

# ***CPAC ASSOCIATE SPONSORSHIP AGREEMENT***

(EFFECTIVE AS OF SEPTEMBER 1, 2002)

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## **UNIVERSITY OF WASHINGTON CENTER FOR PROCESS ANALYSIS AND CONTROL ASSOCIATE SPONSORSHIP AGREEMENT**

This Center for Process Analysis and Control Associate Sponsorship Agreement (the "Agreement") is entered into by the University of Washington (the "University"), a public institution of higher education and an agency of the State of Washington, having its principal campus located in Seattle, Washington, and the undersigned associate sponsor (the "Associate Sponsor").

### **RECITALS**

**WHEREAS**, the University and Associate Sponsor, together with others, desire to join together in a research consortium whose purpose is to support research and development dedicated to advancing a systems approach to real-time measurement science at the University's Center for Process Analysis and Control;

**WHEREAS**, the foregoing interdisciplinary research center is situated in a unique University environment and seeks to carry out a program of basic research to derive a deeper understanding of process analytical chemistry, stimulate industrial innovation, and promote cooperation between the University and industry while also providing enhanced educational capabilities in this field; and

**WHEREAS**, Associate Sponsor desires to become a member of the research consortium subject to those limited privileges, rights, duties and obligations as set forth herein.

**NOW, THEREFORE**, the University and Associate Sponsor do hereby agree as follows:

### **1.0 DEFINITIONS**

Unless the context clearly requires otherwise, the definitions set forth in the attached CPAC Sponsorship Agreement shall apply to this Agreement:

1.1 "Associate Agreement" means a form of agreement identical to this Agreement and shall, as the context requires, be included within the definition of Sponsorship Agreement as set forth in the attached CPAC Sponsorship Agreement.

1.2 "Associate Sponsor" means the undersigned sponsoring party to this Associate Agreement, but shall not include any corporate affiliate of Associate who has not entered into an Associate Agreement or Sponsorship Agreement.

1.3 “CPAC Associate Sponsor” means a CPAC Sponsor having the limited rights, privileges, duties and obligations as set forth in this Agreement.

## **2.0 ELIGIBILITY**

2.1 Initial Approval. In order to be considered for acceptance as a CPAC Associate Sponsor, the prospective organization must be approved by the Director and a majority vote of the Industrial Advisory Board (IAB).

2.2 Annual Approvals. In order to continue membership as a CPAC Associate Sponsor, the organization must be approved for continuation annually by the Director and a majority vote of the Industrial Advisory Board (IAB).

## **3.0 RIGHTS AND PRIVILEGES**

CPAC Associate Sponsors shall have all the rights and privileges of a CPAC Sponsor, including those set forth in the attached CPAC Sponsorship Agreement, except as follows:

3.1 IAB. CPAC Associate Sponsors shall not be entitled to representation or participation in the IAB and its activities, including but not limited to membership, voting, IAB meetings, the IAB Executive Committee, the IAB Steering Committee and other matters set forth in Section 4.2 of the CPAC Sponsorship Agreement.

3.2 Publications and Presentations. CPAC Associate Sponsors shall not be entitled to any of the rights and privileges of a CPAC Sponsor under Article 6.0 of the CPAC Sponsorship Agreement, including but not limited to any right to review or delay publications and presentations prior to public disclosure thereof.

3.3 Intellectual Property Rights. CPAC Associate Sponsors shall not be entitled to any of the rights, privileges or licenses available to CPAC Sponsors under Article 8.0 of the CPAC Sponsorship Agreement, including but not limited to Internal Use Rights and any right to negotiate or obtain licenses. Notwithstanding the foregoing, a CPAC Associate Sponsor shall be considered a non-Sponsor for purposes of Section 8.8 of the CPAC Sponsorship Agreement.

3.4 Termination. In addition to the grounds for termination as set forth in Section 16.2 of the CPAC Sponsorship Agreement, this Agreement may be terminated if the Associate Sponsor does not receive annual approval as provided in Section 2.2 of this Agreement.

## **4.0 DUTIES AND OBLIGATIONS**

CPAC Associate Sponsors shall have all the duties and obligations of a CPAC Sponsor, including those set forth in the attached CPAC Sponsorship Agreement, except the amount of the Sponsorship Fee shall be a lesser amount as set forth in the Schedule of Fees.

**5.0 INCORPORATION BY REFERENCE**

Except as otherwise modified by this Agreement, the attached CPAC Sponsorship Agreement shall apply to and be deemed part of this Agreement and by this reference are incorporated herein.

**THE UNIVERSITY OF WASHINGTON**

\_\_\_\_\_  
**ASSOCIATE SPONSOR**

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

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

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

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

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

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

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

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

**Associate Sponsor's Start Date:** \_\_\_\_\_

**Associate Sponsor hereby acknowledges that it has been provided copies of and agrees to the current Schedule of Fees and Royalty Schedule. Until changed in writing, all notices to Associate Sponsor shall be provided as follows:**

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

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

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City, State, Zip: \_\_\_\_\_

(\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (Facsimile)

The following pages contain the attached CPAC Sponsorship Agreement referred to in the Associate Sponsorship Agreement above

# ***CPAC SPONSORSHIP AGREEMENT***

(EFFECTIVE AS OF NOVEMBER 1, 2001, UPDATED JULY 1, 2002)

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## **UNIVERSITY OF WASHINGTON CENTER FOR PROCESS ANALYSIS AND CONTROL SPONSORSHIP AGREEMENT**

This Center for Process Analysis and Control Sponsorship Agreement (the “Agreement”) is entered into by the University of Washington (the “University”), a public institution of higher education and an agency of the State of Washington, having its principal campus located in Seattle, Washington, and the undersigned sponsor (the “Sponsor”).

