



## **Industrial Partner Agreement**

### **NSF Engineering Research Center *for* Precise Advanced Technologies for Health Systems in Underserved Population (PATHS-UP)**

This Industrial Partner Agreement (hereinafter “Agreement”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, by and between The Texas A&M Engineering Experiment Station (hereinafter “University”), and \_\_\_\_\_ (hereinafter “Industrial Member”).

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support the NSF Engineering Research Center for Precise Advanced Technologies for Health Systems in Underserved Population (hereinafter “PATHS-UP”) at University to establish a mechanism whereby the educational and research environment can be used to develop novel engineered systems for physiological and biomarker monitoring of chronic diseases (diabetes and cardiovascular disease) in underserved populations.

AND WHEREAS, this program will strengthen PATHS-UP’s and Industrial Member’s technology, future product lines and related health care services,

NOW, THEREFORE, for the mutual premises and covenants contained herein, the parties hereto agree as follows:

1. University agrees that the personnel and facilities required for PATHS-UP will be available for research, education, and service as needed to fulfill the purpose of this Agreement. PATHS-UP shall be operated by University under the leadership of a Director (the “PATHS-UP Director”). PATHS-UP will be supported jointly by various private and public sponsoring organizations, including the Industrial Member, the National Science Foundation (hereinafter “NSF”), University, and the State of Texas.
2. University, on behalf of PATHS-UP, will put into place an agreement with Rice University in Houston, TX; University of California in Los Angeles, CA; and The Florida International University Board of Trustees in Miami, FL (hereinafter called “Academic Members”) to assure that the rights and obligations of Industrial Member that apply to University will also apply to Academic Members (hereinafter the “Interuniversity Membership Agreement”). University also is an Academic Member.
3. PATHS-UP's Industrial Partners Program (hereinafter called IPP) has been created to establish partnerships with companies or other entities that may promote PATHS-UP’s mission. IPP participants are expected to play an important role in the research, education, technology transfer, and innovation goals of PATHS-UP, including creating and demonstrating the scientific and technological feasibility of innovative methodologies and systems governing novel engineered systems for physiological and biomarker monitoring of chronic diseases (diabetes and cardiovascular disease) in underserved populations, assisting in the transfer of research discoveries and observations from university to industry and vice versa, and developing an interdisciplinary education program.

Any corporation, company, partnership, sole proprietorship, or any other legally recognized business entity, or any agency of government, government office, or government organization duly authorized by the United States Government or government of any State or Nation may become an Industrial Member of the IPP.

The rights and obligations of Industrial Member under this Agreement shall extend only to Industrial Members's affiliates or subsidiaries that routinely share in a free flow of Industrial Members's internal technical information.

4. The fee for participating in the Industrial Partners Program comprises a contribution as defined in Section 6 below. In addition, appropriate interactions with PATHS-UP administration and researchers to help PATHS-UP accomplish its mission are required. The interaction with PATHS-UP may include visits to Academic Members by Industrial Member representatives, visits to the Industrial Member by faculty and students, and discussions at professional society meetings or conferences. Industrial Member, during visits to Academic Members, can work on a mutually agreed upon research projects, mentor students, learn specialized techniques, and give special seminars. It is expected that during the course of their stay, they will develop strong interactions with PATHS-UP researchers. Required Industrial Member duties include:
  - a. meet as a group of Industrial Advisory Board (hereinafter "IAB") participants twice a year with PATHS-UP researchers during semi-annual reviews;
  - b. provide advice and recommendations on developing the strategic plan;
  - c. review overall progress against strategic goals;
  - d. critique the progress and direction of research thrusts, including an annual Strengths, Weaknesses, Opportunities, and Threats (hereinafter "SWOT") analysis;
  - e. discuss the strategic plan and suggest potential modifications based on research results;
  - f. review and suggest potential changes to the education efforts;
  - g. engage in joint research and experimental test beds to validate PATHS-UP research results in practical applications as agreed to by Industrial Member in its sole discretion;
  - h. assist in translating PATHS-UP research results through commercial implementation as agreed to by Industrial Member at its sole discretion; and
  - i. recommend industry speakers for workshops and seminars to promote the mission of PATHS-UP.
5. Industrial Member is entitled to the following PATHS-UP Industrial Membership benefits:
  - early access to PATHS-UP research products such as reports, papers, and other publications originated by faculty and researchers of Academic Members prior to dissemination to the general public. Early access may include papers in publication, annual reports, poster research briefs, and discussions with faculty and students;
  - data and information resulting from PATHS-UP research will be shared with Industrial Members and Academic Members, and such Industrial Members and Academic Members may utilize and disclose such data and information, subject to Section 10.5 (Confidential Information). Academic Members retain the first right to publish the results

of PATHS-UP research that such Academic Members have solely or jointly authored;

