

**MYELIN REPAIR FOUNDATION  
RESEARCH CONSORTIUM MEMBER AGREEMENT**

This Agreement takes effect \_\_\_\_\_, 2004 (the “Effective Date”), between the Myelin Repair Foundation, Inc., a California 5019 (c) (3) corporation (“MRF”) doing business at (Address) and \_\_\_\_\_, a teaching and research institute, doing business at (address) (“University”). MRF and University are each referred to in this Agreement as a “Party” and collectively as the “Parties.” Further, it is understood that MRF has now or may in the future enter into agreements similar to this Agreement with other research institutions. University and such other research institutions are each referred to in this Agreement as a “Member Institution” and collectively as “Member Institutions,” and this Agreement and such other similar agreements are each referred to as a “Member Agreement” and collectively as “Member Agreements.”

**RECITALS**

**A.** MRF desires to sponsor research and provide the Member Institutions with research funding in the form of Grants (as defined below) in order to rapidly discover rational drug targets and develop effective therapies to slow, stop and ultimately repair damage to myelin caused by multiple sclerosis, and to investigate ways to assure that the results of their efforts are utilized commercially to the fullest extent possible (the “Goal”). MRF and the Member Institutions believe that the Goal can best be reached through collaboration in order to pool their resources and knowledge, and MRF wishes to finance and facilitate this collaboration.

**B.** MRF has invited Principal Investigators from the Member Institutions, to collaborate via the “Myelin Repair Foundation Research Consortium” (the “Consortium”) in order to accomplish the Goal.

**C.** MRF and the Member Institutions share a commitment to the dissemination of scientific knowledge for the public good, and to the advancement of scientific education. Therefore, University and its Principal Investigator(s) are expected to encourage their students and staff to participate in the Consortium’s research activities and to promptly publish their findings once the requirements for protection of Consortium Inventions as described in this agreement have been satisfied.

NOW, THEREFORE, MRF and University hereby agree as follows:

**SECTION 1**

**DEFINITIONS**

All defined terms used in this Agreement have the meanings set forth in definitions list that is attached and incorporated into this Agreement as Schedule 1.

## SECTION 2

### THE CONSORTIUM

2.1 **Purpose and Scope.** The purpose of the Consortium shall be to bring together teams of interdisciplinary researchers from University and the other Member Institutions to facilitate, coordinate, enhance, promote and support the achievement of the Goal.

2.2 **Membership.** Through this Agreement, University agrees to join the Consortium and shall be considered a member of the Consortium. As of the Effective Date, the other Member Institutions are \_\_\_\_\_.

2.3 **Principal Investigator.** \_\_\_\_\_ shall be University's Principal Investigator(s) for the purposes of this agreement University's Principal Investigator(s) shall:

- (a) Supervise the research to be conducted at the University under this Agreement;
- (b) Be the official point of contact between the University and MRF for scientific matters; and
- (c) Serve on the Consortium Committee, performing the obligations set forth in Section 2.4.

2.4 **Consortium Committee.** A "Consortium Committee" including Principal Investigator(s) from each of the Member Institutions (including University) and one representative from MRF shall perform, subject to the terms of this Agreement, the duties described in the MRF Collaborative Research Process Addendum (attached and incorporated into this Agreement as Addendum 2.4) including:

- (a) Developing and proposing Annual Research Plan and Budgets for MRF's review and approval, including Scopes of Study consistent with the Goal;
- (b) Allocating responsibility among the various Investigators from Member Institutions for performance of the Scopes of Study (any University Scope of Study shall be subject to University's prior review and approval as set forth in Section 3.2(ii));
- (c) Meeting regularly at 4-month intervals, or as otherwise agreed upon, to update the Annual Research Plan and Budget, with any substantive changes being subject to review and approval by MRF;
- (d) Evaluating the overall performance of the Consortium, the individual Member Institutions and their individual Principal Investigators according to the MRF Collaborative Research Process Addendum; provided however that Principal Investigators will not be responsible for evaluating (and will not have the right to evaluate) their own performance, that of other Principal Investigators from their Member Institution, or that of their Member Institution as a whole.

Consistent with the foregoing, University's Principle Investigator shall agree in writing to the Rules of Participation set forth in the MRF Collaborative Research Process Addendum.

## 2.5 **New Membership**

(a) From time to time, the Consortium Committee may wish to propose the addition of other researchers (and their institutions) to the Consortium. To be considered, such new researchers (and institutions) must:

(i) Subscribe to the objectives of the Consortium as set forth in this Agreement;

(ii) Possess excellent research capacities, the quality of which meets or exceeds those of the existing Principal Investigators and Member Institutions;

(iii) Be willing and able to collaborate with existing Principal Investigators and non-member affiliates, and their investigators, as necessary or appropriate to accomplish the objectives of the Consortium; and

(iv) Be willing and able to utilize and comply with the existing Consortium processes for approving and conducting Annual Research Plans and Budgets and individual Scopes of Study.

(b) New membership shall be subject to approval by MRF, upon recommendation by the Consortium Committee. Each new Member Institution must become party to a Member Agreement with MRF, which Member Agreement shall also be signed by the new Member Institution's Principal Investigator(s) in his/her(their) capacity(ies) as an employee(s) of new Member Institution.

## SECTION 3

### **ANNUAL RESEARCH PLAN AND BUDGET**

3.1 **Annual Research Plan and Budget.** The Annual Research Plan and Budget in effect as of this Agreement's Effective Date is attached and incorporated into this Agreement as Addendum 3.1. The Annual Research Plan and Budget shall be periodically updated and modified as described below.

3.2 **Contents.** On an annual basis, the Consortium Committee shall propose a new Annual Research Plan and Budget to MRF for review and approval. Each such submission shall be in writing and contain the following in such detail as MRF may require:

(i) Affirmation of the Goal of the Consortium, together with a general statement as to the anticipated Scopes of Study to be performed by the Member Institutions collectively.

