

EXHIBIT 3

CONFIDENTIAL MATERIAL OMITTED AND
FILED SEPARATELY WITH THE SECURI-
TIES AND EXCHANGE COMMISSION.
ASTERISKS DENOTE SUCH OMISSIONS

AGREEMENT

between

GENETICS INSTITUTE INC.

and

Chugai Pharmaceutical Co. Ltd.

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AGREEMENT

AGREEMENT dated as of * 1984 between
GENETICS INSTITUTE, INC., a Delaware corporation, having its
principal place of business at 225 Longwood Avenue, Boston,
Massachusetts 02115 (hereinafter referred to as "Genetics") and
CHUGAI PHARMACEUTICAL CO., LTD., a corporation having its
principal place of business at No. 5-1, 5-chome Ukima, Kita-ku,
Tokyo, Japan (hereinafter referred to as "Licensee").

INTRODUCTION

1. Genetics has research and development facilities and
experienced scientists, research associates and assistants and other
personnel which enables it to conduct research and development
activities in the area of recombinant DNA technology and the
application thereof to the development, production and processing of
recombinant DNA and to the production and expression of the
products using that technology.

2. Licensee desires that Genetics, on behalf of and in
collaboration with Licensee, undertake a research and development
project utilizing recombinant DNA technology for producing
erythropoietin on a commercially feasible basis.

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3. Genetics is willing, for the consideration and on the terms set forth herein, to use its research and development facilities for scientists, research associates and technicians and other personnel to conduct the Project (as defined below).

In consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, Genetics and Licensee agree as follows:

Article I. DEFINITIONS

As used in this Agreement, the following terms, whether used in the singular or plural, shall have the following meanings:

1.1 "Additional Expenses" means (a) costs incurred by Genetics in carrying out activities pursuant to Section 2.10 of this Agreement including without limitation reasonable travel and living expenses of Genetics' staff when away from their normal place of business, the costs of direct materials and equipment, and other reasonable expenses incurred by Genetics which are allocable to such activities and (b) the related salaries of the professional staff and personnel of Genetics and quantifiable fringe benefits associated therewith multiplied, in the case of costs and expenses described in (a) above by _____ and in the case of costs and expenses described in (b) above by _____

1.2. "Affiliate" means a corporation, company, partnership, joint venture and/or firm which controls, is controlled by or is under common control with Licensee. For purposes of this Section 1.2. _____

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control" shall mean (a) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares entitled to vote for the election of directors; and (b) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entities.

1.3. "Benchmarks" means the sequential research steps of the Project as set forth on Schedule A to this Agreement.

1.4. "Confidential Information" means Know-How, as defined in Section 1.11 below, and any other information designated by the disclosing Party as confidential or proprietary, whether or not related to the production or expression of Licensed Compounds and/or Licensed Products (hereinafter defined).

1.5. "Effective Date" means * , 1984.

1.6. "Final Benchmark" means the last of the sequential research steps of the Project set forth on Schedule A hereto.

1.7. "Genetics Know-How" means all technical information of Genetics, patentable or otherwise, relating to the expression and production of erythropoietin, the cloning of genes coding for erythropoietin or precursors thereof, and/or procedures and products used in developing such a cloned gene, which information is used by Genetics in the Project or is required for Licensee, its Affiliates and

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sublicensees to manufacture and/or sell Licensed Compounds and/or Licensed Products hereunder, but not specifically developed for or used in the course of the Project, including without limitation (a) all information which is licensed or sublicensed to Genetics (to the extent that Genetics is entitled to license or sublicense such information to others); and (b) all inventions, cell sources, cultures, stem cells, organisms and parts thereof, plasmids, clones, vectors, progeny, derivatives and parts thereof, formulae, methods, procedures, processes, materials, reagents, components, equipment, equipment design, and animal studies, clinical or other evaluations, analysis results, and quality control or safety procedures relating to the production, use or manufacture of erythropoietin and/or to the development of cloned genes coding for erythropoietin or precursors thereof.

1.8 "Genetics Patent Rights" means all patents, patent applications, inventor's certificates and applications therefor throughout the territory, based on subject matter used in the Project or required for Licensee, its Affiliates and sublicensees to manufacture and/or sell Licensed Compounds and/or Licensed Products hereunder, but not specifically developed for and in the course of the Project, including any substitutions, extensions, reissues, renewals, division, continuations or continuations-in-part, which Genetics owns or controls or under which Genetics has the right to grant or sublicense to Licensees.
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1.9. "Governmental Approval" means any license, registration, authorization or approval (including reimbursement price approval) which is required to be issued by the government authorities, including the Food and Drug Administration in the United States and Ministry of Health and Welfare in Japan, in each country of the Territory for manufacture, import, use and/sale of Licensed Compounds and/or Licensed Products.

1.10. "Joint Technology" is defined in Section 4.3 hereof.

1.11. "Know-How" means Genetics Know-How and Project Law-How, collectively. ~~(As used in this Agreement, "Know-How" of Licensee shall have the meaning stated in this Section 1.11, but as applied to Licensee rather than Genetics.)~~

1.12. "Licensed Compounds" means any and all kinds of erythropoietin consisting of a polypeptide chain, the amino acid sequence of which is derived from erythropoietin encoding cDNA or genomic DNA sequence isolated from human tissues or cell lines, expressed and produced in mammalian cells and/or other host-vector systems (a) which, or the making or use of which, is covered by any of the Patent Rights and/or embodies any Know-How, and/or (b) which is made from a cloned gene or any other genetically engineered product which, or the making or use of which, is covered by any of the Patent Rights and/or embodies any Know-How, and/or (c) which is produced from a cloned gene or any other genetically engineered

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product developed by the use of any procedure, product or technology which is covered by any of the Patent Rights and embodies any Know-How.

Licensed Compounds do not include proteins composed of amino acid sequences encoded by deliberately altered erythropoietin encoding DNA sequences and which have significantly improved or altered physical, chemical or therapeutic characteristics compared to erythropoietin.