- Industrial Member will have access to facilities and instrumentation utilized in PATHS-UP research, but such access is subject to any requirements or limitations of the organization whose facilities and instrumentation are being accessed including, without limitation, any fees associated with such access. These arrangements shall be decided on a case-by-case basis to advance PATHS-UP research and accelerate innovation;
- Industrial Member may request on-location short courses to be provided by the Academic Members at fees to be negotiated between the Academic Members and Industrial Member to cover costs;
- Industrial Member will have access to the PATHS-UP web site, which comprises an electronic information network maintained by the Academic Members for timely exchange of information, e.g., accepted or submitted papers or working drafts as appropriate, annual progress reports, and created knowledge base of research advances; and
- Industrial Member that wishes to support a particular PATHS-UP research thrust or topic that has not been allocated funding through NSF, through Industrial Member fees, or both, may do so by providing such funding support directly to an Academic Member under a separate agreement or arrangement negotiated directly between the Industrial Member and the applicable Academic Member.

6. Upon execution of this Agreement, payment shall be made as indicated below:  
The annual fee for an Industrial Member is based on the table below.

**Table 1: Schedule of Membership Levels, Fees, and Associated Member Rights**

	<b>Premium</b>	<b>Full</b>	<b>Base</b>	<b>In-Kind</b> <i>(Small Business ONLY)</i>
Annual Fee	\$30,000/yr	\$10,000/yr	\$5,000/yr	\$1,000/yr
Advisory board members (will have voting rights per the following schedule 1. Premium Member – 3 votes 2. Full Member – 2 votes 3. Base Member – 1 vote 4. In Kind Member – no votes	✓	✓	✓	Observer
Access to non-exclusive, royalty free intellectual property rights for Industrial Member’s internal research and non-commercial use as specified in Section 10.4.1 hereof	✓	✓		
Option for commercial IP license (Right of First Negotiation as specified in Attachment B to this Agreement)	Right of First Negotiation as specified in Attachment B	Right of First Negotiation as specified in Attachment B	Right of First Negotiation as specified in Attachment B.	Right of First Negotiation as specified in Attachment B

Access to ISO-13485 compliant pilot medical device manufacturing center @ reduced rates	✓	✓		
Access to non-proprietary info	✓	✓	✓	✓
Free/discounted access to conferences and workshops	Free	Free	Discount	Discount
Networking with CMS, FDA, Industry, and University	✓	✓	✓	✓
SBIR assistance for small business members	✓	✓	✓	✓
Priority Access to Test Beds and Data	✓	✓	✓	✓
Priority Access to Students	✓	✓	✓	✓

Payments shall be made annually, with the first payment being due within thirty (30) days of the execution of the Agreement. The initial term of the membership will be from execution of the Agreement through the following twelve (12) months, with subsequent terms continuing for twelve (12) months thereafter conditioned upon payment of each annual fee. Except for the payment specified herein and except as otherwise specified in this Agreement, each party hereto is solely responsible for expenses incurred in performing this Agreement.

**Checks shall be made payable to:**

**The Texas A&M Engineering Experiment Station**

Addressed to: Sponsored Research Services

400 Harvey Mitchell Parkway South, Suite 300

College Station, TX 77845-4375

Attn: Deposits

**ACH or wire transfer method**

Receiving Bank: Wells Fargo Bank, San Francisco, CA

Bank Contact Person: Jeff C. Vander Woude

(979) 776-3411

Bank ABA Number: 1119-0065-9 - ACH Only

1210-0024-8 -Wire Transfers Only

Bank Account Number: 6070982704

TEES EI: Number: 74-1974733

Swift Code: WFBIUS6S

- All educational, research, and other programs and administrative activities of PATHS-UP will be conducted with pooled resources with contributions from Industrial Member, and other sources, including NSF, as long as expenditures from these pools are deemed appropriate for the establishment and operation of PATHS-UP.