(ii) The specific Scopes of Study to be performed by each Member Institution's (including University's) Principal Investigator during the 12-month period following such Annual Research Plan and Budget's effective date, provided that:

(1) Any University Scope of Study included within an Annual Research Plan and Budget shall be subject to University's review and approval;

(2) Once the Consortium Committee agrees by consensus on an Annual Research Plan and Budget that it wishes to propose to MRF, University's Principal Investigator shall submit the University Scope(s) of Study contained in such Annual Research Plan and Budget to University for University's review and approval;

(3) If University does not object to the proposed University Scope of Study in writing within fifteen business days after the Consortium Committee reaches agreement as set forth in the preceding clause on the underlying Annual Research Plan and Budget, or if University's Principal Investigator does not otherwise object to Consortium Committee's proposing of such University Scope of Study to MRF as part of a proposed Annual Research Plan and Budget, University will be considered to have reviewed and approved the University Scope of Study.

(iii) A project plan against which the progress and/or completion of each Member Institution's Scope(s) of Study may be measured, as well as a list of project "deliverables," if any, and expected dates of progress and/or completion.

(iv) A budget for the costs of the each Member Institution's Scope(s) of Study, together with an estimate of the direct and indirect costs of commitments, if any, which might extend beyond such period.

(v) Such other information as MRF may reasonably request.

3.3 **Modifications to Annual Research Plan and Budget.** At regular 4-month intervals, or as otherwise agreed between MRF and the Consortium Committee, the Consortium Committee shall meet to update as necessary the Annual Research Plan and Budget. Written modifications to the Annual Research Plan and Budget shall be submitted to MRF. MRF shall notify University's Principal Investigator in writing when modifications are approved.

3.4 **Scope of Study.** The University's Principal Investigator, with the assistance Other Investigators at University as may be required, shall perform the projects defined in the University Scope of Study, or assigned to him or her by other Member Institutions under the Annual Research Plan and Budget and in the MRF Collaborative Research Process Addendum. University shall enter into an agreement with the sending Member Institution that shall govern the transfer of the research material between University and other Member.

## SECTION 4

### FUNDING

4.1 **Payments.** Upon the commencement of the Term and on or about each anniversary of that date, MRF will disperse to University the University Grant for the succeeding 12-month period.

4.2 **Reconciliation.** Ninety (90) days after the end of each 12-month period, University will submit to MRF a general statement of reconciliation between the funding that MRF previously provided to University for such 12-month period under Section 4.1, and the Research Costs University actually incurred in the same period in connection with University's Scope of Study. If University's Research Costs in any 12-month period are less than the funding previously dispersed to University for such period under Section 4.1, then at MRF's option either: (i) University shall return the difference to MRF, or (ii) MRF may credit the difference against any funding to be dispersed to University under Section 4.1 for the next or any succeeding 12-month period. In no event shall MRF be liable for any Research Costs incurred in excess of the University Grant, unless University and MRF otherwise agree in writing.

4.3 **Audit.** University shall keep complete, true and accurate books of account and records for the purpose of determining its Research Costs. Such books and records shall be kept for at least three (3) years following the end of the 12-month period to which they pertain. Such records will be open for inspection during such three (3) year period by a representative or agent of MRF for the purpose of verifying University's Research Costs. Such inspections may be made no more than once each calendar year, and only at reasonable times mutually agreed by MRF and University. MRF's representative or agent will execute a reasonable confidentiality agreement prior to commencing any such inspection. MRF shall bear the costs and expenses of inspections conducted under this Section 4.3, unless a variation or error resulting in an overcharge of Research Costs exceeding ten percent (10%) is established in the course of any such inspection, whereupon all costs relating to the inspection and any unpaid amounts that are discovered will be paid by University.

4.4 **Other Funding.** Notwithstanding anything to the contrary in this Agreement or any Addenda, the University may request and obtain funding from NIH and other institutions and governmental agencies in addition to the funding provided by MRF.

## SECTION 5

### TREATMENT OF INTELLECTUAL PROPERTY

#### 5.1 Intellectual Property/Consortium Inventions.

(a) **Ownership of Background Inventions.** As a result of performing under this Agreement, neither Party acquires any right, title, or interest in any inventions (including any patent and other intellectual property rights therein) that the other Party either (i) owned or controlled as of this Agreement's Effective Date, or (ii) develops or acquires independent of this Agreement and the Consortium.

(b) **Ownership of Consortium Inventions.** As between the Parties, University owns, subject to this Section 5 (including without limitation Section 5.1(e)), all right, title and interest in and to all Consortium Inventions made by University's Investigator(s), to the extent that University's Investigator(s) (including without limitation University's Principal Investigator) would be an inventor thereof under U.S. patent law ("University Consortium Invention"). As between the Parties, University and MRF jointly own all right, title and interest in and to all Consortium Inventions made jointly by University's Investigator(s) and MRF personnel (including employees and other third parties working on behalf of MRF) ("Joint Consortium Inventions"). For purposes of this Section 5.1(b), whether an invention is made "jointly" shall be determined under principles of inventorship in accordance with U.S. patent law, and "owned jointly" means that, subject to the Parties' rights and obligations under this Agreement, each Party is free to enforce or exploit such patent rights and authorize others to do so, with no obligation to account to the other Party, for profits and otherwise, and each Party hereby waives any right it may have under the laws of any country to require such consent or accounting. University will further cause each University Investigator (including without limitation University's Principal Investigator) who may participate in any element of a Scope of Study, at University or another Member Institution, to assign to University all of his or her right, title and interest in all Consortium Inventions as to which such Investigator may have a claim of ownership or other entitlement in accordance with University's written policies.

