VI

Recordkeeping

Merck and its Affiliates shall keep accurate and correct records of Licensed Vaccine manufactured, used or sold under this Agreement, appropriate to determine royalties payable hereunder. Such records shall be retained for at least one (1) year following a given report period, and shall be available during reasonable business hours for inspection at the expense of NTIS by an independent certified public accountant, selected by NTIS and approved by Merck, for the sole purpose of verifying royalty reports and payments hereunder. Such accountant shall not disclose to NTIS any information other than information relating to the accuracy of reports and payments made under this Agreement, and in no event are quantities or prices to individual customers, or costs of production, to be disclosed to NTIS.

ARTICLE VII

Patent Enforcement

7.1 Merck shall notify NTIS promptly in writing of any infringement of Patent Rights which becomes known to Merck.

7.2 In the event that annual dollar sales in any country of Licensed Vaccine made or sold in infringement of Patent Rights total at least ten percent (10%) of Merck or an Affiliate's annual dollar sales of Licensed Vaccine in such country, and in the event NTIS concurs with Merck that infringement

of Patent Rights exists in connection with such adverse sales, NTIS shall take prompt action to eliminate such infringement.

7.3 Should NTIS be unsuccessful in eliminating the infringement referred to in Paragraph 7.2, NTIS agrees to recommend the filing of an appropriate infringement action on Patent Rights, and Merck shall, at NTIS request and expense, cooperate in every respect including making available to NTIS records, information, evidence and testimony by employees of Merck relevant to said infringing manufacture and/or sale of Licensed Vaccine.

7.4 If after twelve months of the notice by Merck referred to in Paragraph 7.1, NTIS has not eliminated any substantial infringement of Patent Rights pursuant to Paragraph 7.2, Merck may cease payment of royalties due hereunder, on a country-by-country basis. When such infringement has been eliminated or an appropriate infringement suit has been filed, the obligation to pay royalty shall resume.

ARTICLE VIII

Cancellation

8.1 Either party hereto may cancel this Agreement at any time upon at least four (4) months prior written notice to the other party.

8.2 In the event of cancellation by NTIS, or by Merck for reasons other than any uncured breach of this Agreement by NTIS, Merck shall be required to report and pay all royalties

due for Licensed Vaccine sold or manufactured under Patent Rights prior to the effective date of cancellation.

8.3 In the event of cancellation by NTIS for reasons other than any uncured breach of this Agreement by Merck, and in recognization of expenditures advanced by Merck for Licensed Vaccine, Merck shall have the right to commercialize Licensed Vaccine under a separate agreement having terms and conditions at least as favorable as those available to others, provided that in the absence of licenses to others, then Merck shall have the right to commercialize Licensed Vaccine under a separate agreement having running royalty terms and conditions at least as favorable as those hereunder.

8.4 Upon cancellation of this Agreement by Merck, the rights and obligations of the parties hereto shall be those which may have existed had this Agreement not been entered.

8.5 Any breach of this Agreement shall be curable upon thirty (30) days written notice by either party hereto.

ARTICLE IX

Duration

This Agreement, unless sooner cancelled as provided herein, shall remain in effect until January 18, 1989, the expiration date of United States Patent No. 3,636,191.

ARTICLE X

General

10.1 NTIS agrees to promptly extend to Merck the benefit of any more favorable royalty rate which may be granted under Patent Rights for the Licensed Vaccine to any other party.

10.2 NTIS does not warrant the validity of the Patent Rights licensed hereunder and has not made any representations with regard to the scope of the Patent Rights or that such Patent Rights may be exploited without the infringement of other patents.

10.3 This Agreement shall not be transferred by Merck to any party other than to a successor to the business interest of Merck relating to vaccines except by prior written approval of NTIS.

10.4 The parties shall attempt to resolve amicably any disputes arising under this Agreement or in its interpretation. The parties recognize that NTIS is bound by formal Regulations governing the manner of resolving disputes which are not resolved amicably.

This Agreement shall be interpreted in accordance with the laws of the State of New Jersey.

10.5 Written notices required to be given under this Agreement shall be addressed as follows:

If to NTIS:

Director
National Technical Information Service
United States Department of Commerce
Suite 620, Pennsylvania Building
425 Thirteenth Street, N.W.
Washington, D.C. 20004

If to Merck:

Office of the Secretary
Merck & Co., Inc.
Rahway, New Jersey 07065

or to such other address as either party may request in writing.

10.6 This Agreement constitutes the entire understanding of the parties and neither party shall be obliged by any condition or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

The effective date of this Agreement is October 18, 1976.

Attest:

By Peter F. Urbach

Typed Name Peter F. Urbach

National Technical Information Service

By William T. Knox

Typed Name William T. Knox

Title Director, NTIS

Date October 18, 1976

Attest:

By Charles E. Childs Jr

Typed Name Charles E. Childs, Jr.

Merck & Co., Inc.

By John L. Huck

Typed Name JOHN L. HUCK

Title Senior Vice President

Date October 6, 1976