1.13 "Licensed Products" means any and all kinds of formulations, mixtures and/or compositions for whatever use which contain Licensed Compounds.

1.14 "Net Sales" means (a) in the case of Licensed Products sold in the Territory, the total invoice price billed or otherwise charged by Licensee, its Affiliates and sublicensees from or on account of the sale of Licensed Products, whether such sales are made directly to end users or to wholesalers (other than Distributors, as defined below), and (b) in the case of the Licensed Products sold in other countries or territories within the Territory, the total invoice price billed or otherwise charged (F.O.B. Japanese port) by Licensee, its Affiliates and sublicensees from or on account of the sale of Licensed Products, whether such sales are made directly to end users or to Distributors or wholesalers, in each case less price adjustments, returned goods, billing corrections,

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cash, trade and contract discounts, and excises and sales taxes imposed upon and paid with respect to such sales. As used in this Agreement, the term "Distributor" means an individual, corporation or other entity which imports Licensed Products (whether in finished or semi-finished form) for resale under an agreement (written or oral) with Licensee or its Affiliates and which is independent from Licensee and any of its Affiliates (i.e., if the Distributor is a corporation or other entity, Licensee and its Affiliates hold no interest direct or indirect, in such corporation or entity and, if the distributor is an individual, such individual holds no equity interest in, and is not an officer, director, employee or agent of, Licensee or any of its Affiliates). With respect to Licensed Products containing Licensed Compounds in combination with other active ingredients ("Combination Products") or containing Licensed Compounds as components for diagnostic products ("Diagnostic Kits"), Net Sales shall be appropriately adjusted by the Parties in each case to reflect the relative independent value and research cost of the Licensed Compounds embodied in the Combination Product or Diagnostic Kit as compared with the independent value and research cost of the other ingredients or components. Net Sales shall not include any transfer between Licensee and any of its Affiliates or sublicensees for resale, but shall include the resale from an Affiliate or sublicensee to a third party.

1.15. "Party" means Genetics or Licensee; "Parties" means Genetics and Licensee.

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1.16. "Patent Rights" means Genetics Patent Rights and Patent Rights, collectively.

1.17. "Principal Investigator" means Dr. Edward Fritsch or other senior scientist designated from time to time by Genetics.

1.18. "Project" means the research program conceived, planned, organized, controlled and performed by Genetics for development of production technology of Licensed Compound by means of recombinant DNA and specifically directed toward attainment of Benchmarks specified in Schedule A hereto, provided that in no event shall Genetics undertake any research and development activities in the area of in vivo and in vitro assessment, detection, determination or diagnosis of human health conditions, including physical and mental disease, illness, impairment of normal function or agents infectious to humans.

1.19. "Project Know-How" means all technical information developed by Genetics, patentable or otherwise, relating to the expression and production of erythropoietin, the cloning of genes coding for erythropoietin or precursors thereof, and/or procedures and products used in developing such a cloned gene, which information was developed for and in the course of the Project, including without limitation (a) such information which is licensed or sublicensed to Genetics (to the extent that Genetics is entitled to license or sublicense such information to others); (b) any organism, cell source

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1.20. "Project Patent Rights" means all patents, patent applications, inventor's certificates and applications therefor, throughout the Territory, based on subject matter developed, conceived or reduced to practice for and in the course of the Project, including any substitutions, extensions, reissues, renewals, divisions, continuations or continuations-in-part, which Genetics owns or controls or under which Genetics has the right to grant sublicenses.

1.21. "Project Period" means the period commencing from the Effective Date until the completion of Final Benchmark as specified in Module A hereto.

1.22. "Research Fee" means the agreed-upon research cost of the Project to be supported by Licensee, as set forth on Schedule B

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hereto, such Research Fee having been based upon an estimate of the costs to be incurred by Genetics in carrying out the Project including without limitation salaries of the professional staff and personnel of Genetics assigned to the Project and quantifiable benefits associated therewith, costs of direct materials and equipment used in the Project and general overhead costs.

1.23. "Sole Technology" is defined in Section 4.1. hereof.

1.24. "Territory" means the countries and territories specified on Schedule C hereto.

1.25. "Total Technology" means the Sole Technology and Technology, collectively.

Article II. THE PROJECT

2.1. General. Subject to the terms and conditions contained in this Agreement, Genetics agrees, as of the Effective Date, to undertake the Project, with due diligence and efficiency with the objective of completing each Benchmark within the estimated time frame specified on Schedule A for each such Benchmark.

2.2. Staffing. The Project shall be conducted at the facilities of Genetics by a team of scientists, research associates and/or assistants.

under the supervision of Genetics shall be under the direct control of Genetics.

2.3. Inspector shall require the presence of Genetics at its premises and its results shall be the property of Genetics; procure hours and shall be the property of Genetics.

2.4. Patent shall require the presence of associates and consultants to the Project for inventions and discoveries made reasonable for such purpose by employees who are not parties to this agreement for such purpose.

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under the supervision and direction of the Principal Investigator.
Genetics shall be responsible for the administrative management and
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2.3. Inspection. Licensee shall have the right to arrange for its
employees and outside consultants involved in the Project to visit
Genetics at its offices and laboratories and to discuss Project work
and its results in detail with the technical personnel and consultants
of Genetics: provided that such visits shall be during normal business
hours and shall not unreasonably interrupt the operations of
Genetics.

2.4. Patent and Confidential Information Agreements. Genetics
shall require the Principal Investigator, and all scientists, research
assistants and assistants, technicians and technical personnel assigned
to the Project to execute an agreement for the assignment of
inventions and for the protection of Confidential Information in such
writable form as may from time to time be used by Genetics for
such purpose. Licensee shall require all scientific and other
employees working on or involved in the Project to execute an
agreement for the protection of Confidential Information in such
writable form as may from time to time be used by Licensee for
such purpose.

