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Amended & Restated Basic Agreement

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AMENDED AND RESTATED BASIC AGREEMENT

THIS AMENDED AND RESTATED BASIC AGREEMENT, including the Appendix attached hereto and incorporated herein by reference, is entered into as of the Effective Date (defined below) by and among:

UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION, a non-profit Tennessee corporation with offices at UT Conference Center, Suite 211, 600 Henley Street, Knoxville, Tennessee 37996-4122 ("UTRF");

THE UNIVERSITY OF TENNESSEE, a public higher educational institution of the State of Tennessee with its principal office in Knoxville, Knox County, Tennessee ("University");

ANY INDIVIDUAL named as an Originator in the Appendix (Part 1); and

ANY INDIVIDUAL OR ORGANIZATION named as an Other Recipient in the Appendix (Part 1).

WITNESSETH:

[Terms that are not defined when first used are defined in Article 9 below.]

WHEREAS, UTRF is a not-for-profit Tennessee corporation which has as one of its primary functions the management of inventions and other creative works; and

WHEREAS, the Originator(s) has/have contributed to the development of Subject Technology;

WHEREAS, the contribution of one or more Originator(s) was made, in whole or in part, while such Originator(s) was/were employed by the University;

WHEREAS, the parties wish to enter into this Agreement to acknowledge any previous assignment of the Subject Technology to UTRF, to assign to UTRF all Subject Technology that has not been previously assigned to UTRF, to provide for the assignment to UTRF of Subject Technology developed after the Effective Date, to provide for the distribution of the Originator(s) Share of UTRF's revenue from commercialization of Subject Technology, and to address certain other matters pertaining to the business relationship among the parties;

WHEREAS, the parties previously entered into a Basic Agreement effective August 17, 2010, and the parties now wish to amend and restate that Basic Agreement and replace it entirely with this Amended and Restated Basic Agreement.

NOW THEREFORE, in consideration of the mutual obligations and upon the terms and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1
ASSIGNMENTS AND REPRESENTATIONS

Section 1.1 The University hereby assigns and agrees to assign to UTRF its entire right, title, and interest throughout the world in and to the Subject Technology.

~~Section 1.1~~ Section 1.2 Each of the Originator(s) hereby assigns and agrees to assign to UTRF such Originator's entire right, title, and interest throughout the world in and to the Subject Technology. The Originator(s) represent and warrant that they are collectively the owners of the entire right, title, and interest in and to the Subject Technology, except: (a) Subject Technology previously assigned to UTRF, such previous assignment(s) being hereby acknowledged and affirmed; and (b) any right, title, or interest in Subject Technology held by the University or by any third party named in the Appendix (Part 5).

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~~Section 1.1~~ Section 1.3 With regard to all copyrighted or copyrightable works included in the Subject Technology, such assignments to UTRF shall include, without limitation, all rights incident to ownership of copyright under the copyright laws of the United States and all other countries, including but not limited to the right to reproduce, distribute, translate, publicly perform or display, and prepare derivative works and the right to cause or allow others to do all of the foregoing. The Originator(s) represent and warrant that such works are the original work of the Originator(s) and, except as set out in the Appendix (Part 5), a valid release, assignment, or license, as appropriate, has been secured from each and every third party whose copyrighted or copyrightable work is included in the Subject Technology.

~~Section 1.1~~ Section 1.4 Each of the Originator(s) represents and warrants that (a) he or she has full power and authority to enter into this Agreement, to make the foregoing assignments, and to carry out the transactions contemplated hereby; and (b) neither the execution and delivery nor the performance of this Agreement by him or her will violate the terms of any agreement, policy, judgment, order or decree to which such Originator is bound.

~~Section 1.1~~ Section 1.5 It is understood and agreed that any rights granted by or to any party by the terms of this Agreement shall be subject to any rights held by the United States government and any restrictions imposed by the laws and regulations of the United States or by any agency thereof.

ARTICLE 2
OBLIGATIONS OF THE ORIGINATOR(S)

Section 2.1 Each of the Originator(s) agrees not to take action inconsistent with this Agreement or in derogation of the rights in the Subject Technology granted to UTRF or by UTRF to a third party.