### **RECITALS**

**WHEREAS**, the University and Sponsor, together with others, desire to join together in a research consortium whose purpose is to support research and development dedicated to advancing a systems approach to real-time measurement science at the University’s Center for Process Analysis and Control; and

**WHEREAS**, the foregoing interdisciplinary research center is situated in a unique University environment and seeks to carry out a program of basic research to derive a deeper understanding of process analytical chemistry, stimulate industrial innovation, and promote cooperation between the University and industry while also providing enhanced educational capabilities in this field.

**NOW, THEREFORE**, the University and Sponsor do hereby agree as follow:

### **1.0 DEFINITIONS**

Unless the context clearly requires otherwise, the following definitions shall apply to this Agreement:

1.1 “CPAC” means the University’s Center for Process Analysis and Control, a research consortium described in this Agreement whose membership consists of the University and CPAC Sponsors, including Sponsor.

1.2 “CPAC Personnel” means University faculty members, students, visiting scholars, staff, employees, and any other persons to the extent participating in CPAC Research and other similar CPAC administered and funded activities.

1.3 “CPAC Research” means any research that is funded in whole or in part with Sponsorship Fees.

1.4 “CPAC Sponsors” mean all the members of CPAC in good standing, each of whom is a party to a current Sponsorship Agreement.

1.5 “Director” means the person responsible for the day-to-day management of CPAC as described in Section 4.1 of this Agreement.

1.6 “Fiscal Year” means the fiscal year used by CPAC beginning on the first day July and ending on the last day of the following June.

1.7 “IAB” means the Industrial Advisory Board, a board consisting of one representative from each of the CPAC Sponsors whose chairperson shall be selected annually at a meeting called for such purpose by a majority vote of those CPAC Sponsors present.

1.8 “IAB Executive Committee” means a committee consisting of the most recent past, the present, and the designated next chair of the IAB whose function includes representing the IAB and acting as liaison between CPAC and OR and whose chairperson shall be the current chairperson of the IAB.

1.9 “IAB Steering Committee” means a committee appointed by the chairperson of the IAB whose function includes assisting and advising on such matters the IAB Executive Committee deems appropriate.

1.10 “Information” means confidential nonpublic information as defined in Section 11.1 of this Agreement.

1.11 “Internal Use Right” means Sponsor’s limited right to use Inventions as described in Article 8.0 of this Agreement.

1.12 “Invention” means any invention conceived of during, first reduced to practice in, or otherwise arising from CPAC Research, including all patents, copyrights, technical information, trade secrets, know-how, technology, designs, processes, improvements, techniques, algorithms, formulae, data, software, and all other proprietary information developed in the course of or arising from CPAC Research.

1.13 “License Appeal Committee” shall mean the committee authorized to hear license appeals as provided in Section 8.6 of this Agreement. Committee which shall consist of the following three members: the Vice Provost for Research, an IAB member appointed by the Chairperson of the IAB Executive Committee, and a person jointly selected by the Vice Provost for Research and the Chairperson of the IAB Executive Committee.

1.14 “OIPTT” means the University’s Office of Intellectual Property and Technology Transfer, which administers the University’s intellectual property policy, including licensing of University intellectual property and negotiations pertaining thereto, and which is the primary source of information for University employees and CPAC Personnel regarding patents, copyrights, and methods of commercializing University intellectual property and technologies.

1.15 “OR” means the University’s Office of Research, which administers the University’s research policies, oversees CPAC on policy matters, and is directed by the Vice Provost for Research.

1.16 “Parent” means a corporation that either:

- (i) owns at least one-half of the outstanding voting stock of Sponsor; or
- (ii) is the largest direct or indirect shareholder of Sponsor and in the reasonable opinion of the University, “controls” Sponsor.

In determining whether such corporation “controls” Sponsor, the University will consider the following factors: (a) the exercise of direct management control by such corporation of Sponsor; (b) the ownership, direct or indirect, by such corporation of the maximum percentage of voting shares of Sponsor permitted by law in the relevant jurisdiction; (c) membership by such corporation in a group that acts in concert and thereby together controls Sponsor; and (d) any written representations or written public disclosures by such corporation or Sponsor that such corporation controls Sponsor.

1.17 “Patent Review Subcommittee” means a subcommittee of the IAB appointed by the IAB chairperson whose function is to review disclosures of potentially patentable Inventions.

1.18 “Policy Board” means a board consisting of the IAB chairperson and University faculty members and administrators appointed by the University’s Vice Provost for Research whose function is to provide recommendations to the University on general policy matters pertaining to CPAC.

1.19 “Royalty Schedule” means a schedule, as it may from time to time be revised by the University, describing the royalty structure for licenses of patentable Inventions, the current version of which is being furnished to Sponsor at the time of execution of this Agreement.

1.20 “Schedule of Fees” means a schedule, as it may from time to time be revised by the University, describing the annual rate for Sponsorship Fees, the current version of which is being furnished to Sponsor at the time of execution of this Agreement.

1.21 “Sponsor” means the undersigned sponsoring party to this Agreement, but shall not include any corporate affiliate of Sponsor who has not entered into a Sponsorship Agreement.

1.22 “Sponsorship Agreement” means a form of agreement identical to this Agreement.

1.23 “Sponsorship Fees” means the fees paid by CPAC Sponsors, including Sponsor, to the University for membership in CPAC as provided in Article 3.0 of this Agreement.

1.24 “Start Date” means the date on which Sponsor becomes a member of CPAC as indicated on the last page of this Agreement.

1.25 “Subsidiary” means a corporation that Sponsor either:

- (i) owns at least one-half of such corporation’s outstanding voting stock; or
- (ii) is the largest direct or indirect shareholder of such corporation and in the reasonable opinion of the University, “controls” such corporation.