2.5. Quarterly Reports. Genetics shall provide Licensee with
quarterly progress reports summarizing the technological progress of
the Project within 30 days after the end of each calendar quarter

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during the Project Period. For a quarter in which a Benchmark is completed, the quarterly report will include a final report on the attainment of such Benchmark.

2.6. Completion of Benchmarks. Promptly after the completion of each Benchmark, Genetics shall notify Licensee of such completion and shall provide to Licensee the materials specified on Schedule A hereof in order to permit Licensee to evaluate the completion of each Benchmark. Licensee may, pursuant to Section 2.3 hereof, arrange for an inspection and consultation at the premises of Genetics. Unless Licensee otherwise notifies Genetics in writing within 30 days after the receipt of the notice of completion and related materials pertaining to any Benchmark, such Benchmark shall be deemed to have been satisfactorily achieved for all purposes of this Agreement.

2.7. Best Effort. Genetics shall use its best efforts to complete each Benchmark within the estimated time frame specified on Schedule A. In the event that Genetics fails to complete any Benchmark within the anticipated completion date as specified in Schedule A hereof, Genetics shall send Licensee an immediate notice by telex to that effect, indicating the reasons for such delay and a proposal of the completion date of such Benchmark to be best estimated.

2.8. Flexibility. In carrying out the research which Genetics will conduct in the course of the Project, Genetics shall have and maintain sufficient flexibility to shift effort and emphasis within the

overall scope of the Principal consideration development of Compound.

2.9. Technical assistance during the course of the Project to the extent necessary as specified in Schedule A of the Final technical documents to permit Licensee to conduct 10-litre scale-up studies. Licensee intends the scale-up to be reasonably efficient for clinical studies.

2.10. Licensee shall have the right to extend the completion date of such Benchmark.

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overall scope of the Project in a manner that will, in the opinion of the Principal Investigator, after consultation with and giving due consideration to the advice of Licensee, best result in the development of useful technology for the production of Licensed Compound.

2.9. Technology Transfer. Genetics shall disclose from time to time during Project Period, Know-How in confidence to Licensee to the extent necessary to enable Licensee to produce Licensed Compounds as specified in the Final Benchmark. Within 60 days after completion of the Final Benchmark, Genetics shall supply Licensee with a technical documentation package of sufficient detail and completeness to permit Licensee to verify and produce Licensed Compounds on a 10-litre scale and purification procedures on a bench scale. Genetics understands that these procedures will be appropriate for subsequent scale-up to produce Licensed Compounds in a quantity and quality reasonably sufficient for Licensee to initiate the pre-clinical and clinical studies of Licensed Products for Government Approval.

2.10. Technical Assistance. During the twelve months following the completion of the Final Benchmark (such period being subject to extension by mutual agreement of the Parties), Genetics shall, upon request from Licensee, make available to Licensee the Principal Investigator (to the extent available) and members of the technical staff of Genetics assigned to the Project in order to assist Licensee and contractors in the Technology Transfer as specified in Section 2.9, provided that such assistance shall not be required to be in

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excess of 40 man hours per month per person (such hours shall be subject to extension by mutual agreement of the parties). Licensee shall reimburse Genetics for the Additional Expenses incurred in rendering such assistance.

2.11. Arrangements with Third Parties. Genetics shall have the right to contract with third parties approved by Licensee for the performance of work in connection with the Project, provided that Licensee shall have the opportunity to review and comment on such proposed contract prior to its execution. Approval of any such contract shall not be unreasonably withheld. Upon the request of Licensee, Genetics will provide Licensee with a complete copy of any such executed contract. It is specifically understood that any and all of expenses incurred by Genetics for the performance of any part of the Project under such contracts with third parties shall be regarded as part of the Research Fee.

2.12. Disclosure. Licensee shall disclose in confidence to Genetics all necessary information, including all pre-clinical and clinical study data, for use by Genetics or any licensees in obtaining regulatory approvals for marketing Licensed Products outside of the Territory.

Article III. PROJECT FUNDING

3.1. Research Fee. In consideration of the research conducted by Genetics with regard to the Project, Licensee shall pay to Genetics

the Research Fee set forth in Schedule 1

3.2. Reimbursement. Licensee shall reimburse Genetics for the expenses described in the invoice therefor. Licensee shall substantiate such request for reimbursement with appropriate documentation. Licensee shall not be required to reimburse Genetics for any expenses not described in the invoice hereunder.

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expenses incurred in

the Research Fee in the amount and on the periodic installments set
forth in Schedule B hereto, it being understood that:



Genetics shall have the
right to comment on any
provision of any such
agreement on the request by
Licensee for the
purpose of providing a
complete copy of each
document that any and all
provisions of any part of
this agreement shall be regarded as

in confidence as
to all pre-clinical and
clinical data obtained
by Licensee in obtaining
this license outside of the

research conducted
by Licensee shall pay to Genetics

1.2 Reimbursement of Additional Expenses. Genetics shall be
reimbursed by Licensee for its Additional Expenses incurred as
described in Section 2.10, payable by Licensee within 15 days after
invoice therefor. Genetics shall keep true and accurate records to
substantiate all Additional Expenses invoiced to Licensee. Upon
request from Licensee, Genetics shall permit Licensee or its
authorized representatives to inspect such records in confidence in
order to verify the amount of Additional Expenses invoiced
thereunder.

1.3 Termination.

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(a) At any time prior to or within two weeks from receipt of the materials specified in Schedule A evidencing completion of Benchmark I, Licensee may terminate this Agreement on any reason by giving Genetics a written notice, such termination to be effective immediately with no further payments by Licensee (except for the payments specified in Section 3.1 (a) above).

(b) At any time after the receipt of the materials specified in Schedule A evidencing the completion of Benchmark I and prior to completion of the Final Benchmark, Licensee may terminate this Agreement by:

(i) giving Genetics at least 30 days' prior notice in writing when Licensee elects to do so for the reason of failure or delay for more than three months in achievement by Genetics of anticipated completion date of Benchmark II as specified in Schedule A hereto, provided that Licensee shall continue to pay Genetics Research Fee during the 30 day notice period in an amount equal to that become due during the 30 day period immediately prior to the date of notice.