8. This Agreement shall be renewed annually with no action required of either party hereto. Either party of this Agreement may terminate annual continuation of the Agreement by providing the other party with written notice at least three (3) months prior to each anniversary date of this Agreement. Either party may terminate this Agreement for the other's breach on thirty (30) days' prior written notice to the other party.

All notices shall be in writing and addressed to Industrial Member's stated address or as follows:

Mark Andrews  
The Texas A&M Engineering Experiment Station (TEES)  
Director, TEES Contracting  
1470 William D. Fitch Parkway  
College Station, TX 77845-4645  
Ph: 979-458-7482  
Cell: 979-595-7751

9. The organization and operation of PATHS-UP shall be in accordance with existing procedures established by University, all applicable State and Federal laws, and the PATHS-UP Bylaws, which are attached hereto and incorporated herein as Attachment A (PATHS-UP Bylaws). In particular but without limitation, each party shall comply with applicable export control laws including, without limitation, the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and the Office of Foreign Assets Control (OFAC) regulations.

#### 10. Intellectual Property and Publication Policies.

- 10.1 Definitions. In addition to other terms defined in this Agreement, the parties ascribe the following meanings to the terms set forth herein:

- 10.1.1 "Other Industrial Members" mean other entities that have executed an Industrial Partner Agreement.

- 10.1.2 "PATHS-UP Collaborators" mean University, Academic Members, Industrial Member, and Other Industrial Members.

- 10.1.3 "Membership Fees" mean, in addition to those fees paid by Industrial Member pursuant to this Agreement, fees paid by Other Industrial Members pursuant to similar agreements between each such Other Industrial Members and Lead University.

- 10.1.4 "Core Projects" mean research projects funded through the PATHS-UP Award, the Membership Fees, and any combination thereof.

- 10.1.5 "PATHS-UP Award" means that NSF Contract No. EEC-1648451 dated October 1, 2017 between University and the NSF.

- 10.1.6 “Intellectual Property” means all technical information, inventions, developments, discoveries, methods, techniques, formulae, algorithms, data, and processes, whether or not patentable or copyrightable, including computer software whether patentable or not, patents, designs (whether registered or unregistered), utility models, copyright and database right, trademarks and service marks (whether registered or unregistered), trade names and domain names, trade secrets, rights in unpatented know-how and any other intellectual property rights of any nature including without limitation all rights to the grant of and applications for the same and all renewals, reissues, extensions, divisions and continuations of them, together with all similar and analogous rights throughout the world for their full term.
- 10.1.7 “Core Intellectual Property” means and includes all Intellectual Property first invented or authored in the performance of any Core Project.
- 10.1.8 “Background Intellectual Property” means Intellectual Property developed before or independent of the Core Projects, whereby PATHS-UP researchers who are performing Core Projects are named inventors of the Intellectual Property, and in which a license to the Intellectual Property is necessary to practice Core Intellectual Property.
- 10.1.9 “Technology Transfer Office” means the unit within, or utilized by, an inventing organization that engages in transferring technology on behalf of the inventing party.
- 10.1.10 “Academic Member Intellectual Property Owner” refers to an Academic Member that has an ownership interest in an item of Core Intellectual Property or, if more than one Academic Member has an ownership interest in the same item of Core Intellectual Property, the Academic Member that has the right to negotiate with third parties for commercial rights to the item of Core Intellectual Property.
- 10.1.11 “Disclosure” means any document describing an item of Core Intellectual Property that University, an Academic Member, or both invent through performing a Core Project, author through performing a Core Project, or both.
- 10.1.12 “Notice of Disclosure” means a document that a) notifies Industrial Member that a Disclosure is being furnished to Industrial Member pursuant to Attachment B (Right of First Negotiation) and b) includes a copy of the Disclosure.

10.2 Inventorship and Ownership. The parties agree that:

- 10.2.1 Inventorship of Core Intellectual Property will be determined in accordance with applicable U.S. patent and copyright law and any corresponding State laws.
- 10.2.2 Each inventing party shall determine whether to retain title pursuant to 35 U.S.C. §§ 200 et seq. to Core Intellectual Property developed solely by employees or students of the inventing party. Core Intellectual Property developed jointly by employees and/or students of more than one party shall be jointly owned by the inventing parties; each owner will have an undivided interest in the same.
- 10.2.3 Each owner of Background Intellectual Property reserves all legal rights in its Background Intellectual Property for all purposes.