(c) **Cooperation with IP Counsel.** University's Principal Investigator (and upon MRF's reasonable request, a representative of University's technology transfer office) will on a periodic basis consult with IP Counsel with respect to University's Scope of Study to the end that such counsel may become generally familiar with the potential for, and the status of, University Consortium Inventions and Joint Consortium Inventions. In addition, University's Principal Investigator will notify MRF and University using the University's then-current invention disclosure promptly after he or she determines that a Consortium Invention has been made. IP Counsel may regularly contact University to assist in determining the patentability of any Consortium Inventions.

(d) **Patent Activity.** As between the Parties, MRF will have the initial right (but not the obligation) to prosecute and oversee all Patent Activity with respect to University Consortium Inventions and Joint Consortium Inventions, at its sole cost and expense (outside of and in addition to funding Annual Budgets, but subject to Section 5.1(f) below). University agrees to reasonably cooperate with any MRF Patent Activity, and MRF shall keep University reasonably informed as to the status of the Patent Activity with respect to the University Consortium Inventions and Joint Consortium Inventions, including providing University, to the extent reasonably requested, with serial numbers and filing dates, together with copies of all such applications, office actions, responses, all other material patent office communications.

MRF shall notify University of any purported University Consortium Inventions and Joint Consortium Inventions for which MRF determines not to prosecute or maintain Patent Activity within 60 days of such decision (and for decisions not to maintain, reasonably in advance of the due date for any required maintenance payment). In such case, University may prosecute or maintain any Patent Activity and control the licensing and/or other exploitation of resultant patent rights in the University Consortium Invention or Joint Consortium Invention at its own cost, and all Royalties with respect to such University activity will inure to the sole benefit of University; provided that in

such case University shall offer each of the other Member Institutions that were Member Institutions at the time the University Consortium Invention or Joint Consortium Invention was invented the opportunity to jointly share in costs of Patent Activity and Royalties from the licensing and/or other exploitation of same; and provided further that in any such case, any of the other Member Institutions may opt out of cost sharing in which case they will also not share in any Royalties related to the exploitation of such University Consortium Invention and Joint Consortium Invention.

(e) **Licenses.**

(i) University hereby grants to MRF a worldwide, exclusive (even as to University, subject to Section 5.1(e)(iii)) license under the University Consortium Inventions and Joint Consortium Inventions (including all patent and other intellectual property rights therein), to make, use, sell, offer for sale, and import products, practice any method, process or procedure within the University Consortium Inventions and Joint Consortium Inventions, and otherwise exploit the University Consortium Inventions and Joint Consortium Inventions, within the Licensed Field.

(ii) MRF may grant and authorize sublicenses within the scope of the license granted to MRF pursuant to Section 5.1(e)(i).

(iii) University retains for itself the right to use, and non-exclusively license to other not-for-profit research institutions the right to use, the University Consortium Inventions and Joint Consortium Inventions solely for internal research and educational purposes, including sponsored research. In addition, to the extent of its patent and other intellectual property rights in other Consortium Inventions under the other Member Agreements, MRF hereby grants to University a non-exclusive, non-transferable, royalty-free license, without the right to grant or authorize sublicenses, to use all other Consortium Inventions made during University's Participation Period, solely for internal, research and educational purposes including sponsored research. To the extent University grants license rights in University Consortium Inventions and Joint Consortium Inventions to not-for-profit research institutions as permitted under the first sentence of this Section 5.1(e)(iii) (including through the provision of research materials that include such University Consortium Inventions and Joint Consortium Inventions), University shall promptly notify and provide MRF with a copy of the license or material transfer agreement so entered.

(iv) Consistent with the foregoing provisions of this Section 5.1(e), as between the Parties, MRF has the exclusive right to license and/or otherwise exploit each Consortium Invention for commercial purposes. Accordingly, as between the Parties, MRF has the power and authority to negotiate and commit with respect to the patenting, licensing and/or other exploitation of all such Consortium Inventions. MRF will have the power and authority to make all decisions as to and, if it so determines, to enter into, modify, amend, enforce and otherwise deal with binding agreements with third parties with respect to such, patenting, licensing and/or exploitation. In connection with such patents, licensing and/or other exploitation, MRF may retain such experts and professionals, as it deems necessary or appropriate, at its own expense (provided that the cost thereof may be recovered by MRF as provided in Section 5.1(f)). Licenses to University Consortium Inventions and Joint Consortium Inventions shall reserve to University the right to use such University Consortium Inventions and Joint Consortium Inventions for internal, non-commercial, research and educational purposes.

(f) **Sharing of Royalties.** Royalties generated from time to time from the licensing and/or other exploitation of all Consortium Inventions will be paid to and collected by MRF on behalf of the Consortium and distributed at least annually in accordance with the provisions of Addendum 5.1(f). University shall have the right to participate in Royalties (as defined below) from the sale or disposition of Consortium Inventions discovered during University's Participation Period.

(g) **Records.** MRF shall keep complete and accurate accounts of all expenses related to each Consortium Invention and all Royalties received from each commercial licensee attributable to each Consortium Invention. Upon reasonable advance written notice (at least 30 days) University may have its independent, certified public accounting firm examine MRF's relevant books and records, during regular business hours and no more than once per year, as necessary to verify that Royalties generated from time to time from licensing and/or other exploitation of all Consortium Inventions is paid in accordance with this Section 5.1.

(h) **Disputes.** Any disputes with respect to MRF's distribution or allocation of Royalties among University on the one hand, and MRF and/or the other Member Institutions on the other hand, will be determined in accordance with this Agreement.

## **5.2 Publication/Presentation of Information Relating to Scopes of Work.**

(a) In each University publication/presentation that results from a University Scope of Study, University will appropriately acknowledge MRF and the other Member Institutions.

(b) University's Principal Investigator shall submit substantive drafts of all publications/presentations of data developed in the course of performing University Scope(s) of Study to the MRF member of the Consortium Committee for review at least sixty (60) calendar days prior to submission for publication/presentation. "Publication" for purposes of this provision, shall include all "publications," including presentation and/or transfer of materials, which constitute "prior art" under the intellectual property laws of the United States.