~~Section 2.1~~ Section 2.2 Each of the Originator(s) agrees (a) to promptly disclose to UTRF in writing all Related Developments as soon as reasonably possible; (b) to provide UTRF at its request all relevant notes, laboratory records, drawings, blueprints and other documents in his or her possession or control pertaining to the Subject Technology; and (c) to make all disclosures and execute any contracts or other documents and to provide any other assistance reasonably requested by UTRF in the patenting, administration, and commercialization of the Subject Technology, in the prosecution, defense, or settlement of any lawsuit, arbitration, mediation, or other proceeding pertaining to the Subject Technology, and in general to effectuate the intent of this Agreement.

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ARTICLE 3 COMMERCIALIZATION OF SUBJECT TECHNOLOGY

Section 3.1 In consideration of the foregoing assignments, UTRF agrees to attempt to commercialize the Subject Technology and to secure revenue therefrom in such manner and in such form as its sole judgment best dictates. In its discretion, UTRF may at any time cease its commercialization efforts for the Subject Technology or any part thereof.

~~Section 3.1~~ Section 3.2 The parties agree, and the Originator(s) hereby specifically consent to, UTRF's exercise of its sole judgment to grant University students access, use, options, licenses, or assignments of Subject Technology ("student access") for purposes of their University course work, for example in connection with a University course on entrepreneurship where the Subject Technology might be the subject of an application for a small business innovation research (SBIR) or small business technology transfer (STTR) grant, or similar effort. The parties recognize that UTRF is authorized by this consent, within its sole discretion, to fix the terms and conditions for such student access on a blanket, scheduled or fixed basis, without regard to the particular actual value or potential for the Subject Technology. Even if no Originator withholds consent, UTRF may unilaterally and in its sole discretion deny student access to Subject Technology. Recognizing the possible advantages and disadvantages to Originator(s), University, UTRF and any involved students of allowing such student access, Originator(s) specifically waive any objection and hereby release UTRF from any claim or cause of action for loss or injury under contract or tort based on any act or omission of UTRF or such students with regard to the adequate, reasonable, prudent or diligent commercialization of the Subject Technology.

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ARTICLE 4 DISTRIBUTION OF THE ORIGINATOR(S) SHARE

Section 4.1 UTRF shall disburse the Originator(s) Share of Revenue as set out in the Appendix (Part 3) subject to the remaining provisions of this Agreement.

~~Section 4.1~~ Section 4.2 Where there are multiple Originators, UTRF may disburse the Originator(s) Share of Revenue in accordance with the percentages set out in the Appendix (Part 3) even though one or more of the Originators may not have contributed to the conception or reduction to practice of the particular part or aspect of Subject Technology that generated the Revenue. In the event the Originator(s) Share of Revenue is reduced as a

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result of any one or more of the Originators' acts or omissions in connection with the commercialization of the Subject Technology (by way of illustration, but not limitation, if an Originator is obligated, but fails, to perform some research or consulting for a third party licensee or assignee of the Subject Technology, which failure causes a reduction of the Originator(s) Share of Revenue), UTRF may unilaterally and in its sole discretion modify this Agreement to reallocate the Originator(s) Share of Revenue to provide all Originators with percentages of the Originator(s) Share that UTRF deems appropriate under the circumstances.

~~Section 4.1~~ Section 4.3 If it is determined by UTRF that an individual who is not named as an Originator under this Agreement has the right to share in Revenue or that an individual who is named as an Originator under this Agreement does not have the right to share in Revenue, UTRF may unilaterally and in its sole discretion modify this Agreement to (a) add (or remove, as the case may be) such individual as an Originator under this Agreement and (b) reallocate the Originator(s) Share in order to provide all Originators and Other Recipients with a percentage of the Originator(s) Share that UTRF deems appropriate under the circumstances. Each of the parties hereby agrees to any increase, decrease, or elimination of such party's share of Revenue resulting from UTRF's reallocation of the Originator(s) Share pursuant to this provision.

~~Section 4.1~~ Section 4.4 If it is determined by UTRF that an Originator or Other Recipient has been overpaid for any reason, UTRF may deduct the over-payment from subsequent payment(s) that may be due to such Originator or Other Recipient.

~~Section 4.1~~ Section 4.5 By execution of this Agreement, each Originator and Other Recipient hereby irrevocably waives all right to receive a portion of the revenue or other proceeds from commercialization or use of Subject Technology by UTRF and/or the University except as provided herein.