### 10.3 Oversight of Core Intellectual Property

10.3.1 University, as the prime recipient of the PATHS-UP Award, will oversee implementation of a plan to manage Core Intellectual Property (the “Plan”) and will form an Inter-Institutional IP Management Board (hereinafter the “IPMB”). The IPMB will be chaired by the ERC Industrial Liaison Officer (ILO) and will be comprised of one representative from the Technology Transfer Offices of each of the Academic Members. This committee will perform the following functions in relation to Core Intellectual Property:

- a. monitor disclosure, patenting, and licensing activity;
- b. provide advice and recommendations to the IAB, and the PIs from each of the Academic Members on matters related to PATHS-UP IP policy and management.
- c. seek, as needed, potential third-party licensees;
- d. resolve disputes;
- e. discuss, when needed, the strategy for patenting and licensing; and
- f. facilitate timely and accurate reporting of Disclosures, patents, and licenses to the PATHS-UP Collaborators and NSF by each inventing Party, and in the final invention report of the University.

10.3.2 PATHS-UP Collaborators will make reasonable and good faith efforts to:

- a. inform, on a periodic basis, faculty, staff, and students involved in the PATHS-UP Award Work that the research is to serve the public benefit and encourage publication and prompt disclosure of developments and potential inventions;
- b. share the existence of any identified Background Intellectual Property or any existing contracts that may affect rights in Core Intellectual Property;
- c. disclose and evaluate Core Intellectual Property, Background Intellectual Property, and facilitate dissemination of the Core Intellectual Property for the greater public good; and
- d. notify of the availability of Core Intellectual Property for licensing to other PATHS-UP Collaborators via Disclosures.

10.3.3 Data generated in the performance of the PATHS-UP Award will be shared among PATHS-UP Collaborators subject to the obligations of Section 10.5 (Confidential Information).

10.3.4 PATHS-UP Collaborators intend to encourage sharing of data and other information related to the PATHS-UP Award Work through publication, presentation, or other scientific communications consistent with academic standards. PATHS-UP Collaborators performing PATHS-UP Award Work will be free to publish the results of the PATHS-UP Award Work, provided due consideration is given to protection of patentable subject matter.

#### 10.4 Rights to Core Intellectual Property.

10.4.1 University hereby grants Industrial Member that is a Premium Member or a Full Member, on behalf of University and Academic Members, a fully-paid up, royalty-free, world-wide, non-exclusive, non-transferable, non-sublicensable license to Core Intellectual Property for such Industrial Member's internal research and non-commercial purposes only, and such license shall endure for as long as the Industrial Member remains a Premium Member or a Full Member. If the Academic Member that solely owns such item of Core Intellectual Property were to cease being an Academic Member, other than through termination pursuant to Section V(B) of the Interuniversity Membership Agreement, and were to cease receiving funding through the PATHS-UP Award, the Membership Fees, or any combination thereof (collectively "Cessation of Academic Membership"), then with respect to any such items of Core Intellectual Property, the non-exclusive license granted pursuant to this Agreement and pursuant to the Industrial Partner Agreement shall terminate within ninety (90) days of the date on which such Academic Member sends written notice to all Full Members and to all Premium Members that Cessation of Membership has occurred with respect to such Academic Member. Nothing in this Agreement or in the Interuniversity Membership Agreement shall be interpreted to suggest or imply that Academic Member has any obligation whatsoever to seek, pursue, or maintain statutory intellectual property protection on any item of Core Intellectual Property. To the extent that, in the absence of the license granted pursuant to this Section 10.4.1, Industrial Member may legally use an item of Core Intellectual Property, the existence or absence of the license granted pursuant to this Section 10.4.1 does not alter such Industrial Member's legal rights vis-à-vis such item of Core Intellectual Property.