In determining whether Sponsor “controls” such corporation, the University will consider the following factors: (a) the exercise of direct management control by Sponsor of such corporation; (b) the ownership, direct or indirect, by Sponsor of the maximum percentage of voting shares of such corporation permitted by law in the relevant jurisdiction; (c) membership by Sponsor in a group that acts in concert and thereby together controls such corporation; and (d) any written representations or written public disclosures by Sponsor or such corporation that such Sponsor controls such corporation.

## **2.0 FISCAL YEAR; RESEARCH AND SUPPORT**

CPAC’s business and activities shall be conducted based on the Fiscal Year. CPAC Research will be conducted by CPAC Personnel under the general direction of the University and the Director in accordance with University policies and procedures pertaining to such matters. Funding and other support for CPAC Research will be provided through collection of Sponsorship Fees and through specific awards of grant and contract funds to the University designated for CPAC Research. Sponsorship Fees received by the University under this Agreement shall be expended for CPAC Research and related CPAC support and applied to CPAC direct costs and to University indirect costs at the University’s United States government approved indirect cost rates applicable for each Fiscal Year.

## **3.0 TERM AND SPONSORSHIP FEES**

3.1 Term. The term of this Agreement and Sponsor’s membership in CPAC shall: (i) begin on the Start Date, (ii) automatically renew on the first day of each succeeding Fiscal Year, and (iii) continue until otherwise terminated by the University or Sponsor in accordance with Article 16.0 of this Agreement.

3.2 Sponsorship Fee. The amount of the Sponsorship Fee shall be as set forth in the Schedule of Fees applicable to the Fiscal Year for which the Sponsorship Fee is payable. Sponsor shall pay all Sponsorship Fees and other amounts due under this Agreement to the University as provided in Sections 3.3 and 26.2 of this Agreement. During the term of this Agreement, Sponsor shall pay University the following: (i) upon becoming a member of CPAC, a prorated Sponsorship Fee for the current Fiscal Year based upon the number of days remaining in the Fiscal Year, and (ii) a full Sponsorship Fee for each year thereafter that Sponsor remains a member of CPAC.

3.3 Payment of Sponsorship Fee, Invoicing and Interest. The Sponsorship Fee described in Section 3.2 shall be payable as follows: (i) the Sponsorship Fee referred to in Section 3.2(i) shall be paid within thirty (30) days of Sponsor’s Start Date, and (ii) the Sponsorship Fee referred to in Section 3.2(ii) shall be paid no later than the first day of the Fiscal Year for which it is payable. With respect to the Sponsorship Fee referred to in Section 3.2(ii),

the University shall invoice Sponsor, consistent with the then applicable Schedule of Fees, for the Sponsorship Fee for the next succeeding Fiscal Year no later than the first day of April immediately preceding the beginning of the Fiscal Year. All past due payments under this Agreement are subject to payment of interest at the legal rate of interest as provided by Washington law.

3.3.1 Prepayments. A Sponsor may prepay Sponsorship Fees for up to five years at the then-existing rate providing that payment is made in full at the time of any such prepayment or that Sponsor has irrevocably agreed in writing to make such payment in equal annual installments upon invoice from the University.

3.3.2 In-Kind Payments. The University may allow, in its sole judgment and discretion, a Sponsor to pay all or a portion of a Sponsorship Fee in a form other than cash on the following conditions: (i) such payment will not have an adverse financial effect on CPAC; (ii) the fair market value of the consideration is no less than the amount of the Sponsorship Fee being paid; (iii) the consideration consists of goods and/or services that CPAC would otherwise purchase in the normal conduct of its business and activities; and (iv) such alternative form of payment is recommended by the IAB Executive Committee.

3.4 Notification of Sponsorship Fee Schedule. During the term of this Agreement, CPAC shall notify all CPAC Sponsors, including Sponsor, of the Sponsorship Fees rates by distributing the Schedule of Fees applicable to the next Fiscal Year no later than the first day of April of each year.

3.5 Sponsorship Fee Changes. The University reserves the right to make reasonable changes in the Sponsorship Fee after consultation with the IAB Executive Committee. Any such change shall be effective as of the beginning of a Fiscal Year and only upon no less than fifteen (15) months' prior written notice thereof to CPAC Sponsors.

#### **4.0 MANAGEMENT AND OPERATION**

4.1 Director. The day-to-day management and operation of CPAC, including selection and appointment of technical staff, selection of projects to be emphasized, and budget allocations shall be the responsibility of the Director, who shall be appointed by and serve at the pleasure of the University.

4.2 Advisory Bodies. Advice and recommendations on the management and operation of CPAC will be provided by the Policy Board, the IAB, the IAB Executive Committee, and the IAB Steering Committee, according to their respective roles. The Policy Board shall review and approve general policies for CPAC and render advice and recommendations on patents, publications, organization, and CPAC's program direction. The IAB, together with the IAB Executive Committee, shall provide advice and recommendations on the choice of research projects and research emphasis, feedback on the overall CPAC program, and foster communication and interaction between CPAC Sponsors and the University. The IAB Executive Committee shall be authorized to recommend to the IAB from time to time, after review and approval of the Policy Board, additional categories of non-voting membership in

CPAC, including the rights, privileges and obligations of any such categories. Any such additional categories shall require final approval of a majority of the IAB prior to becoming effective. The IAB Steering Committee shall assist and advise the IAB Executive Committee on such matters the IAB Executive Committee deems appropriate. In addition, the Policy board and the IAB Executive Committee shall be authorized to create such additional advisory and working committees or groups as they may from time to time deem useful.