(ii) giving Genetics at least 120 days' prior notice in writing when Licensee elects to do so for any reasons other than as set forth under (i) of this paragraph (b), provided that Licensee shall continue to pay Genetics its Research Fee during the 120-day notice period Research Fee in an amount equal to that become due during the 120 day period immediately prior to the date of notice.

Article IV. IN

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Article IV. INTELLECTUAL PROPERTY RIGHTS

4.1. Sole Technology. Genetics shall own the entire right, title and interest in and to any and all technology invented and/or developed solely by employees or consultants of Genetics during the term of this Agreement, which relates to Licensed Compounds and/or Licensed Products (hereinafter referred to as "Sole Technology").

4.2. Licensee Technology. Licensee shall own the entire right, title and interest in any and all technology invented and/or developed solely by employees or consultants of Licensee during the term of this Agreement, which relates to Licensed Compounds and/or Licensed Products.

4.3. Joint Technology. Unless otherwise agreed upon, Genetics shall own the entire right, title and interest in and any and all technology invented and/or developed jointly by Genetics and Licensee during the term of this Agreement, which relates to Licensed Compounds and/or Licensed Products (hereinafter referred to as "Joint Technology"), subject to the license granted Licensee hereunder.

4.4. Filing and Prosecution of Patent Applications.

(a) Unless otherwise agreed upon, Licensee shall have the right of first refusal:

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(i) to elect to file patent applications, in the name of Genetics and in the countries to be selected by Licensee at its sole discretion, for any and all of Sole Technology which Genetics may propose to Licensee for patenting from time to time during the term of this Agreement.

(ii) to elect to file patent applications in the name of Genetics in the countries to be selected by Licensee at its sole discretion for any and all of Joint Technology.

(b) Genetics hereby authorizes and empowers Licensee, and hereby grants to Licensee its permission and consent for Licensee and its authorized attorneys, agents or representatives, to assume the foregoing responsibilities in the name of Genetics. Licensee agrees to assume such responsibilities and to pay all costs and expenses incurred in carrying out such responsibilities. Copies of all communications to and from patent offices regarding applications for patents or certificates of invention on any Total Technology shall be provided to Genetics promptly after the receipt thereof; copies of all proposed communications to such patent offices shall be provided to Genetics in sufficient time before the due date in order to enable Genetics an opportunity to comment on the content thereof.

(c) All current Genetics Patent Rights are specified on Schedule D hereto and Genetics shall from time to time enter all future Genetics Patent Rights developed by it onto Schedule D. Licensee shall enter all patent applications and applications for certificates of invention which it elects to file such applications, onto Schedule D. Any of Patent Rights which Licensee has elected to abandon shall no longer be

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4.5 Right

Licensee elects not to seek protection on Territory. Genetics shall procure, maintain and defend such Technology. Licensee shall have the right to file an application or a patent or certificate of invention or to advise Genetics of such application, and continuing to disclose in such

Notwithstanding the above, Licensee elects not to file an application in connection with Total Technology which is a patent application in

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4.5 Right of Genetics to Prosecute Applications. If Licensee elects not to seek or continue to seek, use or maintain patent protection on any Total Technology in any country within the territory, Genetics shall have the right, at its expense, to file, procure, maintain and enforce in such countries patents on such Total Technology. Licensee agrees to advise Genetics of all decisions taken under this Article 4. If Licensee elects not to file a patent application or application for a certificate of invention, not to maintain a patent or certificate of invention, or to abandon a pending patent application or application for a certificate of invention, Licensee shall advise Genetics of such election in a timely manner, and Genetics shall have the right, at the expense of Genetics, of filing such application, maintaining such patent or certificate of invention or continuing to attempt to obtain protection of the subject matter disclosed in such pending application.

Notwithstanding the foregoing, with respect to the filing of a patent application in Japan, Licensee shall notify Genetics in writing if it elects not to file a patent application in Japan with respect to any Total Technology, and Genetics shall be entitled to file a patent application in Japan pursuant to this Section 4.5.

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4.6. Genetics Assistance. Genetics shall make available Licensee or its authorized attorneys, agents or representatives, or of Genetics' employees whom Licensee in its reasonable judgment deems necessary in order to assist Licensee in obtaining patent protection for the Total Technology. Each Party shall sign or, in its best efforts to have signed all legal documents necessary to file, prosecute patent applications or applications for certificates of invention or to obtain or maintain patents or certificates of invention at no charge to the other Party.

Article V. PATENT AND KNOW-HOW LICENSES

5.1. Patent Licenses. Subject to the payment of the royalties provided in Article VI and the fulfillment of the other terms and conditions of this Agreement, Genetics hereby grants to Licensee and its Affiliates:

(a) an exclusive license (even as to Genetics) in the Territory under the Project Patent Rights, and

(b) a non-exclusive license in the Territory under the Genetic Patent Rights, including the right to grant sublicenses, for the sole and exclusive purpose of manufacturing, having manufactured for Licensee and its Affiliates, using and selling Licensed Compounds and/or Licensed Products in the Territory; provided, however *

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5.2. Know-How provided in Article VI and the conditions of this Agreement and its Affiliates:

(a) an exclusive license in the Territory under the Project Know-How

(b) a non-exclusive license in the Territory including the right to grant sublicenses, for the sole and exclusive purpose of manufacturing, having manufactured for Licensee and its Affiliates, using and selling Licensed Products in the Territory; provided, however *

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granted pursuant to this Section 5.1 shall continue in effect until the expiration of the last patent licensed to the Licensee hereunder.