10.4.2 Right of First Negotiation. With regard to Core Intellectual Property described in a Notice of Disclosure, Industrial Member shall have those rights of first negotiation delineated in Attachment B (Right of First Negotiation), which is attached hereto and incorporated herein by reference. Pursuant to the Interinstitutional Membership Agreement, each Academic Member Intellectual Property Owner has agreed that, for each item of Core Intellectual Property of which such Academic Member is an Academic Member Intellectual Property Owner, the Academic Member shall first offer such item of Core Intellectual Property to Industrial Member and to Other Industrial Members in accordance with Attachment B (Right of First Negotiation) prior to offering such item of Core Intellectual Property to any party that is not the Industrial Member or that is not an Other Industrial Member.

10.5 Confidential Information. Except for Disclosures, Notices of Disclosure, and certain yet-to-be published data, neither University nor Industrial Member anticipate that either party hereto will provide Confidential Information (as defined below) to the other or to other PATHS-UP Collaborators. However, in the event that University, Industrial Member, Academic Members, or other PATHS-UP Collaborators furnish Confidential Information, the parties hereto agree as follows:

10.5.1 "Confidential Information," as used in this Agreement, means any information that:

- a. belongs to the party disclosing the information or otherwise has been disclosed with permission of the information owner;
- b. is clearly marked or identified as Confidential Information at the time of the disclosure or if disclosed orally or visually, is reduced to written form and marked as specified



herein within thirty (30) days of such oral or visual disclosure, except for Disclosures and Notices of Disclosure which shall be treated as Confidential Information regardless of whether marked as confidential or proprietary;

- c. has value to the disclosing party; and
- d. has generally been considered and treated by the disclosing party as confidential prior to the time of disclosure.

10.5.2 Confidential Information shall not include any information that:

- a. at the time of disclosure is in the public domain (whether or not either of the parties knows that the information is in the public domain);
- b. after disclosure is published or otherwise becomes part of the public domain in any manner other than by violation of this Agreement;
- c. was in the possession of the receiving party at the time of disclosure as evidenced by its records and was not acquired under an obligation of confidence; or
- d. is independently developed by the receiving party as established by receiving party's records.

10.5.3. A party receiving Confidential Information shall not use the Confidential Information except for the purpose specified in writing by the party disclosing the Confidential Information or as otherwise specified in this Agreement.

10.5.4 A party receiving Confidential Information shall not further disclose the Confidential information except:

- a. Confidential Information may be disclosed as required by law. As used in this subsection, "required by law" shall include, but not be limited to, disclosures compelled by lawful subpoena, court order, or demand, or any other lawful process; provided, however, that to the extent reasonably practicable under the circumstances, immediately upon receipt of any subpoena, order or demand, the party receiving the subpoena, order or demand shall notify the other party of the impending disclosure to afford that party an opportunity to avail itself of legal process to prevent the disclosure. In the event that University receives a request under the Texas Public Information Act, the U.S. Freedom of Information Act, or in response to any other court or government order requiring disclosure, University will use reasonable efforts to promptly provide notice to the Confidential Information owner or the party from which the Confidential Information was received. To the extent permitted by applicable law, the University will cooperate with Confidential Information owner or with the party from which the Confidential Information was received to protect Confidential Information.
- b. This section shall not be construed to require University, its governing board, or the State of Texas, nor any agent, employee or attorney in the service of any of them, to pursue any claim, defense, cause of action, or legal process or proceeding on behalf of the Confidential Information owner or the party from which the Confidential Information was received.

10.5.5 Within thirty (30) days following receipt of written notice from the disclosing party, the receiving party shall return to the disclosing party all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the disclosing party's Confidential Information, or shall confirm in writing to the disclosing party that the Confidential Information has been destroyed.

10.5.6 The duties of paragraphs 10.5.3 and 10.5.4 hereof shall endure for three (3) years from the date of first disclosure of each such item of Confidential Information.

11. The parties agree to comply with all applicable State and Federal laws and/or rules concerning equal opportunity and non-discrimination.

12. No party shall use the name, logo, or marking (“Mark”) of any PATHS-UP Collaborator in any advertising or promotional material without the specific written consent of an authorized representative of the owner of such a Mark. A general exception is hereby granted to Industrial Member to use the name of PATHS-UP and to cite the fact that PATHS-UP is operated by University in written advertising and other promotional materials provided that: (1) such use is limited to describing the Industrial Member relationship to PATHS-UP as herein defined by this Agreement, (2) no endorsements by PATHS-UP or University of Industrial Member products or other commercial activities may be reasonably inferred from such use, and (3) such use does not represent that a partnership, joint venture, or other legal entity has been formed between and among the parties to this Agreement. University may disclose that Industrial Member is a PATHS-UP Collaborator.