(c) If MRF, upon recommendation of the Consortium Committee and/or IP Counsel, determines to pursue Patent Activity for any Consortium Inventions which are recorded in any draft publication/presentation, within thirty (30) days after receipt of such draft publication/presentation, University shall be so notified, and any such publication/presentation which discloses such invention shall be withheld for up to an additional thirty (30) days to allow filing of applicable patent applications.

(d) Without limiting the foregoing rights of MRF under this Section 5.2, if University's Principal Investigator is unable to provide MRF with a draft of the publication or presentation before planned submission to a third party according the guidelines above, MRF will make its best reasonable efforts to facilitate a rapid review, provisional patent application(s) if any and approval prior to release.

**5.3 Conformance with NIH Guidelines.** Notwithstanding the foregoing provisions of this Section 5, nothing in this Agreement is intended to conflict with the NIH Guidelines "SHARING BIOMEDICAL RESEARCH RESOURCES: Principles and Guidelines for Recipients of NIH



Research Grants and Contracts [64 FR 72090]" which shall govern in the event of any inconsistency with this Agreement.

## **SECTION 6**

### **STUDY DATA**

6.1 Principal Investigator agrees to inform all Investigators to collect and store all Study Data in MRF's electronic laboratory notebook application ("**Electronic Notebook**"). The Electronic Notebook shall be hosted by a service provider ("**Service Provider**") selected by MRF in its sole and reasonable discretion. As of the Amendment Date, the Service Provider selected by MRF is SLP Track, and University and its Principal Investigator consent to the selection of SLP Track as the Service Provider. If MRF terminates its relationship with the Service Provider, MRF shall give University thirty (30) days prior written notice. If the Service Provider discontinues hosting the Electronic Notebook or otherwise ceases active operations, MRF shall make a good faith effort to download and make available all University Study Data collected after July 1, 2009 by the Electronic Notebook to University and University's Investigators.

6.2 As between the Parties, University shall own all Study Data that is developed on University's premises by its Investigators in connection with University Scope(s) of Study. Principal Investigator shall make copies of all such Study Data available to MRF and all other Member Institutions as necessary to document Consortium Inventions and facilitate collaboration and coordination between the Member Institutions, including as set forth in Section 2.1, provided that the other Member Institutions shall only have access to such University Study Data as is generated during such other Member Institution's Participation Period, unless specifically agreed otherwise by all relevant Parties. With respect to Study Data collected by the Electronic Notebook, University and its Principal Investigator shall have the right to download such Study Data at any time during the Term subject to the terms and conditions of MRF's agreement with the Service Provider and provided that MRF shall not be responsible for the actions or inactions of the Service Provider.

## **SECTION 7**

### **DILIGENCE**

7.1 MRF will diligently seek licensee(s) for the commercial development of Consortium Inventions and will administer Consortium Inventions for the mutual benefit of MRF and the Member Institutions (as provided in Section 5.1(f)) and in the public interest to achieve the Goal.

7.2 MRF, in collaboration with the Member Institutions and in consultation with counsel, will use its best commercial judgment to determine the timing and scope of such licensing activities in order to achieve maximum public benefit from University Consortium Inventions and Joint Consortium Inventions and secondary regard for Royalties for the MRF and the Member Institutions.

7.3 MRF will provide University with copies of all licenses issued on Consortium Inventions made during University's Participation Period.

7.4 45 days after the end of each calendar year, MRF will provide University with an annual report giving the status of patent prosecution, commercial development and licensing activities for Consortium Inventions.

7.5 If MRF fails to pursue licenses or other commercial exploitation of any University Consortium Invention or Joint Consortium Invention within a commercially reasonable time, University may convert the license rights granted to MRF under Section 5.1(e)(i) from exclusive to non-exclusive.

## **SECTION 8**

### **USE OF UNIVERSITY'S NAME**

MRF may disclose the identity of University and University's Principal Investigator, that University supports the goals of the Consortium as they are defined in this Agreement, and that a Scope of Study has been funded for performance at University and the nature of that Scope of Study. If MRF wishes to use of any of the foregoing information in promotional advertising or other promotional materials, press releases or other publicity, it will notify the University in advance, and receive prior approval from the University. MRF may not, however, make trademark use of any trademark, service mark, trade name, or symbol of University without University's prior written consent except as required by law. MRF shall keep University informed about any of its activities other than those described above that involve using University's name.

## **SECTION 9**

### **INDEMNIFICATION**

#### **9.1 Indemnification.**

(a) MRF shall defend, indemnify and hold harmless University and its affiliates, successors and assigns, and all of the foregoing's respective officers, directors, trustees, students employees, members, representatives, affiliates and agents, from and against any Losses that they may incur or suffer due to third-party claims, arising from this Agreement, the conduct of any Scope of Study or the use of Study Data, in proportion and to the extent that such Loss is caused by the intentional or negligent acts or omissions of MRF or its affiliates, successors or assigns, or any of the foregoing's respective officers, directors, trustees, students, employees, members, representatives or agents. In addition, MRF's foregoing indemnity obligations shall also apply to the intentional or negligent acts and omissions of the other Member Institutions to the extent MRF receives indemnity therefor from such other Member Institutions. Notwithstanding anything else in this Agreement to the contrary, MRF shall have no liability for the acts or omissions of (i) any staff who are employed or are otherwise provided by University, or (ii) the Consortium Committee (excluding the acts or omissions of its representative on the Consortium Committee).