## **5.0 REPORTS AND MEETINGS**

During the term of this Agreement, the University will provide CPAC Sponsors the following: (i) regular written (or electronic) progress reports and/or abstracts summarizing all current CPAC Research; (ii) regular written (or electronic) reports, no less than annually, setting forth in reasonable detail the status of patent disclosures, patent applications and issued patents, and potential licenses and licenses; and (iii) an annual technical meeting at the University that will include oral and written (or electronic) presentations on the progress of all current CPAC Research.

## **6.0 PUBLICATIONS AND PRESENTATIONS**

The University reserves the right to present at scientific and governmental meetings and to publish in scientific, scholarly and professional journals (whether in the form of written, electronic or other media) the results of all CPAC Research, subject only to the express limitations set forth in this Agreement. All CPAC Sponsors shall have thirty (30) days to review any such publications or presentations prior to submission for publication, during which period any CPAC Sponsor may request in writing, for patent-related purposes, a delay in publication or presentation for a period not to exceed six (6) months from the date of receipt by CPAC Sponsors; providing, however, that any such delay shall be granted at the sole discretion of the University and only to the extent deemed reasonable and necessary by the University. In no event shall the provisions of this Article 6.0 be interpreted as discharging the University and CPAC Personnel from complying with restrictions regarding nondisclosure of confidential information under Article 11.0 of this Agreement.

## **7.0 INVENTIONS**

7.1 University Ownership. Except only to the extent expressly provided in Section 7.4 of this Agreement, the University shall retain all title and ownership to all Inventions and rights arising from all CPAC Research and arising from all research activities performed by CPAC Personnel.

7.2 Sponsor Employee Participation in CPAC Research. The University shall determine, at its sole discretion, whether and under what terms and conditions, if any, it will permit any employee of Sponsor to engage or participate in CPAC Research. Any such participation shall only be pursuant to a prior written agreement signed by the University, Sponsor, and Sponsor's employee. In the event either Sponsor or Sponsor's employee is unwilling to enter into such an agreement on terms and conditions acceptable to the University, the University shall have the right, in its sole discretion, to deny participation of Sponsor's

employee in CPAC Research. Any Sponsor employee participating in CPAC Research shall be considered CPAC Personnel within the meaning of Section 7.1 of this Agreement.

7.3 Disclosure of Sponsor's Invention Concepts. The parties understand that circumstances may arise in which Sponsor's employee (who would not otherwise be considered CPAC Personnel as described in Section 7.2) discloses to CPAC Personnel invention concepts that may be the basis of a potentially patentable Invention. In such event, the following provisions shall apply whenever a patentable Invention is subsequently reduced to practice as part of CPAC Research and whenever such patentable Invention arises from a concept that is either: (i) jointly conceived by Sponsor's employee and CPAC Personnel or (ii) independently conceived by Sponsor's employee and disclosed to CPAC Personnel. In either such case, Sponsor and Sponsor's employee shall assign to the University their entire interest in and to such patentable Invention unless Sponsor notifies the University, in the manner specified in Section 26.1, of Sponsor's election not to assign. Any such notice of Sponsor's election not to assign shall be received by the University not later than (60) days following the date the concept is either, as the case may be, (a) jointly conceived by Sponsor's employee and CPAC Personnel or (b) independently conceived by Sponsor's employee and disclosed to CPAC Personnel. If Sponsor elects not to assign, Sponsor agrees and understands that CPAC shall not fund any further research pertaining to such concept or invention without first obtaining the written approval of the IAB Executive Committee. Providing Sponsor complies with all of the provisions of this Section 7.3, Sponsor assumes no other obligations to assign any rights to intellectual or other property to the University with respect to the matters described in this Section 7.3.

7.3.1 Sponsor's Nonexclusive License. In the event that Sponsor and Sponsor's employee assign to the University their entire interest in and to an Invention as provided in the foregoing Section 7.3, Sponsor shall have a royalty-free, nonexclusive, world-wide license from the University, extendable to Sponsor's Subsidiaries, to practice any such Invention as claimed in the University's patents and patent applications pertaining to such Invention in which a named inventor therein is Sponsor's employee who has assigned ownership of such Invention to the University.

7.3.2 CPAC Sponsor Rights. All CPAC Sponsors shall have the same rights with respect to Inventions assigned to the University by Sponsor under Section 7.3 of this Agreement as they have with respect to any other Invention developed in the course of CPAC Research, including the Internal Use Right and other rights set forth in Article 8.0 of this Agreement.

7.4 Federal Rights. In the event the University receives any funding from a funding agency of the United States government for any CPAC Research, Sponsor understands and agrees that the intellectual property or other similar rights covered by this Agreement may be subject to the rights and limitations of U.S. Public Laws 96-517 and 98-620, 35 USC §§200-211, and various implementing regulations, including those codified at 37 CFR Part 401, known generally and collectively as the "Bayh-Dole Requirements." In such case, the parties agree to include, where applicable, in any application for a United States Patent a statement fully identifying the rights of the United States government under the Bayh-Dole Requirements; and Sponsor acknowledges that the University shall be required to grant the United States

government a worldwide, non-exclusive, royalty-free license for such invention covered by any Patent notwithstanding anything in this Agreement to the contrary.

7.5 Federal Export Restrictions. Sponsor understands that the University is subject to the laws and regulations of the United States, including the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), and that the University's obligations hereunder are contingent upon compliance with all applicable laws and regulations, including those for export control. Sponsor understands that any transfer of any intellectual property or other rights to Sponsor under this Agreement or under any other agreement entered into pursuant to this Agreement, including transfers to Sponsor's Parent, Subsidiaries or other affiliates and permitted uses by certain third parties, may require a license from a cognizant agency of the United States government and/or written assurances by Sponsor that Sponsor shall not transfer data or commodities to certain foreign countries without the prior approval of an appropriate agency of the United States government. The University neither represents that any such export license shall not be required, nor that, if required, it shall be issued.