5.2. Know-How Licenses. Subject to the payment of the royalty provided in Article VI and the fulfillment of the other terms and conditions of this Agreement, Genetics hereby grants to Licensee and its Affiliates:

(a) an exclusive license (even as to Genetics) to use the Project Know-How in the Territory, and

(b) a non-exclusive license to use the Genetics Know-How in the Territory,

including the right to grant sublicenses, for the sole and exclusive purpose of manufacturing, having manufactured for Licensee and its Affiliates, using and selling Licensed Compounds and/or Licensed Products in the Territory; provided, however, *

The Licenses granted pursuant to this Section 5.2 shall continue in effect for a period of * from the date of the completion of the Final benchmark set forth on Schedule A hereto.

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Article VI, PATENT AND KNOW-HOW ROYALTIES

6.1. Royalties

(a) Licensee shall pay to Genetics during the term of License granted in Section 5.1 above earned royalties at the rate set forth on Schedule F hereto on all Net Sales by Licensee and its Affiliates of Licensed Products which fall within the definition of Licensed Products under Section 1.13 by virtue of involving Patent Rights (whether or not such Licensed Products also fall within the definition of Licensed Products under Section 1.13 by virtue of involving Know-How). Royalties shall be payable on a country-by-country basis with respect to Net Sales (i) in each country in which there is a claim under Patent Rights, and (ii) in each country in which the Licensed Products being sold were manufactured or are to be used in which there is a claim under Patent Rights.

(b) Licensee shall pay to Genetics earned royalties at the rate set forth on Schedule F hereto on all Net Sales anywhere in the Territory by Licensee and its Affiliates of Licensed Products which fall within the definition of Licensed Products under Section 1.13 by virtue of involving Know-How.

(c) For purposes of determining the date of the Final Benchmark as set forth on Schedule F, the date shall be deemed to be the date on which Genetics has shipped, as evidenced by an appropriate document, to Licensee (in Japan or the U.S.) the materials relating to the Final Benchmark specified in Schedule A hereto pursuant to Section 2.6 hereof.

(d) Royalties shall be payable to Genetics with respect to the Net Sales of Licensed Products under Section 6.1. Licensee shall pay to Genetics such royalties as set forth on Schedule F hereto on all Net Sales by Licensee and its Affiliates of Licensed Products which fall within the definition of Licensed Products under Section 1.13 by virtue of involving Patent Rights (whether or not such Licensed Products also fall within the definition of Licensed Products under Section 1.13 by virtue of involving Know-How). Royalties shall be payable on a country-by-country basis with respect to Net Sales (i) in each country in which there is a claim under Patent Rights, and (ii) in each country in which the Licensed Products being sold were manufactured or are to be used in which there is a claim under Patent Rights.

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(d) Under no circumstances shall Licensee be obligated to pay royalties under both paragraph (a) and (b); only one royalty shall be due with respect to each sale of a Licensed Product.

(e) Upon the expiration of the royalty obligations set forth in Section 6.1(b) with respect to any Know-How in any country, the licenses granted under Section 5.2. with respect to such Know-How in such country shall become fully paid non-exclusive licenses. Licensee may upon such expiration elect to continue in effect the exclusive nature of the license of any Know-How in any country by paying to Genetics the royalty specified on Schedule F hereto. Such exclusive license shall remain in effect so long as Licensee pays such royalty; and when such royalty payments are terminated, the license shall become a fully paid non-exclusive license with respect to such Know-How in such country.

6.2 Minimum Royalty. Beginning with

Licensee shall pay to Genetics royalties at the rate set forth on Schedule F hereto; provided, however, that Licensee shall be required to pay to Genetics no less than the minimum annual royalty set forth on Schedule F hereto. Such minimum annual royalty payments shall be made within 45 days from the last day of the applicable twelve-month period. In the event that the minimum royalty is not paid within such 45-day period, the provisions of Section 10.4 shall apply.

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6.3 Dominant Patents. If Licensee, its Affiliates or sublicensees in order to operate under or exploit the licenses granted under Article V of this Agreement in any country in the Territory, shall make payments (including without limitation royalties, option fees or license fees) to one or more third parties to obtain a license or similar right in the absence of which the Licensed Products could not legally be manufactured or sold in such country, Licensee may deduct from royalties thereafter payable to Genetics on Net Sales in such country an amount equal to up to * of such third party payments provided that the total royalties otherwise due to Genetics on Net Sales in such country in any year shall not be reduced by more than * as a result of such deduction.

6.4 Reports and Payments. Licensee shall deliver to Genetics within 45 days after the end of each calendar quarter a written report showing its computation of royalties due under this Agreement upon Net Sales by Licensee, its Affiliates and sublicensees during such calendar quarter. All Net Sales shall be segmented in each such report according to sales by Licensee and each Affiliate and sublicensees as well as on a country-by-country basis, including the rates of exchange used to convert such royalties to United States dollars from the currency in which such sales were made. For the purposes hereof, the rates of exchange to be used for converting royalties hereunder to United States dollars shall be those in effect on the day of purchase of dollars at Tokyo, Japan. Licensee, simultaneously with the delivery of each such report, shall tender payment in U.S. dollars of all royalties shown to be due thereon.

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6.5 Foreign Royalties. Where royalties are due Genetics hereunder for sales of Licensed Products in a country where, by reason of currency regulations or taxes of any kind, it is impossible or illegal for Licensee, any Affiliate or sublicensee to transfer royalty payments to Genetics for Net Sales in that country, such royalties shall be deposited in whatever currency is allowable by the person or entity not able to make the transfer for the benefit or credit of Genetics in an accredited bank in that country that is acceptable to Genetics.

6.6 Records. Licensee shall keep, and shall require all affiliates and sublicensees to keep, full, true and accurate books of accounts and other records containing all information and data which may be necessary to ascertain and verify the royalties payable hereunder. During the term of this Agreement and for a period of one year following its termination, Genetics shall have the right from time to time (not to exceed twice during each calendar year) to inspect, or have an agent, accountant or other representative inspect such books, records and supporting data. *

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Article VII. PATENT AND KNOW-HOW INFRINGEMENT

7.1 Infringement

(a) Each Party shall promptly report in writing to the other Party during the term of this Agreement any (i) known infringement or suspected infringement of any of the Patent Rights, or (ii) unauthorized use or misappropriation of Know-How or Confidential Information by a third party of which it becomes aware, and shall provide the other Party with all available evidence supporting such infringement, suspected infringement or unauthorized use or misappropriation.