(b) University shall defend, indemnify and hold harmless MRF, the other Member Institutions and their affiliates, successors and assigns, and all of the foregoing's respective officers directors, trustees, students, employees, members, representatives and agents, from and against any

Losses due to third-party claims that they may incur or suffer arising from this Agreement, or the conduct of any University Scope of Study or the use of Study Data, in proportion and to the extent that such Loss is caused by (i) the negligent acts or omissions of University or its affiliates, successors or assigns, or any of the foregoing's respective officers, directors, trustees, students, employees, members, representatives or agents, or (ii) University's breach of its representations and warranties under Section 10.3.

(c) **Notice to Indemnifying Party.** If any Party (the "Indemnified Party") receives notice of any claim or other commencement of any action or proceeding with respect to which the other Party (the "Indemnifying Party") is obligated to provide indemnification pursuant to this Section, the Indemnified Party shall promptly give the Indemnifying Party written notice thereof, which notice shall specify the nature of the matter in issue and, if known, the amount or an estimate of the amount of the liability arising therefrom. Such notice shall be a condition precedent to any liability of the Indemnifying Party for indemnification hereunder, but only to the extent that a failure of timely notice would prejudice materially the Indemnifying Parties. The Indemnified Party shall not settle or compromise any claim by a third party for which it is entitled to indemnification hereunder, without the prior written consent of the Indemnifying Party which will not be unreasonably withheld or delayed.

(d) **Defense by Indemnifying Party.** If the Indemnifying Party assumes the defense of the Indemnified Party under this Section, the Indemnified Party shall be entitled to participate in, but not control, any such defense, with its own counsel and at its own expense; except that, if the Indemnified Party, in its reasonable discretion, determines that there exists a conflict of interest between the Indemnifying Party and the Indemnified Party, the Indemnified Party shall have the right to engage separate counsel, at its sole cost and expenses. The Indemnifying Party may not admit liability or wrongdoing on the part of the Indemnified Party without the Indemnified Party's prior written consent.

## SECTION 10

### **REPRESENTATIONS AND WARRANTIES**

10.1 **Power and Authority.** Each Party hereby represents and warrants to the other Party that it has the right, power and authority to enter into and fully discharge its obligations under this Agreement.

10.2 **Legal Status of Parties.**

(a) MRF hereby represents and warrants to University that it is a corporation duly formed and validly existing under the laws of the State of California.

(b) University hereby represents and warrants to MRF and the other Member Institutions that its Board of Trustees has corporate powers under the laws of its state or province of formation.

(c) Each Party hereby represents and warrants to the other Party that it has received a determination from the internal Revenue Service that it is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended if formed in the United States, or equivalent tax status by the applicable taxing authority if formed outside the United States.

10.3 **Additional Representations of University.** University hereby represents and to MRF and the other Member Institutions that:

(a) University's Investigators will exercise reasonable efforts to perform University's Scope(s) of Study in conformance with generally accepted professional standards, prudent clinical and laboratory practices, and all applicable laws and regulations.

(b) To the best of University's knowledge and belief, no Investigator or other person employed in the performance of a University Scope of Study has been debarred and no debarred person will in the future be employed by University in connection with any work to be performed under a University Scope of Study.

(c) The University has in place a written policy specifying that each University Investigator who participates in sponsored research through the University is required to promptly disclose potentially patentable inventions and discoveries made during the course of, and within the scope of the sponsored research, to the University and to assign ownership of such inventions to the University when required to do so under sponsored research agreements, and such policy shall apply to University Investigator's performance under all University Scope(s) of Study under this Agreement. Without limiting the rights and remedies otherwise available to MRF, if University becomes aware of other claims to rights, title or interest in Consortium Inventions, University will promptly notify MRF.

(d) Subject only to the rights of MRF and the other Member Institutions, to the best of its knowledge, University owns or will own all University Consortium Inventions and Joint Consortium Inventions licensed to MRF under this Agreement. University has not previously granted and will not grant any rights in any Consortium Inventions that are inconsistent with the rights and licenses granted to MRF in this Agreement except as expressly provided within this Agreement or an amendment hereto.

(e) University operates research facilities accordance with all applicable laws and such guidelines as provided by NIH and/or other government institutions for the safe and ethical conduct of biological research

10.4 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH RESPECT TO THE CONSORTIUM INVENTIONS, STUDY DATA, OR OTHER RESEARCH RESULTS INTRODUCED TO THE CONSORTIUM BY SUCH PARTY.

## SECTION 11

### CONFIDENTIALITY

11.1 **Defined.** The Parties agree to maintain as confidential, confidential or proprietary information and data acquired from each other and identified as “confidential” at the time of disclosure in writing or reduced to writing by the disclosing party within ten days of disclosure to another party (collectively, “Confidential Information”) only in performing the services of this Agreement and the Scope(s) of Study and not to disclose such to any third party (except other Member Institutions as this Agreement contemplates), during the period of this Agreement and for a period of three (3) years thereafter. In addition, Study Data shall be treated as Confidential Information under this Section 11.1 (whether or not identified as “confidential” at the time of disclosure), but only to the extent necessary to protect intellectual property rights in Consortium Inventions as provided under this Agreement or to protect the privacy rights of individuals.

11.2 **Exceptions.** The receiving party’s obligations under this Section 11 shall not apply to Confidential Information that: (i) is or becomes part of the public domain through no breach of this Agreement by the receiving party, (ii) is received in good faith from a third party having no known obligations of confidentiality to the disclosing party, (iii) is independently created by the receiving party’s personnel or agents without use of the Confidential Information, or (iv) is required by law, regulation or a court of competent jurisdiction to be disclosed, provided that the receiving party notifies the disclosing party immediately. The receiving party shall bear the burden of proof with respect to proving that any of the foregoing exceptions apply to Confidential Information.

11.3 **Breach of this Section.** Each Party acknowledges that in the event of any breach or default or threatened breach or default by any Party of this Section 11, the other Party may be irreparably damaged, it may be extremely difficult and impractical to measure such damage and the remedy of damages at law may be inadequate. Accordingly, each Party, in addition to any other rights and remedies available at law or in equity, shall be entitled to seek injunctive relief including, but not limited to, specific performance, with respect to the breach or default or threatened breach or default of this Section 11.