## **8.0 LICENSES AND INTERNAL USE RIGHT**

8.1 Internal Use Right to Use Inventions. Subject to the limitations of Section 8.9 of this Agreement, Sponsor shall have an Internal Use Right to practice and use Inventions, including any patent rights, arising from CPAC Research within the limited scope described in Section 8.2 of this Agreement. At Sponsor's option, any Internal Use Right granted to Sponsor hereunder may be extended by Sponsor to any Subsidiary designated by Sponsor; except that, if Sponsor is a governmental agency that is not an agency of the United States, such Internal Use Right shall not include any other governmental agency or entity.

8.2 Scope of Internal Use Right. The Internal Use Right described in Section 8.1 of this Agreement shall consist of a nonexclusive right for Sponsor and its Subsidiaries: (i) to practice the results of all non-patentable Inventions and other results of CPAC Research so long as such practice is not inconsistent with Sponsor's nondisclosure obligations under Article 11.0 of this Agreement, and (ii) to make, have made, and use compositions, products, apparatus, processes, and know-how and to practice methods covered by patentable Inventions arising from CPAC Research. Providing further, that the Internal Use Right shall include the right to copy and distribute internally copyrightable information within Sponsor, but shall not in any event include (a) any right to sell any compositions, products, apparatus, processes, and know-how claimed in a patentable Invention unless Sponsor enters into a license agreement with the University consistent with the royalty rates set forth in the Royalty Schedule in effect at the time such license agreement is entered into, or (b) any right to assign, license or sublicense to third parties to practice any patentable Invention. Notwithstanding anything in this Agreement to the contrary, nothing contained herein shall be interpreted as limiting use by CPAC Sponsors of any CPAC Research which is neither (x) in the public domain and not confidential Information under Article 11.0 of this Agreement, (y) covered by copyright, nor (z) an Invention for which a patent has issued or is pending.

8.3 Sponsor's Sublicensee of Internal Use Right. Sponsor, including any Subsidiary entitled to exercise the Internal Use Right, may sublicense the Internal Use Right incidental to

the sale of any business, plant, or operation in which such Internal Use Right is being practiced at the time of sale in accordance with this Agreement, except that any sublicensee thereof shall not be entitled to practice such Internal Use Right in any other portion of sublicensee's businesses, plants, or operations. As a condition to the sublicense of such Internal Use Right, Sponsor shall provide University a copy of a written sublicense agreement in which sublicensee agrees to comply with all restrictions in this Agreement pertaining to such Internal Use Right. In no event shall any such sublicense be interpreted as terminating Sponsor's Internal Use Right.

8.4 Sponsor's Right to Negotiate License. Sponsor shall have the right to request negotiations for a nonexclusive or exclusive license, including sublicensing rights, to practice an Invention claimed in a University patent or patent application. Sponsor may exercise the foregoing right by written notice thereof to OIPTT, with a copy to the Director, not later than three (3) months following the date of being notified by the University of the filing of the patent application pertaining to the Invention. Such notice shall specify whether Sponsor desires to obtain an exclusive license. The Office of Research, Director, and Director of OIPTT shall review all decisions to offer only an exclusive license to an Invention and in no event shall this Agreement be interpreted as obligating the University to grant any exclusive license to Sponsor. Any exclusive license granted hereunder shall be subject to any licenses or rights already existing with respect to such Invention and may be limited to such fields of use as the University deems advisable. If the University elects to grant Sponsor a license, the University and Sponsor shall have three (3) additional months from the date of the University's receipt of Sponsor's notice in which to negotiate in good faith a nonexclusive license. Any such license shall be on mutually agreeable terms and consistent with the royalty rates set forth in the Royalty Schedule in effect at the time such license agreement is entered into.

8.5 License Appeal Committee. In the event that OIPTT, acting on behalf of the University, and Sponsor are unable to agree, after good faith negotiations, within the applicable period described in the foregoing Sections 8.4 of this Agreement upon the terms and conditions of a license, Sponsor may request that that the matter be reviewed by the License Appeal Committee. The License Appeal Committee shall consider the matter, using informal procedures deemed appropriate by its members and issue a written decision to the University and Sponsor no later than thirty (30) days after the matter is submitted to it. The written decision of the License Appeal Committee may include, if appropriate, a description of the appropriate terms and conditions to be included in a license agreement, but the License Appeal Committee shall have no authority to require that any license alter, amend or vary from the terms of this Agreement or from the University's established written policies with respect to management and ownership of University intellectual property. The decision of the License Appeal Committee with respect to any such matter shall be final and binding.

8.6 Sponsor's Request to Negotiate License. Sponsor may request negotiations for a nonexclusive or exclusive license, including sublicensing rights, to practice an Invention claimed in a University patent or patent application, by written notice thereof to OIPTT, with a copy to the Director, at any time more than three (3) months following the date of filing of the patent application pertaining to the Invention. Providing, however, OIPTT, acting on behalf of the University, shall have the sole authority to decide, in its sole discretion, whether to enter into any such negotiations and/or any such license agreement.

8.7 Patent Fees and Costs. All exclusive license agreements licensing rights to Inventions shall contain provisions for reimbursement of the University by the licensee therein of all reasonable fees and out-of-pocket costs, including attorney fees, incurred by the University in the application, prosecution, issuance and maintenance of any patents covered by such license. Notwithstanding the foregoing, a licensee who is or has been a CPAC Sponsor shall not be required to reimburse the University to the extent that any such fees and costs are paid using Sponsorship Fees collected by the University when such licensee was a CPAC Sponsor.