13. The relationship between Industrial Member and University shall be that of independent contractor. As such, each of Industrial Member and University are liable and responsible for their own acts and omissions and not for one another’s acts or omissions, to the extent permitted under applicable law. As an independent contractor, Industrial Member assumes all risk and liability for injury to persons or damage to property caused by acts or omissions of its employees during the period of the Agreement while they are using facilities or equipment owned and/or controlled by University. Neither Industrial Member nor University may incur liability on the other’s behalf or otherwise contractually bind the other except with such party’s written consent. University is an agency of the State of Texas and nothing in this Agreement waives or relinquishes the right of University to claim any exemptions, privileges, or immunities as may be provided by the constitution and/or the laws of the State of Texas.

14. All noted confidential information submitted to University by Industrial Member will remain as such unless written permission granting public dissemination is received and vice versa.

15. The provisions contained herein, in Attachment A (PATHS-UP Bylaws), and in Attachment B (Right of First Negotiation), and constitute the entire Agreement and supersede all previous communications or representations, either verbal or written, between the parties hereto with respect to the subject material hereof. This Agreement may not be changed, altered, or supplemented except by written amendment hereto, signed by all parties. It is further agreed that nothing contained in the Agreement shall modify, amend, or supersede any prior or subsequent arrangement between Industrial Member and University with respect to activities outside the scope of this Agreement.

IN WITNESS WHEREOF, this Agreement is effective as of the last date of signing set forth herein below, which day and month in subsequent years in which Industrial Member adheres to the terms of this Agreement shall be called the anniversary date of this Agreement.

The Texas A&M Engineering Experiment Station	Industrial Member: _____
_____ Signature	_____ Signature
_____ Printed Name	_____ Printed Name
_____ Title	_____ Title
_____ Date	_____ Date

## **Attachment A PATHS UP BYLAWS**

### **NSF ENGINEERING RESEARCH CENTER (ERC) FOR PRECISE ADVANCED TECHNOLOGIES FOR HEALTH SYSTEMS IN UNDERSERVED POPULATIONS (PATHS-UP) BYLAWS (HEREINAFTER THE “PATHS-UP BYLAWS”)**

#### **1. Constitution**

- 1.1 PATHS-UP is a National Science Foundation (NSF)-funded center, funded through that NSF Contract No. EEC-1648451 (hereinafter the “PATHS-UP Award”) comprised of academic and industrial members that wish to collaborate on developing solutions to mitigate the effects of diabetes and cardiovascular disease in medically underserved areas.
- 1.2 The academic constituents of PATHS-UP currently comprise Rice University, University of California Los Angeles, The Florida International University Board of Trustees, and The Texas A&M Engineering Experiment Station (the “Partner Universities”), with The Texas A&M Engineering Experiment Station as the lead university (“Lead University”). Collectively, the Partner Universities and the Lead University are referred to as the “Academic Members.”
- 1.3 Over time, additional academic institutions may execute the Interuniversity Membership Agreement, and such institutions also shall be referred to as Academic Members.
- 1.4 The industrial members of PATHS-UP comprise entities that have signed an Industrial Partner Agreement with The Texas A&M Engineering Experiment Station and that comply with the terms and conditions of the Industrial Partner Agreement (hereinafter “Industrial Members”).
- 1.5 “Core Projects” mean research projects funded through the PATHS-UP Award, the Membership Fees, and any combination thereof. PATHS-UP shall use the PATHS-UP Award and Membership Fees (hereinafter “PATHS-UP Funds”) to conduct Core Projects.
- 1.6 Industrial Members are free to independently and separately fund projects of specific interest to an Industrial Member or to a set of Industrial Members by entering into agreements directly with an Academic Member for such projects. These projects shall be referred to as “Non-Core Projects.”

## **2. Objective**

2.1 The role of PATHS-UP is to:

2.1.1 develop and implement technical solutions to help diabetes and cardiovascular patients in medically underserved areas; and

2.1.2 commercialize solutions developed through PATHS-UP research.