(b) Except as provided in paragraph (d) below, Licensee shall have the right and responsibility to initiate an infringement or other appropriate suit anywhere in the Territory against any third party who at any time has infringed, or is suspected of infringing, any of the Project Patent Rights or of using without proper authorization any portion of Project Know-How. Licensee shall give Genetic

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sufficient advance notice of its intent to file said suit and the reasons therefor, and shall provide Genetics with an opportunity to make suggestions and comments regarding such suit. Genetics agrees to take all the necessary steps to lawfully authorize Licensee to initiate and prosecute the said infringement or other suit. Licensee shall keep Genetics promptly informed, and shall from time to time consult with Genetics regarding the status of any such suit, and shall provide Genetics with a copy of all documents filed in, and all relevant communications relating to, such suit.

(c) Licensee shall have the sole and exclusive right to select counsel for any suit referred to in paragraph (b) above and shall, except as provided below, pay all expenses of the suit, including without limitation attorneys' fees and court costs. Genetics, in its sole discretion, may elect, within sixty days after the commencement of such litigation, to contribute to the costs incurred by Licensee in connection with such litigation and, if it so elects, any damages, royalties, settlement fees or other consideration received by Licensee or any of its Affiliates as a result of such litigation shall be shared between Licensee and Genetics pro rata based on their respective sharing of the costs of such litigation. In the event that Genetics elects not to contribute to the costs of such litigation, Licensee and/or its Affiliates shall be entitled to retain any damages, royalties, settlement fees or other consideration resulting therefrom. If necessary, Licensee shall join as a party to the suit but shall be under no obligation to participate except to the extent that such participation is required as the result of being a named party to the suit. Genetics

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shall offer reasonable assistance to Licensee in connection therewith at no charge to Licensee. Genetics shall have the right to participate and be represented in any such suit by its own counsel at its own expense. Licensee shall not settle any such suit involving rights of Genetics without obtaining the prior written consent of Genetics, which consent shall not be unreasonably withheld.

(d) In the event that Licensee elects not to initiate an infringement or other appropriate suit pursuant to paragraph (c) above, Licensee shall promptly advise Genetics of its intent not to initiate such suit, and Genetics shall have the right, at the expense of Genetics, of initiating an infringement or other appropriate suit against any third party who at any time has infringed, or is suspected of infringing, any of Project Patent Rights or of using without proper authorization all or any portion of Project Know-How. In exercising its rights pursuant to this paragraph (d), Genetics shall have the sole and exclusive right to select counsel and shall, except as provided below, pay all expenses of the suit including without limitation attorneys' fees and court costs. Licensee, in its sole discretion, may elect, within sixty days after the commencement of such litigation, to contribute to the costs incurred by Genetics in connection with such litigation and, if it so elects, any damages, royalties, settlement fees or other consideration received by Genetics as a result of such litigation shall be shared by Genetics and Licensee pro rata based on their respective sharing of the costs of such litigation. In the event that Licensee elects not to contribute to the costs of such litigation, Genetics shall be entitled to retain any

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7.2 Claimed Infringement.

(a) In the event that a third party at any time brings suit against Licensee, its Affiliates, or sublicensees anywhere in the territory claiming infringement of its patent rights or unauthorized use or misappropriation of its technology, based on a claim arising out of the manufacture, use or sale by Licensee, its Affiliates, or sublicensees of Licensed Compound and/or Licensed Products, Licensee shall have sole and exclusive responsibility for the selection of counsel and the control of the suit, and shall keep Genetics advised of the current status of the suit.

(b) Licensee shall, after receipt of notification of a third party or notice of commencement of any action, suit or proceeding of the type described in paragraph (a) above, notify Genetics of such suit or the commencement of said action, suit or proceeding, including a copy of all papers served. Genetics may participate in

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the conduct of the suit at its own expense. Licensee shall not bring any such suit involving rights of Genetics without obtaining the prior written consent of Genetics, which consent shall not be unreasonably withheld.

(c) Irrespective of the decision of Genetics to participate in the suit or not pursuant to the preceding subsection (b), Genetics agrees to extend Licensee, at no charge, its best possible technical assistance and support to enable Licensee to defend and/or prosecute any action, suit or proceeding by any third party. *

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Article VIII. COMMERCIALIZATION

8.1 Commercialization. Promptly and diligently upon the completion of the Final Benchmark, Licensee shall exert its best effort, at its own expense, to:

(a) conduct all necessary and appropriate animal and human testing on the Licensed Compounds and Licensed Products, and control the manner and extent of such testing;

(b) provide for commercial scale production of the Licensed Compounds and Licensed Products;

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(c) obtain Government Approvals necessary to produce, manufacture, distribute and market the Licensed Compounds and/or Licensed Products in the Territory; and

(d) market the Licensed Compounds and/or Licensed Products in the Territory on a diligent commercial basis on a country-by-country basis after Government Approval.

8.2 Reporting. Licensee shall send Genetics from time to time a report in writing on progress in the development and marketing of Licensed Compounds and/or Licensed Products in the Territory.