~~Section 4.1~~ Section 4.6 Each of the Originator(s) and Other Recipient(s) is responsible for notifying UTRF of his/her/its current address and for updating that information as appropriate. UTRF shall have discharged its obligations to any Originator or Other Recipient if it directs payment to such Originator or Other Recipient at the last address provided to UTRF. If payment is not deliverable to the last address provided, such payment will be held by UTRF and will be available to such Originator or Other Recipient if claimed within one (1) year after the date of UTRF's letter transmitting the original check. After one (1) year, uncashed checks from UTRF to any Originator or Other Recipient shall become void and UTRF's payment obligation to such Originator or Other Recipient shall be discharged. In the event that such Originator or Other Recipient contacts UTRF with a current address after a period in which UTRF had no current address, UTRF shall resume payments to such Originator or Other Recipient, but UTRF is under no obligation to make payments for any prior period during which UTRF had no current address. Email or facsimile contact information does not constitute an address under this paragraph.

ARTICLE 5
PAYMENTS, NOTICES AND OTHER COMMUNICATIONS

Any notice or other communication required or permitted hereunder (hereinafter "notice") shall be in writing and shall be delivered in person or sent by nationally-recognized overnight courier, by certified United States mail, return receipt requested, by email, or by facsimile. Notice shall be deemed given and received five (5) days after being deposited with the U.S. Postal Service certified mail postage prepaid, or upon the date of actual delivery if notice is hand-delivered, or if sent by overnight courier, upon the date of delivery as indicated by the courier's records, or if sent by facsimile or email, upon the date the receiving party acknowledges receipt in writing. All communications shall be sent to a party at such party's address, email, or facsimile number, set forth in the Appendix (Part 1) or at such other address as a party designates by written notice.

ARTICLE 6
INSPECTION OF RECORDS

The Originator(s) and any Other Recipient(s) shall have the right for a period of two (2) years after receiving any payment hereunder to examine and make extracts of books and records maintained by UTRF pertaining to the distribution of revenue from the commercialization of Subject Technology for the sole purpose of verifying the accuracy of such payment, during regular business hours only and not more often than once in any calendar year. The failure of any party to request verification of any payment made during said two (2) year period shall be deemed acceptance of the accuracy of such payment, and UTRF shall have no obligation to maintain any records pertaining to such payment beyond said two (2) year period.

ARTICLE 7
DISPUTE RESOLUTION

Section 7.1 Procedure. Any and all claims, disputes or controversies (hereinafter "dispute(s)") among any Originator(s), Other Recipient(s) and/or UTRF arising under, out of, or in connection with this Agreement shall be resolved by the University pursuant to the provisions of the University's Policy on Patents, Copyrights, and Other Intellectual Property (hereinafter "Policy") currently in effect or as hereafter renamed, substituted, or amended.

~~Section 7.1~~ Section 7.2 Arbitration. Any disputes arising out of or relating to this Agreement that are not resolved by the University pursuant to Article 7.1 above, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitrator shall enforce, and shall have no power to add to, subtract from, or modify any of the terms or conditions of this Agreement, the University's Policy, or UTRF's specific written policies relative to the sharing of income *with* inventors and creators. Judgment upon the award rendered by the arbitrator may be entered in any court having *in personam* and subject matter jurisdiction.

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The provisions of this Article 7.2 shall not apply to the University, and the University shall not be bound by any award rendered as a result of such arbitration.

ARTICLE 8 **GENERAL MATTERS**

Section 8.1 Assignment. Neither this Agreement nor any rights or duties created hereunder may be assigned in whole or in part by any party without the prior written consent of UTRF; provided, however, that any Originator may transfer his or her right to receive payments hereunder to a third party without the consent of UTRF provided that such transfer shall not be effective until such Originator notifies UTRF in writing of the identity and address of the assignee, and further provided that no such assignment shall relieve an Originator of his or her duties and obligations hereunder.

~~Section 8.1~~ Section 8.2 Entire Agreement: No Oral Modification. The parties hereto acknowledge that this Agreement (including the Appendix) sets forth the entire agreement and understanding of the parties as to the subject matter hereof, and supersedes and cancels any prior agreements or understandings between the parties, written or oral, with respect to such subject matter, including specifically, but not by way of limitation, the Basic Agreement previously entered into by the parties effective August 17, 2010 which is replaced by this Amended and Restated Agreement. Except for modifications to this Agreement that UTRF is permitted to make unilaterally, any modifications must be signed by the party(ies) against whom the provision is sought to be enforced.