## **3. Management**

3.1 PATHS-UP shall have a director appointed by the Lead University (hereinafter the “PATHS-UP Director”).

3.2 The PATHS-UP Director shall be responsible for the overall operation and management of PATHS-UP and shall preside or shall have a designee preside at PATHS-UP Industrial Advisory Board (“IAB”) meetings.

3.3 Each Academic Member shall have a PATHS-UP Co-Director to whom investigators at such institution who are working on Core Projects may disclose any intellectual property that they develop through performance of a Core Project; provided, however, that investigators at such institutions at least first disclose any such intellectual property to the technology licensing office (TLO) at the institution with which they are affiliated.

3.4 Further, each PATHS-UP Co-Director shall be responsible for coordinating the PATHS-UP funded research at their university and interacting with the IAB to identify key technology areas, establish long-range goals and short-range planning procedures necessary for an overall research program.

3.5 PATHS-UP shall have an Industry Liaison Office (ILO) appointed by the Lead University to whom investigators at each Partner University (including the Lead University) who are working on Core Projects may disclose any intellectual property that they develop through performance of a Core Project.

#### **4. Industrial Advisory Board (“IAB”)**

##### 4.1 Composition

- 4.1.1 The IAB shall be comprised of at least one representative from each Industrial Member (as defined in the Industrial Partner Agreement).

##### 4.2 Meetings

- 4.2.1 The IAB shall meet at least twice per year (“Semi Annual Meetings”).

##### 4.3 Annual Review

- 4.3.1 At least annually, the IAB shall:
  - carry out an analysis of the PATHS-UP's strengths, weaknesses, opportunities and threats to survival (a SWOT analysis);
  - participate in an NSF review of the PATHS-UP's performance and plans; and
  - develop plans to mitigate weaknesses identified in the SWOT analysis.

##### 4.4 Recommendations to the Director

- 4.4.1 The IAB shall render recommendations to the PATHS-UP Director regarding:
  - (a) the Core Projects to be carried out by PATHS-UP, (b) the allocation of resources to these Core Projects, and (c) changes to the PATHS-UP Bylaws.
- 4.4.2 The IAB shall vote on the recommended allocation of resources for Core Projects; however, the Director shall have ultimate, complete, and total authority as to the allocation of funds for Core Projects.

#### **5. Interinstitutional Intellectual Property Management Board**

- 5.1 Academic Members shall form an Interinstitutional Intellectual Property Management Board.
- 5.2 The Interinstitutional Intellectual Property Management Board shall be chaired by Industrial Liaison Officer (ILO) and will be comprised of one representative from the technology transfer offices or similar organization of each of the Academic Members.

5.3 The Interinstitutional Intellectual Property Management Board shall perform the following functions with regard to Core Intellectual Property:

5.3.1 monitor disclosure, patenting, and licensing activity;

5.3.2 provide advice and recommendations to the IAB and to the principal investigators from each of the Academic Members on matters related to PATHS-UP intellectual property policy and management;

5.3.3 seek, as needed, potential third-party licensees for Core Intellectual Property;

5.3.4 resolve disputes;

5.3.5 discuss, when needed, the strategy for patenting and licensing; and

5.3.6 facilitate timely and accurate reporting of disclosures, patents, and licenses for Core intellectual Property to the PATHS-UP Collaborators and NSF by each inventing party, and in the final invention report of the Lead University.