8.8 Negotiations and Licenses with non-Sponsors. The University agrees as follows: (i) it will not engage in any negotiations relating to the possible license of any Invention to a non-Sponsor prior to six (6) months after providing notice to CPAC Sponsors that the initial patent application covering such Invention has been filed; and (ii) if any CPAC Sponsor has exercised its right to negotiate a license for a patent under Section 8.4 of this Agreement, it will not grant any license with respect to such patent to a non-Sponsor prior to nine (9) months after OIPTT's report in regard to such Invention has been provided to CPAC Sponsors in accordance with Article 9.0 of this Agreement.

8.9 Limitations on Internal Use Right and License Rights. Sponsor's Internal Use Right under the foregoing Section 8.1 and license rights under the foregoing Sections 8.4 and 8.5 shall apply only to Inventions conceived and reduced to practice during any period in which Sponsor has been a member in good standing of CPAC and has been current in payment of amounts due under this Agreement, including Sponsorship Fees. With respect to any Invention not conceived, reduced to practice and disclosure during such period, Sponsor shall be deemed a non-Sponsor for purposes of Section 8.7 of this Agreement.

8.10 Sponsor Guarantee. Sponsor hereby guarantees the performance of its Parent and Subsidiaries of any duties and obligations arising from the transfer of any rights thereto under this Agreement.

## **9.0 INVENTION DISCLOSURES, PATENT APPLICATIONS AND REPORTS**

9.1 Invention Disclosures. Upon reduction to practice, CPAC Personnel shall disclose all Inventions to OIPTT, with copies to the Director, on a preliminary written disclosure form provided by OIPTT. The Director shall periodically review such preliminary Invention disclosures with the Patent Review Subcommittee and transmit any recommendations of the Patent Review Subcommittee and Director to OIPTT. OIPTT will regularly review all such preliminary Invention disclosures submitted to it and obtain any additional information from CPAC Personnel that it may require to make a reasonable evaluation of the likely patentability and potential commercial value of the Inventions disclosed. OIPTT may also meet and confer, as it deems appropriate, with the Patent Review Subcommittee in connection with such evaluations. OIPTT shall complete such evaluations within approximately six (6) months of receiving all required information and provide the Director a written report describing such Inventions and summarizing OIPTT's conclusions with regard thereto.

9.2 Patent Applications. OIPTT shall, in accordance with its established policies and practices, periodically file such United States and foreign patent application that OIPTT deems appropriate and advisable and shall regularly notify the Director in writing of Inventions with

respect to which it does not intend to file any patent applications. OIPTT and CPAC may from time to time agree upon joint funding of patent and provisional patent applications with respect to such Inventions as they may mutually agree.

9.3 Reports to CPAC Sponsors. The Director shall periodically provide all CPAC Sponsors a copy of OIPTT's invention evaluation reports, which shall be considered Information subject to the nondisclosure provisions of Section 11.1 herein. The Director shall promptly notify all CPAC Sponsors of any decision by OIPTT, acting on behalf the University, not to file a patent application with respect to any Invention disclosure. As of the date the University notifies CPAC Sponsors that OIPTT has made a decision not to file a patent application with respect to a particular Invention, the nondisclosure obligations of Section 11.1 herein with respect thereto shall terminate as provided in Section 11.1.

## **10.0 SUBLICENSES AND ASSIGNMENTS**

Except as expressly provided in Section 8.3, Sponsor shall not sublicense, assign, or otherwise transfer any rights conferred by this Agreement without the prior, written consent of the University. Any such attempt to sublicense, assign, or transfer by Sponsor without such consent shall be null and void. All approved sublicenses, assignments, or transfers including extension of Sponsor's Internal Use Right to Subsidiaries under Sections 8.1 and 8.2 shall be subject to the terms of this Agreement, including the duty of confidentiality and nondisclosure. University shall not assign its title to an Invention without the written agreement of the IAB Executive Committee.

## **11.0 CONFIDENTIALITY AND NONDISCLOSURE**

11.1 Nondisclosure of Confidential Information. For purposes of this agreement, "Information" shall include all information pertaining to Inventions and CPAC Research, whether conveyed in written, graphic, oral or physical form, including but not limited to the results of CPAC Research, scientific knowledge, know-how, processes, materials, Invention disclosures, OIPTT Invention reports, pending patent applications pertaining to Inventions, techniques, algorithms, formulae, data, software, plans, or other records to the extent held in confidence and not otherwise made public. The University and Sponsor hereby agree not to disclose to third parties nor make any unauthorized use of any Information, including but not limited to any public disclosures or uses thereof that would create a bar to obtaining a United States or foreign patent. Each party will restrict access to Information to those persons directly connected with the performance of this Agreement and to such other persons involved in the business of each party who have a need to know Information. In receiving, storing, transmitting and using Information, each party shall employ the same safeguards and observe the same degree of care with respect to the secrecy and proprietary nature of Information as it observes with respect to its own property of substantial value. Communications between only such persons that are obligated under the terms of this Agreement, whether a direct party to this Agreement or not, regarding CPAC Research, Inventions or Information shall not be deemed public disclosures. As of the date the University notifies CPAC Sponsors that OIPTT has made a decision not to file a patent application with respect to a particular Invention, the nondisclosure obligations of this Section 11.1 shall terminate, but only to the extent that such Information pertains solely to the particular Invention. In no event shall the nondisclosure obligations of this

Agreement apply to a party with respect to Information that is known to the party prior to disclosure hereunder, is information which is or becomes generally known to the public without fault of the party, becomes known to the party from a third party having the right to disclose it, or is independently developed by or for the party. The provisions of this Section 11.1 shall survive any termination of this Agreement for any reason.

11.2 Confidential Disclosure of Information to Sponsor's Parent. Sponsor may disclose CPAC Research, including Inventions and Information, to its Parent on condition that (i) Sponsor first obtains the written permission of the University, which the University shall not unreasonably withhold, and (ii) the Parent enters into a nondisclosure agreement with the University on substantially the same terms as Section 11.1 of this Agreement, which shall include the Parent's express agreement not to use such Information without the prior written authorization of the University.