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~~Section 8.1~~ Section 8.3 Cooperation of the Parties. The parties agree to use their best efforts to cooperate with each other in the further perfection and commercial promotion of the Subject Technology.

~~Section 8.1~~ Section 8.4 Choice of Law. This Agreement is entered into in the State of Tennessee and shall be construed, interpreted, and applied in accordance with the laws of the State of Tennessee without reference to the conflicts-of-law rules of such State.

~~Section 8.1~~ Section 8.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same document.

ARTICLE 9 **DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings set out below. The singular shall be interpreted as including the plural and vice versa, unless the context clearly indicates otherwise.

Section 9.1 "Basic Technology" shall mean (a) all developments, inventions, discoveries, know-how, designs, methods, improvements, technology, products, data, works of authorship, marks, trade secrets, mask works, and derivative works named,

described, illustrated, referenced in, or otherwise attributable to the Disclosure named in the Appendix (Part 2); (b) the Patent Rights; and (c) all copyright, trademark, and other intellectual property rights pertaining thereto.

~~Section 9.1~~ Section 9.2 "**Commercialization Agreement**" shall mean any agreement whereby UTRF is entitled to receive cash and/or Securities as consideration for a grant of rights in the Subject Technology to a third party.

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~~Section 9.1~~ Section 9.3 "**Disclosure**" shall mean (a) a written document submitted to UTRF by UT whereby one or more Originators report the development of one or more inventions or creations and (b) the invention(s) and/or creation(s) reported in such document, as well as any intellectual property rights pertaining thereto.

~~Section 9.1~~ Section 9.4 "**Effective Date**" shall mean October 21, 2009.

~~Section 9.1~~ Section 9.5 "**Expenses**" shall mean attorney fees and other actual out-of-pocket expenses incurred by UTRF before or after the Effective Date, excluding the salary paid to any UTRF staff member. By way of illustration, but not limitation, Expenses may include amounts expended in:

(1) the acquisition and maintenance of intellectual property rights, including but not limited to copyright and trademark registration and the preparation, filing, prosecution, and maintenance of patent rights;

~~(+)~~(2) the negotiation, implementation, monitoring and enforcement of commercialization agreements and other agreements;

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~~(+)~~(3) the prosecution or defense of any lawsuit or participation in any mediation, arbitration, interference or other proceeding;

~~(+)~~(4) research and development, testing, marketing, and general administration;

~~(+)~~(5) compensation of any joint owner, co-inventor, co-author, or other third party who has the right to share in Revenue;

~~(+)~~(6) excise, sales, use, value added and other taxes; delivery charges; and expenses connected with the import and export of goods; and

~~(+)~~(7) the determination, judicial or otherwise, of any issues involving or arising out of this Agreement.

Section 9.6 "**Net Revenue**" shall mean Revenue allocated to commercialization of Subject Technology less Expenses allocated to Subject Technology, provided that:

(A) UTRF may deduct Expenses incurred in the administration or commercialization of one part or aspect of Subject Technology from Revenue generated by another part or aspect of Subject Technology.

~~(A)(B)~~ UTRF may deduct Expenses from Revenue even though such Expenses are incurred after the receipt of Revenue.

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~~(A)(C)~~ When Expenses are expected to exceed Revenue, UTRF may set aside sufficient funds from Revenue to cover those Expenses.

~~(A)(D)~~ Where Revenue is received from a Commercialization Agreement that covers Other Technology as well as Subject Technology, UTRF may allocate Revenue (and the Expenses pertaining to any or all technologies covered by that Commercialization Agreement) between Subject Technology and Other Technology as UTRF deems appropriate under the circumstances. UTRF may set forth in the Appendix (Part 6) the procedure(s) to be used in allocating Revenue and Expenses to Subject Technology under particular Commercialization Agreement(s) (even if not yet finalized), and UTRF may unilaterally modify any such procedure as it deems appropriate.

Section 9.7 "Originator(s) Share" shall have the meaning set forth in the Appendix (Part 3).

~~Section 9.7~~ Section 9.8 "Other Technology" shall mean all developments, inventions, discoveries, know-how, designs, methods, improvements, technology, products, data, works of authorship, marks, trade secrets, mask works, and derivative works other than Subject Technology that are commercialized by UTRF pursuant to a Commercialization Agreement.