## **Attachment B**

### **Right of First Negotiation**

1. Each Academic Member Intellectual Property Owner shall promptly provide each Notice of Disclosure to University's Technology Transfer Office, to Industry Member, to Other Industry Members, or any combination thereof, as determined by the PATHS-UP Director. Lead University shall implement a notification mechanism to facilitate the timely provision of Notices of Disclosure to the Industrial Member and to Other Industrial Members.
2. If Industrial Member is a Premium Member and with regard to any Notice of Disclosure:
  - a) Industrial Member shall have at most sixty (60) days from the date on which a Notice of Disclosure is transmitted to Industrial Member (the "First Notice Period") to indicate in writing to the Academic Member Intellectual Property Owner that the Industrial Member wishes to negotiate with the Academic Member Intellectual Property Owner for a non exclusive or exclusive (subject to any licenses granted pursuant to paragraph 10.4.1 of the Agreement), royalty-bearing, commercial license to the Core Intellectual Property described in the Notice of Disclosure (hereinafter an "Indication of Interest");
  - b) upon receipt of the Industrial Member's Indication of Interest and upon conclusion of the First Notice Period, the Academic Member Intellectual Property Owner shall commence negotiations with the Industrial Member and shall use reasonable diligence to conclude negotiations and endeavor to execute a license agreement within at most one hundred and eighty (180) days of the Academic Member Intellectual Property Owner's receipt of the Indication of Interest from the Industrial Member and conclusion of the First Notice Period (the "First Negotiation Period");
  - c) cumulatively, the First Notice Period and the First Negotiation Period are referred to as the Premium Member Right of First Negotiation Period, and may last at most two hundred and forty (240) days but may last less than two hundred and forty (240) days if, for illustrative purposes only, the First Negotiation Period terminates within less than one hundred and eighty (180) days of the Academic Member Intellectual Property Owner's receipt of the Indication of Interest from the Industrial Member and conclusion of the First Notice Period;
  - d) if, during the First Notice Period, the Academic Member Intellectual Property Owner receives Indications of Interest from multiple Other Industry Members that are Premium Members in addition to the Industrial Member, then the Academic Member Intellectual Property Owner shall commence licensing negotiations with each such Premium Member in addition to the Industrial Member and shall endeavor to execute at least one license agreement within at most one hundred and eighty (180) days of the conclusion of the First Notice Period; and
  - e) during the First Notice Period, Academic Member Intellectual Property Owner shall refrain from negotiating for a license to the Core Intellectual Property described in a Notice of Disclosure with any Other Industrial Members that are not Premium Members and, during the First Negotiation Period, Academic Member Intellectual Property Owner shall negotiate only with Industrial Member for a license to the Core Intellectual Property described in the Notice of Disclosure unless Academic Member Intellectual Property Owner has received Indications of Interest from multiple Other Industry Members that are



Premium Members during the First Notice Period in which case the Academic Member Intellectual Property Owner shall negotiate for a license with each such Premium Member as specified in paragraph d hereof..

3. If Industrial Member is a Full Member and with regard to any Notice of Disclosure:
  - (a) after conclusion of the Premium Member Right of First Negotiation Period, Industrial Member shall have at most sixty (60) days from the conclusion of the Premium Member Right of First Negotiation Period (the “Second Notice Period”) to transmit an Indication of Interest to the Academic Member Intellectual Property Owner;
  - (b) upon receipt of the Industrial Member’s Indication of Interest and upon conclusion of the Second Notice Period, the Academic Member Intellectual Property Owner shall use reasonable diligence to conclude negotiations and endeavor to execute a license agreement within at most one hundred and eighty (180) days of the Academic Member Intellectual Property Owner’s receipt of the Indication of Interest from the Industrial Member and conclusion of the Second Notice Period (the “Second Negotiation Period”); and
  - (c) cumulatively, the Second Notice Period and the Second Negotiation Period are referred to as the Full Member Right of First Negotiation Period, and may last at most two hundred and forty (240) days but may last less than two hundred and forty (240) days if, for illustrative purposes only, the Second Negotiation Period terminates within less than one hundred and eighty (180) days of the Academic Member Intellectual Property Owner’s receipt of the Indication of Interest from the Industrial Member and conclusion of the Second Notice Period.
  
4. With regard to any Notice of Disclosure:
  - (a) after conclusion of the Premium Member Right of First Negotiation Period and after conclusion of the Full Member Right of First Negotiation Period, Industrial Member shall have at most sixty (60) days from the conclusion of the Premium Member Right of First Negotiation Period and conclusion of the Full Member Right of First Negotiation Period (the “Third Notice Period”) to transmit an Indication of Interest to the Academic Member Intellectual Property Owner;
  - (b) upon receipt of the Industrial Member’s Indication of Interest and upon conclusion of the Third Notice Period, the Academic Member Intellectual Property Owner shall use reasonable diligence to conclude negotiations and endeavor to execute a license agreement within at most one hundred and eighty (180) days of the Academic Member Intellectual Property Owner’s receipt of the Indication of Interest from the Industrial Member and conclusion of the Third Notice Period (the “Third Negotiation Period”); and
  - (c) after conclusion of the Third Negotiation Period, Academic Member Intellectual Property Owner may negotiate with any third party for a license to the Core Intellectual Property described in the Notice of Disclosure.