11.4 **Return of Confidential Information.** Upon the expiration or earlier termination of this Agreement, or the withdrawal, non-renewal or removal of the receiving party from the Consortium, the receiving party shall promptly return to the disclosing party all Confidential Information of the disclosing party and any copies made thereof, except that disclosing party may keep one copy thereof in order to comply with their record keeping obligations.

## SECTION 12

### MEMBERSHIP TERM AND TERMINATION

12.1 **Term.** The term of scientific activity in the Consortium by University shall be established in the Annual Research Plan and Budget. It is expected that this overall work will take five (5) years. However, if a new Annual Research Plan and Budget is not approved by MRF in its discretion (upon the recommendation of the Consortium Committee) within 90 days after the

expiration of any previously approved Annual Research Plan and Budget, then this Agreement shall automatically expire at the end of such 90-day period, unless the Parties otherwise agree in writing. It is understood that the term of each Annual Research Plan and Budget is limited to 12 months. Accordingly, and by means of example only, if the initial Annual Research Plan and Budget is approved to take effect on January 1, 2004 and end on December 31, 2004, and a second Annual Research Plan and Budget is not approved by April 1, 2005, then this Agreement would automatically expire as of April 1, 2005. MRF shall use commercially reasonable efforts to notify University of any expiration of this Agreement within a reasonable time after such expiration.

12.2 **Withdrawal of University.** University may withdraw from the Consortium, and thereby terminate this Agreement, at any time upon at least 30 days advance written notice to MRF, subject to the terms and conditions of this Agreement. If the employment of any University Principal Investigator(s) is terminated, or if any University Principal Investigator(s) is (are) otherwise unavailable to perform under this Agreement, such occurrence shall be considered a withdrawal from the Consortium by University, unless a replacement investigator is submitted by the University in writing and approved by the other members of the Consortium Committee and MRF within 120 days of such occurrence.

12.3 **Withdrawal of MRF.**

(a) MRF may withdraw from the Consortium, or otherwise terminate this Agreement in its entirety, at any time, subject to the terms and conditions set forth in this Section 12.3:

(i) MRF shall give twelve (12) months notice to University as to its intention to withdraw.

(ii) MRF shall continue to fund University's Scope of Study in accordance with the Annual Research Plan and Budget, or until the completion of the 12-month period, whichever shall come first.

(b) Without limiting the foregoing rights of MRF under this Section 12.3, MRF may terminate this Agreement with respect to all or any Consortium Inventions (or all or any patents and patent applications claiming the same) upon 30 days prior notice to University.

12.4 **Removal of University for Cause.** MRF may, from time to time, review the performance of University or its Principal Investigator based on, among other things, the criteria set forth in this Agreement, the Annual Research Plan and Budget (including, specifically, University's Scope of Study), and the MRF Collaborative Research Process Addendum. If MRF determines there exists a problem with respect to University or its Principal Investigator based on such criteria, or if University or its Principal Investigator is in breach of any material provision of this Agreement, or of this Agreement's Addenda, or any other agreement relating to the Consortium to which University or the University's Principal Investigator(s) is (are) a party(ies), MRF will notify University, as to the nature of such problem or breach, and give University a reasonable opportunity (not less than 60 days) to cure the problem or breach to the reasonable satisfaction of MRF. If the problem or breach is not cured within a reasonable time of not more than 60 days or is not otherwise cured to the reasonable satisfaction of MRF, MRF may upon written notice to the University, remove University

and/or its Principal Investigator from the Consortium, thereby terminating this Agreement in the case where University is removed.

**12.5 Termination of Consortium for MRF's Bankruptcy.** If an order of relief is entered into against MRF under Title 11 of the United States Code, or MRF otherwise ceases active operations, University may terminate this Agreement upon 60 days prior written notice to MRF, provided that MRF is unable to cure or otherwise provide adequate and reasonable assurances to University of its continuing ability and willingness to fulfill its obligations under this Agreement.

**12.6 Effect of Expiration, Withdrawal or Removal.** If this Agreement expires or otherwise terminates as set forth in Section 12.1, 12.2, 12.3, 12.4 or 12.5, the following shall apply:

(a) Financial support for University shall be terminated as of the effective date of this Agreement's expiration or termination. Except in the case where MRF terminates this Agreement under Section 12.3 for its convenience, MRF shall be responsible for noncancelable obligations that University incurred prior to the date MRF provides notice of such termination, to the extent such obligations are consistent with University's Scope of Study under the Annual Research Plan and Budget;

(b) University shall have no further access to Study Data generated by other Institution Members of the Consortium after such expiration or termination. Notwithstanding the foregoing, MRF shall download and make available all University Study Data collected after July 1, 2009 by the Electronic Notebook to University and University's Investigators;

(c) University shall provide MRF (for further distribution to the other Member Institutions) a complete report of all work done up to the date of termination or expiration, including all Study Data, and MRF will continue to have the right to license the Consortium Inventions arising out of University's Scope of Study while it was a Member Institution, as provided in this Agreement;

(d) University shall have no further rights to participate in Consortium supported research activities;

(e) University shall promptly return to MRF all funding, if any, that MRF paid to University under Section 4.1 of this Agreement, and University did not expend or obligate to spend on Research Costs consistent with University's Scope of Study under the Annual Research Plan and Budget prior to the University's withdrawal from the Consortium; and

(f) The Parties rights and obligations under Sections 4.3, 5 (subject to Section 12.7), 6, 7.5, 9 through 11, 12.6, 12.7, and 13 through 14, shall survive the termination or expiration of this Agreement provided MRF is not in breach of its funding obligations to University.