Article IX. CONFIDENTIAL INFORMATION

9.1 Treatment of Confidential Information. Each Party hereto shall maintain the Confidential Information of the other Party in confidence, and shall not disclose, divulge or otherwise communicate such Confidential Information to others, or use it for any purpose, except pursuant to, and in order to carry out, the terms and objectives of this Agreement and hereby agrees to exercise every reasonable precaution to prevent and restrain the unauthorized disclosure of such Confidential Information by any of its directors, officers, employees, consultants, Affiliates, subcontractors, sublicensees, distributors or agents. Notwithstanding the foregoing, officers may disclose Confidential Information pertaining to the project, the obtaining of regulatory approvals and the development of

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Licensed Products in confidence to other Licensees or
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9.2 Release from Restrictions. The provisions of Section 1 shall not apply to any Confidential Information disclosed hereunder which:

(a) was known or used by the receiving Party prior to its disclosure of disclosure to the receiving Party, as evidenced by the pre-written records of the receiving Party; or

(b) either before or after the date of the disclosure to the receiving Party is lawfully disclosed to the receiving Party by an independent, unaffiliated third party rightfully in possession of Confidential Information; or

(c) either before or after the date of the disclosure to the receiving Party becomes published or generally known to the public through no fault or omission on the part of the receiving Party or its Affiliates; or

(d) is required to be disclosed by the receiving Party to comply with applicable laws, to defend or prosecute litigation or to comply with governmental regulations, provided that the receiving Party provides prior written notice of such disclosure to the other Party and takes reasonable and lawful actions to avoid and/or minimize the degree of such disclosure.

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9.3 Publications. The following restrictions shall apply with respect to the disclosure in scientific journals or publications by any Party or any Affiliate, employee, sublicensee, consultant, or agent of any Party relating to any scientific work performed as part of the Project:

(a) A Party (the "publishing Party") shall provide the other Party with an advance copy of any proposed publications of results arising from the Project, and such other Party shall have a reasonable opportunity to recommend any changes it reasonably believes are necessary to preserve Patent Rights or Know-How belonging in whole or in part to Genetics or Licensee, and the incorporation of such recommended changes shall not be unreasonably refused; and

(b) If such other Party informs the publishing Party, within 30 days of receipt of an advance copy of a proposed publication, that such publication in its reasonable judgment could be expected to have a material adverse effect on any Patent Rights or Know-How belonging in whole or in part to Genetics and/or Licensee, the publishing Party shall, to the extent permitted by its agreements with its employees and consultants, delay or prevent such publication as proposed. In the case of inventions, the delay shall be sufficiently long to permit the timely preparation and filing of a patent application(s) on the information involved.

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Article X. TERMINATION

10.1 Term. This Agreement shall remain in effect until terminated in accordance with the provisions of Section 3.3, Article X or until the last to expire of the licenses granted pursuant to Section 5.1. and 5.2. hereof.

10.2 Termination for Breach. Each Party shall be entitled to terminate this Agreement by written notice to the other Party in the event that the other Party shall be in default of any of its obligations hereunder, and shall fail to remedy any such default within 60 days after notice thereof by the non-breaching Party. Upon termination of this Agreement pursuant to this Section 10.2, neither Party shall be relieved of any obligations incurred prior to such termination.

10.3 Termination by Licensee. Licensee shall be entitled to terminate this Agreement pursuant to the provisions of Section 3.3.

10.4 Termination by Genetics of Exclusivity. In the event that (a) Licensee fails to make any required minimum royalty payment within 30 days of the date such payment is due, or (b) Licensee fails to comply with Section 8.1 of this Agreement, or (c) Licensee, any of its affiliates or any of its sublicensees fails to

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(I) Genetics shall receive from Licensee non-exclusive rights in and to Licensee Technology (as described in Section 4.2.), animal and human data, and to such other information in Licensee's possession that Genetics may require in order to obtain Government Approval to manufacture and market the Licensed Compounds and/or Licensed Products:

(II) All Licenses granted herein by Genetics to Licensee shall become non-exclusive; and

(III) All other terms and conditions of the Agreement not inconsistent with this Section 10.4, including the royalty provisions, shall remain in effect.

10.5 Disposition of Licensed Products. Upon any termination of the Agreement pursuant to Sections 10.2, Licensee shall within 30 days of the effective date of such termination notify Genetics in writing of the amount of Licensed Compounds and/or Licensed Products which Licensee and its Affiliates and sublicensees have completed on hand, the sale of which would, but for the termination, be subject to royalty, and Licensee, its Affiliates and

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sublicensees shall thereupon be permitted during the six months following such termination to sell that amount of Licensed Components and/or Licensed Products, provided that Licensee shall pay the aggregate royalty thereon at the conclusion of the earlier of the date of such sale or such six months period. Except as provided above, all sublicenses granted by Licensee shall forthwith terminate upon the termination of this Agreement.

10.6 Survival of Obligations: Return of Confidential

Information. Notwithstanding any termination of this Agreement, the obligations of the Parties with respect to the protection and non-disclosure of Confidential Information shall survive and continue to be enforceable. Upon any termination of this Agreement pursuant to Section 10.2., 10.3. or 10.4, each Party shall promptly return to the other Party all written Confidential Information, and all copies thereof, of the other Party. If Licensee elects to terminate this Agreement pursuant to Section 10.3. or 10.4, all rights in the Total Technology shall remain and vest in Genetics. If Licensee elects to terminate this Agreement pursuant to Section 10.2, Licensee shall be entitled to use the Joint Technology and shall not be obligated to pay a royalty to Genetics for such use.

Article XI.

11.1 Licensee shall be liable for all taxes imposed by the state and/or local authorities therefrom. Licensee shall be responsible for obtaining a tax office ruling evidencing the tax treatment of the

11.2 Licensee shall be responsible for all news releases and public relations to this Agreement between the Parties except as otherwise provided.

11.3 Licensee shall be responsible for all obligations or liabilities incurred by Licensee prior to the date of acquisition by merger or acquisition.

11.4 Licensee shall be responsible for interpreting and enforcing the laws of Massachusetts.

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Article XI. MISCELLANEOUS

11.1 Withholding Tax. If any income or other taxes are imposed by the Japanese government on the payments of the Research Fee and/or of the royalties and are required to be withheld therefrom, such taxes shall be withheld for the account of Genetics. Licensee shall pay such taxes on behalf of Genetics to the appropriate tax office of Japan and shall furnish Genetics with the certificate evidencing each payment of tax so made by Licensee.