## **12.0 INTERNAL REVENUE CODE**

The University will comply with any requirements of the United States Internal Revenue Code and regulations adopted thereto with respect to the reporting of expenditures for basic research. Upon request from Sponsor, the University shall supply Sponsor with information on what portion of Sponsor's Sponsorship Fees were expended for basic research during Sponsor's taxable year.

## **13.0 FINANCIAL REVIEWS**

The University shall periodically supply Sponsor with the results of internal University reviews of CPAC financial records.

## **14.0 DISCLAIMER OF WARRANTIES**

Sponsor acknowledges that all Inventions and Information are experimental in nature and the University makes no express or implied warranties or representations with regard to their utility, safety, patentability, patent validity, merchantability, or fitness for a particular purpose. All warranties, express or implied, arising out of or in connection with the furnishing, performance, or use of any Inventions or Information are hereby disclaimed by the University.

## **15.0 INDEMNIFICATION**

15.1 Sponsor. Sponsor agrees to defend, indemnify, and hold harmless the University from any and all claims, damages, costs, attorneys fees, expenses, or other liabilities of whatever nature, resulting from or arising out of Sponsor's use of information received from the University relating to CPAC, CPAC Research, Information, or Inventions or arising out of the practice of any license or similar right granted to Sponsor as part of the terms of this Agreement.

15.2 University. To the extent permitted by Washington law and except for those matters referred to in Section 15.1, University agrees to hold Sponsor harmless against liabilities, claims, and actions relating to or arising out of the negligent acts or omissions of the University's employees or agents while engaged in CPAC activities or conducting CPAC Research.

## **16.0 TERMINATION**

16.1 Termination by Sponsor. Sponsor may terminate this Agreement by providing notice thereof to the University in accordance with Section 26.1 as follows:

16.1.1 Upon thirty (30) days' prior written notice, providing that if any such written notice is received by the University after May 31 of any Fiscal Year, Sponsor shall be obligated to pay University a full Sponsorship Fee for the next succeeding Fiscal Year as set forth in Section 3.2 (ii) of this Agreement; or

16.1.2 Within thirty (30) days after receiving notice of any amendment to the Sponsorship Agreement pursuant to Article 21.0 of this Agreement.

16.2 Termination by University. University may terminate this Agreement by providing, in accordance with Section 26.1, written notice thereof as follows:

16.2.1 In the event of failure of Sponsor to cure a material breach of this Agreement within thirty (30) days after written demand thereof, the University shall have the right to terminate this Agreement and Sponsor's membership in CPAC upon five (5) business days' written notice to Sponsor.

16.2.2 In the event of a decision by the University to discontinue the operation of CPAC, upon thirty (30) days' written notice to all CPAC Sponsors, including Sponsor.

16.3 No Refunds. Upon termination of this Agreement for any reason, Sponsor shall not be entitled to any refund of any previously paid Sponsorship Fee, or any portion thereof, nor shall Sponsor be relieved of any obligation to pay any amounts, including Sponsorship Fee, otherwise arising or accruing under this Agreement.

16.4 Surviving License. No termination of this Agreement shall cause any termination of any existing license or internal use right granted to Sponsor under the terms of this Agreement.

## **17.0 HEADINGS**

The headings of this Agreement are for purposes of convenience and reference only and shall not govern the interpretation of any of the terms of this Agreement.

## **18.0 USE OF NAMES**

The University and Sponsor agree not to use any name, trademark, or identifier of the other for any advertising, promotion, or other commercially related purpose except with advance written approval thereof.

## **19.0 APPLICABLE LAW, JURISDICTION AND VENUE**

This Agreement shall be governed by and enforced according to the laws of the State of Washington, without giving effect to its or any other jurisdiction's choice of law provisions, and

the Superior Court of Washington for King County shall have exclusive jurisdiction and venue of all disputes arising under this Agreement, except that in any case where the courts of the United States shall have exclusive jurisdiction over the subject matter of the dispute, the United States District Court for the Western District of Washington, Seattle division, shall have exclusive jurisdiction and venue.

## **20.0 WAIVER OR MODIFICATION**

No waiver or modification of this Agreement shall be valid or enforceable unless it is in writing and signed by the party granting the waiver or modification; providing, however, any such waivers and modifications by the University shall first be preceded by the University's consultation with the Policy Board. The waiver by any party of the other party's breach of any of the provisions of this Agreement shall not operate or be construed as a waiver by a party of any subsequent breach by the other party of a breach of the entire Agreement.

## **21.0 REVISION OF AGREEMENT**

The University reserves the right to amend the terms and form of the Sponsorship Agreement. Any such amendment shall be applicable to all CPAC Sponsors and be approved by a majority of members of both the Policy Board and the IAB Executive Committee following the IAB Executive Committee's consultation with the IAB. Upon such approval, any such amendment shall become binding upon all CPAC Sponsors, including Sponsor, no less than thirty (30) days following written notice thereof to Sponsor; providing, however, in such event, Sponsor may terminate this Agreement prior to the effective date of any such amendment in accordance with the provisions of Section 16.1.2 of this Agreement.

## **22.0 ENTIRE AGREEMENT**

This Agreement expresses the entire agreement between the parties. All prior negotiations, understandings, promises and agreements, oral or written (including any sponsorship agreement relating to membership in CPAC), previously executed by the University and Sponsor and pertaining to the subject matter of this Agreement, are superseded hereby.

## **23.0 SEVERABILITY**

If any of the provisions of this Agreement shall be determined to be illegal or unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect.

## **24.0 BINDING EFFECT**

This Agreement shall inure to the benefit of and be binding upon the each party's successors and assigns.