**12.7 Termination of License Rights.** If MRF terminates this Agreement with respect to any particular Consortium Inventions (or any patents and patent applications claiming the same) under Section 12.3(b), or if University terminates this Agreement in its entirety under Section 12.5, MRF license rights and related obligations (including, without limitation, payment obligations) under Section 5 with respect to the Consortium Inventions so affected shall immediately terminate.

In such case, any sublicenses previously granted under Section 5.1(e)(ii) with respect to the affected Consortium Inventions shall survive, provided that University shall have the right to directly enforce such sublicenses as they apply to University Consortium Inventions sublicensed thereunder.

## SECTION 13

### **DISPUTE RESOLUTION**

Except for claims for indemnity arising out of or relating to a lawsuit filed by or against any Party to this Agreement, and except for injunctive relief sought by a Party against another due to breach of confidentiality provisions of this Agreement, the Parties mutually agree that any dispute that may arise under this Agreement which cannot be resolved within thirty (30) days through customary channels will be submitted to a senior executive from each Party. Each Party's senior executive shall meet (in person or by phone) and consult with the other Party's senior executive in a good faith effort to resolve the dispute, prior to the commencement of any litigation involving such dispute. The Parties agree that the period of amicable resolution shall toll any otherwise applicable statute of limitations. Nothing in this clause shall preclude any Party from commencing mediation or arbitration if such good faith efforts do not result in a signed written settlement agreement within thirty (30) days after the initial substantive discussions between the Parties' senior executives.

## SECTION 14

### **GENERAL PROVISIONS**

14.1 **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without regard to conflicts-of-laws principles.

14.2 **Taxes.** All taxes, duties, fees, surcharges and the like arising in connection with the performance of this Agreement that are imposed on a Party by any applicable law shall be borne by such Party.

14.3 **Relationship of Parties.** The relationships between the Parties shall be that of independent contractors. No joint venture, partnership, employment, agency or similar arrangement is created between the Parties. No Party has the right or power to act for or on behalf of the others or to bind the other in any respect other than as expressly provided for in this Agreement. This Agreement shall not be construed to limit the freedom of either Party to engage in any research outside the Consortium.

14.4 **No Third Party Rights.** The other Member Institutions are intended third-party beneficiaries under Sections 5.1(d) through 5.1(h), 5.2(a), Section 6, and Sections 9.1(b), 10.2(b) and 10.3. However, to the extent University is not similarly made an intended third-party beneficiary of the analogous sections of another Member Institution's Member Agreement, that other Member Institution shall not be considered an intended third-party of this Agreement. Subject to the foregoing, this Agreement is made solely for the benefit of the Parties and does not, and shall not be



construed to, grant any rights or remedies to any other person or entity other than as expressly provided for in this Agreement.

14.5 **Compliance With Laws.** Each Party shall be solely liable and responsible for its compliance with all applicable laws, rules and regulations relating to this Agreement and its performance hereunder.

14.6 **Liability Limitation.** EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES IN CONNECTION WITH INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 OF THIS AGREEMENT, DAMAGES RESULTING FROM A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11, AND DAMAGES RESULTING FROM A PARTY'S WILFULL MISCONDUCT, GROSS NEGLIGENCE OR INTENTIONAL BREACH, NEITHER PARTY SHALL HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR LOST PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH.

14.7 **Entire Agreement.** This Agreement (and all schedules and addenda attached, or to be attached, hereto, which are hereby incorporated by this reference) constitutes the entire understanding between the Parties and replaces and supersedes any and all prior and contemporaneous agreements and understandings, whether oral or written, express or implied, between the Parties with respect to the subject matter hereof. Except as expressly provided herein, in the event of any inconsistency between the terms of this Agreement and the documents referenced or incorporated herein, the terms of this Agreement will prevail.

14.8 **Amendment.** Except as expressly provided herein, neither this Agreement nor any of its provisions may be amended, supplemented, modified or waived except by a writing duly executed by the duly authorized representatives both Parties.

14.9 **Waiver.** No waiver of any provision or consent to any action hereunder shall constitute a waiver of any other provision or consent to any other action, nor shall such waiver or consent constitute a continuing waiver or consent or commit either Party to provide a waiver or consent in the future.

14.10 **Severability.** If any provision of this Agreement is determined to be illegal, invalid or otherwise unenforceable by a court or tribunal of competent jurisdiction, then to the extent necessary to make such provision and/or this Agreement legal, valid or otherwise enforceable, such provision shall be limited, construed or severed and deleted from this Agreement, and the remaining portion of such provision and the remaining other provisions hereof shall survive, remain in full force and effect and continue to be binding, and shall be interpreted to give effect to the intention of the Parties insofar as that is possible.

14.11 **Assignment.** Except as expressly provided for in this Agreement, neither Party shall assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent may be withheld at such other Party's sole discretion.

14.12 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

14.13 **Construction**. The normal rule of construction that an agreement shall be interpreted against the drafting Party shall not apply to this Agreement.

14.14 **Interpretation**. In this Agreement, whenever the context so requires, the masculine, feminine or neuter gender, and the singular or plural number or tense, shall include the others.

14.15 **Headings**. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

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

14.17 **Notices**. Any notice or other communication hereunder shall be given in writing and either (i) delivered in person, (ii) transmitted by telex, facsimile or telecopy mechanism, (iii) delivered by FedEx or similar commercial delivery service or (iv) mailed by certified mail, postage prepaid, return receipt requested, to the Party to which such notice or communication is to be given at the address set forth below or at such other address as may be given from time to time under the terms of this Section. Each such notice or other communication shall be effective (i) if given by telecommunication, when transmitted, (ii) if given by mail, five (5) days after such communication is deposited in the mail and addressed as aforesaid, (iii) if given by FedEx or similar commercial delivery service, one (1) business day after such communication is deposited with such service and addressed as aforesaid and (iv) if given by any other means, when actually received.