11.2 Publicity. Neither Party shall originate any publicity, press release or other public announcement, written or oral, relating to this Agreement, the Project or the existence of an arrangement between the Parties, without the prior written approval of the other Party except as otherwise required by law.

11.3 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either Party without the prior written consent of the other Party, except to a party who acquires all or substantially all of the business of the assigning Party by merger, sale of assets or otherwise.

11.4 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

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11.5 Force Majeure. In the event that Genetics is prevented from performing or is unable to perform any of its obligations under this Agreement due to any act of God; fire; casualty; flood; war; strike; lockout, failure of public utilities; injunction or any exercise, assertion or requirement of governmental authority, including any governmental law, order or regulation permanently or temporarily prohibiting or reducing the level of research, development or production work hereunder epidemic; inability to procure materials, labor, equipment, transportation or energy sufficient to carry out experimentation; or any other cause beyond the reasonable control of Genetics, if Genetics shall have used its best efforts to avoid such occurrence, Genetics shall give notice to Licensee in writing promptly, and thereupon the performance by Genetics shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence. Upon receipt of such notice from Genetics, Licensee may extend the Payment Schedule B hereto for the period of delay or inability of Genetics to perform its obligations under this Agreement or terminate this Agreement with immediate effect, without liability to Genetics as a result thereof.

11.6 Waiver. The waiver by either Party of a breach or default of any provision of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or

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Party shall
he same or
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power or

privilege that it has or may have hereunder operate as a waiver of any right, power or privilege by such Party.

11.7 Notice. Any notice or other communication in connection with this Agreement must be in writing and if by mail, by certified mail, return receipt requested, and shall be effective when delivered to the addressee at the address listed below or such other address as the addressee shall have specified in a notice actually received by the addressor.

If to Genetics:

Genetics Institute, Inc.
225 Longwood Avenue
Boston, Massachusetts 02115
Attention: President

If to Licensee:

Chugai Pharmaceutical Co., Ltd.
1-9, Kyobashi 2-chome, Chuo-ku,
Tokyo, 104 Japan
Attention: _____

11.8 No Agency. Nothing herein shall be deemed to constitute either Party as the agent or representative of the other Party, or both Parties as joint venturers or partners for any purpose. Genetics shall be an independent contractor, not an employee or partner Licensee, and the manner in which Genetics renders its

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services under this Agreement shall be within Genetic's discretion. Neither Party shall be responsible for the acts, omissions of the other Party, and neither Party will have authority to speak for, represent or obligate the other Party in any way without prior written authority from the other Party.

11.9 Headings. The headings contained in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.

11.10 Entire Agreement. This Agreement and the Schedules hereto (which Schedules are deemed to be a part of this Agreement for all purposes) contain the full understanding of the Parties with respect to the subject matter hereof and supersede all prior understandings and writings relating thereto. No waiver, alteration or modification of any of the provisions hereof shall be binding unless made in writing and signed by the Parties by their respective officers thereunto duly authorized.

11.11 Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable.

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successors

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(SEAL)

(SEAL)

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

11.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as a sealed instrument in their names by their properly and duly authorized officers or representatives as of the date first above written.

(SEAL)

GENETICS INSTITUTE, INC.

By: Gabriel Schrage

(SEAL)



CHUGAI PHARMACEUTICAL CO., LTD.

By: Keiichi Ueno
President

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SCHEDULE A

BENCHMARKS

Benchmark Identification Number	Description of Benchmark	Anticipated Completion Date	Material Delivery License Completion
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*

Total Amount
Payment Schedule

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Acknowledged:
GENETICS INSTITUTE INC.
 By: Gabriel Schwach
CHUGAI PHARMACEUTICAL CO., LTD.
 By: Kunio Ueno
 President

ACKNOWLEDGE
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 By: Gas
 CHUGAI PH
 By: Kin
 Preside

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SCHEDULE B
RESEARCH FEE

Total Amount:
Payment Schedule:

Materials to be
Delivered to
Licensee upon
Completion



ACKNOWLEDGED:

GENETICS INSTITUTE, INC.

by Gabriel Schwegel

GENEAL PHARMACEUTICAL CO., LTD.

by Kinnis Uyo
President

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SCHEDULE C

TERRITORY

Japan
 United States of America
 Canada
 Mexico
 India
 Nepal
 Sri Lanka
 Bhutan
 Sikkim
 Bangladesh
 Burma
 Thailand
 Laos
 Kampuchea (Cambodia)
 Vietnam
 Malaysia
 Singapore
 North Korea
 South Korea
 Hong Kong
 Philippines
 Taiwan
 Indonesia
 Pakistan

M.L.
G.J.

List of Gene?

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Acknowledged:
GENETICS INSTITUTE, INC.

By: Gabriel Schussel
CHUGAI PHARMACEUTICAL CO., LTD.

By: Kimio Uyeno
President

Acknowledgt
GENETICS I

By: Gai
CHUGAI PH

By: Kim
Preside

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SCHEDULE D
PATENT RIGHTS

List of Genetics Patent Rights



acknowledged:
GENETICS INSTITUTE, INC.

By: Gabriel Schwiegel
TEGAI PHARMACEUTICAL CO., LTD

By: Kimio Uyeo
President

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SCHEDULE E
PERFORMANCE BONUSES

Not applicable.

Acknowledged:
GENETICS INSTITUTE, INC.

By: Gabriel Scheraga
CHUGAI PHARMACEUTICAL CO., LTD.

By: Kimio Ueno
President

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Acknow:
GENETI

By: C

CHUGAI

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SCHEDULE F

ROYALTIES/MINIMUM ROYALTIES

1. Royalties-Patent Rights and Know-How

*

2. Project Know-How Exclusivity Royalty (Section 6.1 (e)):

*

3. Minimum royalties

*

Witnessed:
GENETICS INSTITUTE, INC.
by Gabriel Schmeigel
JSCA) PHARMACEUTICAL CO., LTD.
by Kimio Hiyano
President

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