## **25.0 FORCE MAJEURE**

Nonperformance by the University or Sponsor shall not operate as a breach of the terms of this Agreement if due to: strikes or other labor disputes; prevention or prohibition by law; the

loss or injury to products in transit; an Act of God; war; or other cause beyond the control of the University or Sponsor.

## **26.0 NOTICES AND PAYMENTS**

26.1 Notice. Any notice served pursuant to the terms of this Agreement (other than notices of payments as provided in Section 26.2) shall be delivered either: (i) in person, (ii) by certified mail, return receipt requested and postage prepaid, or (iii) transmitted by facsimile with confirmation by receiving operator. Until changed in writing, any such notice shall be addressed as follows:

Center for Process Analysis and Control  
University of Washington  
1013 NE 40<sup>th</sup> Street  
Seattle, Washington 98105-6698, U.S.A.

(206) 543-6506 (Facsimile)

### **With a copy to:**

To University: Director of Industry Agreements  
Office of Sponsored Programs  
University of Washington  
1100 NE 45<sup>th</sup> St., Suite 300  
Box 354945  
Seattle, Washington 98105, U.S.A.

(206) 685-1732 (Facsimile)

To Sponsor: As indicated on the signature page of this Agreement.

Notice shall be deemed effective, as the case may be, upon the earlier of (a) actual delivery to the recipient, (b) five (5) days after the date on which such notice was postmarked within the United States, or (c) receipt by facsimile with confirmation by receiving operator.

26.2 Payments. Until changed in writing by the University, all payments by Sponsor to University under this Agreement shall be made as follows:

By check payable to the “*University of Washington*” delivered or mailed as follows:

Center for Process Analysis and Control/APL  
University of Washington  
1013 NE 40<sup>th</sup> Street  
Seattle, Washington 98105-6698  
U.S.A.

**- OR -**

By wire transfer (with written notice to the CPAC Director) as follows:

Company Name:	University of Washington
Bank Name:	Bank of America, Washington Seattle, Washington

Bank Routing/ABA No.:	0260-0959-3
University of Washington Account No.:	62045000
University CPAC Account No.:	65-4488

## **27.0 RETURN OF TITLE**

If the University elects not to pursue the commercialization of an Invention due to an inability to patent or license such Invention, the University shall follow the University’s then-current policies and procedures regarding the return of title thereof to the inventor or to the United States government as may be applicable. In no event shall such a return of title result in a termination of any license or Internal Use Right granted pursuant to Article 8.0 of this Agreement.

**28.0 ATTORNEYS FEES**

The prevailing party in any action sought to enforce or interpret this Agreement or any provision of this Agreement shall be entitled to its reasonable attorney's fees and costs as determined by a court in conjunction with such legal proceeding.

**THE UNIVERSITY OF WASHINGTON**

\_\_\_\_\_ **SPONSOR**

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

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

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

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

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

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

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

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

**Sponsor's Start Date:** \_\_\_\_\_

**Sponsor hereby acknowledges that it has been provided copies of and agrees to the current Schedule of Fees and Royalty Schedule. Until changed in writing, all notices to Sponsor shall be provided as follows:**

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

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

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City, State, Zip: \_\_\_\_\_

(\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (Facsimile)



# ***CENTER FOR PROCESS ANALYSIS AND CONTROL***

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## **SCHEDULE OF ASSOCIATE FEES FOR 2011 – 2012 FISCAL YEAR (JULY 1, 2011 TO JUNE 30, 2012)**

**Effective September 1, 2002**

### **Due Date**

Payment must be received by the University no later than July 1, 2011.

### **Payment Methods**

By check payable to the “*University of Washington*” delivered or mailed as follows:

Center for Process Analysis and Control/APL  
The University of Washington  
1013 NE 40<sup>th</sup> Street  
Seattle, Washington 98105-6698  
U.S.A.

**- OR -**

By wire transfer (with written notice to the CPAC Director) as follows:

Company Name:	University of Washington
Bank Name:	Bank of America, Washington Seattle, Washington
Bank Routing/ABA No.:	0260-0959-3
University of Washington Account No.:	62045000
University CPAC Account No.:	66-1502

### **Associate Sponsorship Fee Amount**

\$9,500 U.S. Dollars per year or agreed upon In-Kind Sponsorship which may also include cash payment.

### **Late Fees and Interest**

10% late fee (\$950.00) for fees received by the University after due date plus interest in accordance with Sponsorship Agreement.

# **CENTER FOR PROCESS ANALYSIS AND CONTROL**

## **ROYALTY SCHEDULE (AS A PERCENTAGE OF NET SALES)**

**EFFECTIVE NOVEMBER 1, 2001**

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The terms and conditions of commercial license agreements shall be negotiated with and on terms satisfactory to the University of Washington's Office of Intellectual Property and Technology Transfer. All such license agreements shall be consistent with University policies and practices pertaining to licensing of University intellectual property and with applicable provisions of the Sponsorship Agreement.

Within the ranges set forth in the following paragraph, royalty rates for such license agreements shall be commercially reasonable, taking into account usual and customary commercial factors, including, without limitation, the nature and character of the particular product, the industry within which it will be marketed and sold, the licensee's anticipated profitability from the particular product sales, and the value added of licensed University intellectual property to the product.

In the absence of unusual circumstances, royalties applicable to license agreements entered into when this Royalty Schedule is in effect shall be subject to no less than the following rates, expressed as a percentage of licensee's net sales (as that term is defined in the applicable license agreement), providing, in no event shall the maximum royalty rate exceed 10%:

4% of the first \$5,000,000 of net sales

3% of the next \$3,000,000 of net sales

2% of the next \$2,000,000 of net sales

1% of over \$10,000,000 of net sales

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