Notices to University should be sent to the following:

Notices to MRF should be sent to the following:

20111 Edinburgh Drive  
Saratoga, CA 95070  
Attn: Scott Johnson  
Fax: (408) 341-8884

with copies to:

Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Kenneth A. Clark, Esq.  
Fax: (650) 493-6811

14.18 **Further Assurances**. Each Party shall execute and deliver all such further documents and instruments and take all such further actions, as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

MYELIN REPAIR FOUNDATION, INC.

\_\_\_\_\_  
University

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By signature below, University's Principal Investigator acknowledges having reviewed the provisions of this Agreement.

PRINCIPAL INVESTIGATOR

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1**  
**DEFINED TERMS**

The following defined terms, as used in this Agreement, have the meanings set forth in this Schedule 1:

“**Consortium**” has the meaning set forth in Recital B of this Agreement.

“**Consortium Committee**” has the meaning set forth in Section 2.4.

“**Consortium Inventions**” means individually and collectively all inventions, as defined in U.S. Patent law (i) invented by one or more University Investigators arising out of the performance of University’s Scope of Study under this Agreement, (ii) invented by one or more Investigators of other Member Institutions arising out of the performance of such other Member Institutions’ Scope of the Study, to the extent, in the case of clause (ii), ownership or the right to license such inventions is granted to MRF under such other Member Agreement, and (iii) invented by any combination of University Investigators and Investigators under clauses (i) and (ii).

“**Effective Date**” has the meaning set forth in this Agreement introductory paragraph.

“**Goal**” has the meaning set forth in Recital A of this Agreement.

“**Income,**” calculated on an aggregate basis for all Consortium Inventions, or on a sublicense-specific basis, as the context requires and consistently applied, means revenues that MRF actually receives from Sublicensee(s) to the extent such amounts are paid to MRF in consideration of rights in or to Consortium Invention(s) sublicensed by MRF to the Sublicensee, which may include (i) royalties on sales of products that would, but for the license rights granted to the Sublicensee from MRF, infringe a valid and enforceable claim of an issued and unexpired patent in a Consortium Invention in the country of sale, (ii) milestone payments with respect to the Sublicensee’s achievements with respect to such products, and (iii) other license fees such as upfront payments for such license rights (whether paid in cash, equity or otherwise).

“**Investigator**” means an individual who performs work under a Scope of Study and who is an employee of or otherwise acts (such as a contractor) for a Member Institution.

“**IP Counsel**” means an attorney, from time to time selected by MRF in consultation with and reviewed for potential conflict of interest by University. If University does not object to MRF’s selection of IP Counsel within seven days of written notice, the individual so selected shall be considered approved by University.

“**Joint Consortium Invention**” has the meaning set forth in Section 5.1(b) of this Agreement

“**Licensed Field**” means the diagnosis, treatment or prevention of all human and animal diseases.

“**Losses**” means all monetary damages, judgments and payments awarded or required, together with all interest thereon, including all court costs and legal expenses of defending any claim, lawsuit or arbitration and any appeal therefrom, including all actual attorneys’ fees incurred.

“**Member Agreements**” means, collectively, this Agreement and the other agreements described in this Agreement’s introductory paragraph (each of which is a Member Agreement).

“**Member Institutions**” means, collectively, University and the other research institutions described in this Agreement’s introductory paragraph (each of which is a Member Institution).

“**Net Income**” means an aggregate calculation with respect to all Consortium Inventions, or a calculation on a sublicense-specific basis, as the context requires and consistently applied, equal to Income less (i) all out-of-pocket costs and expenses incurred by MRF for Patent Activity, (ii) all out-of-pocket costs and expenses of licensing and/or exploitation of Consortium Inventions, (iii) all out-of-pocket costs and expenses incurred in the defense of Consortium Inventions, (iv) any royalties or other amounts that MRF owes to third parties in respect of sales by Sublicensees, and (v) any applicable withholding taxes credited or deducted against the amounts actually received by MRF with respect to Consortium Inventions.

“**Participation Period**” means, with a respect to a research institution, the period of time during which the research institution was acting as a Member Institution of the Consortium under an effective Member Agreement.

“**Patent Activity**” means the legal and technical efforts necessary or appropriate to obtain statutory patent, and/or copyright protection, both U.S. and possibly foreign on Consortium Inventions.

“**Principal Investigator**” means, with respect to each Member Institution, the individual(s) designated in the applicable Member Agreement as the Member Institution’s Principal Investigator(s). “University’s Principal Investigator(s)” is(are) the individual(s) so designated in Section 2.3 of this Agreement.

“**Research Costs**” means those direct costs identified in the Annual Research Plan and Budget and such indirect overhead expenses incurred in the performance of a Scope of Study, provided that in no event may such indirect costs exceed 20% of the direct costs.

“**Scope of Study**” means the projects and tasks, and associated Research Costs, specified in an approved Annual Research Plan and Budget for performance by Investigators at an individual Member Institution. “University’s Scope of Study” means the Scope of Study the responsibility for the performance of which the Consortium Committee allocates Investigators at University, subject to University’s review and approval as set forth in Section 3.2(ii).

“**Study Data**” means all information concerning performance of Scope(s) of Study, which shall include, without limitation, all information relating to the achievement of the Goal and the protection of any resulting Consortium Inventions including raw data or notes in electronic or written form and any final reports generated by Member Institutions participating in a Scope of Study.

**“Sublicensee”** means non-affiliated third parties to whom MRF has granted rights in Consortium Inventions.

**“University Consortium Invention”** has the meaning set forth in Section 5.1(b) of this Agreement.

**“University Grant”** means that portion of the funding set forth in the Annual Research Plan and Budget that the Consortium Committee has allocated to University in connection with University’s Scope of Study.

**ADDENDUM 3.1**

**ANNUAL RESEARCH PLAN AND BUDGET**