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~~Section 9.7~~ Section 9.9 "Patent Rights" shall mean:

(A) any United States or foreign patents and patent applications listed in the Appendix (Part 4);

~~(A)(B)~~ any United States or foreign patent applications not listed in the Appendix (Part 4) that are directed to subject matter included in Subject Technology, and the resulting patents;

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~~(A)(C)~~ any divisionals, renewals, extensions, additions, continuations and continuation-in-part applications directed in whole or in part to subject matter described in any patent or patent application described in paragraph A. or B. above, and the resulting patents;

(A)(D) any patents resulting from reissues or reexaminations of the United States patents described in subparagraph A., B., or C. above; and

(A)(E) any foreign patents resulting from equivalent foreign procedures to United States reissues and reexaminations of the foreign patents described in paragraph A., B., or C. above.

Section 9.10 **"Related Developments"** shall mean inventions, discoveries, know-how, designs, methods, improvements, technology, products, works of authorship, trademarks, trade secrets, mask works and derivative works (collectively referred to as "developments") related to the Basic Technology that (a) were developed, conceived, and/or reduced to practice by one or more Originators prior to the Effective Date in the course of employment by the University and/or with substantial use of University funds or facilities or (b) are developed, conceived, and/or reduced to practice by one or more Originators after the Effective Date in the course of employment by the University and/or with substantial use of University funds or facilities.

~~Section 9.10~~ Section 9.11 **"Revenue"** shall mean UTRF's actual cash revenues from a Commercialization Agreement (including cash revenues from sale of Securities). Revenue shall not include payments to the University or UTRF for support of research and development activities.

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~~Section 9.10~~ Section 9.12 **"Securities"** shall mean all securities of every kind and rights and options with respect thereto, including stock, notes, bonds, debentures, evidences of indebtedness and other equity or debt ownership interests in any partnership, corporation, limited liability company, joint venture, proprietorship or other entity, domestic or foreign, accruing to UTRF's benefit pursuant to a Commercialization Agreement.

~~Section 9.10~~ Section 9.13 **"Subject Technology"** shall mean and include Basic Technology and Related Developments and all intellectual property rights pertaining thereto, including but not limited to patent rights, copyrights, trademarks, trade secrets, and mask work rights.

IN WITNESS WHEREOF, signifying their acceptance of an agreement to be bound by the terms and conditions of this Agreement, the signatures of the parties are affixed hereto.

ATTEST:

**THE UNIVERSITY OF TENNESSEE
RESEARCH FOUNDATION**

Witness

By: _____
Name: _____
Title: _____
Date: _____

THE UNIVERSITY OF TENNESSEE

Witness

By: _____
Name: _____
Title: Vice President
Date: _____

TAMI H. WYATT

Witness

(signature)
Date: _____

MATTHEW A. BELL

Witness

(signature)
Date: _____

CHAYAWAT INDRANOI

Witness

(signature)

Date: _____

XUEPING LI

Witness

(signature)

Date: _____

APPENDIX TO BASIC AGREEMENT

Part 1: Names and Addresses of the Parties

[It is agreed that UTRF may unilaterally modify this Appendix (Part 1) to reflect the addition or deletion of parties in accordance with the terms of this Agreement and to reflect changes in the addresses, emails, and facsimile numbers of the parties as they may designate by written notice to UTRF.]

UTRF:

University of Tennessee Research Foundation
UT Conference Center, Suite 211
600 Henley Street
Knoxville, Tennessee 37996-4122
Email:
Facsimile:

University:

The University of Tennessee
Office of the Vice President for Research
5th Floor, Andy Holt Tower
Knoxville, Tennessee 37996

Originator(s)

Tami H. Wyatt
2535 Coning Road
Maryville, TN 37803

Matthew A. Bell
8919 Maple Ridge Lane
Knoxville, TN 37923

Chayawat Indrani
191 Portland Drive
Lenoir City, TN 37771-6811

Xueping Li
1350 Pershing Hill Ln
Knoxville, TN 37919-0700

Other Recipient(s)

NONE

APPENDIX TO BASIC AGREEMENT

Part 2: Basic Technology

"Basic Technology" means software and all associated content and Intellectual Property developed, conceived, and/or reduced to practice by one or more Originators in the course of employment by University and/or with substantial use of University funds or facilities to support the teaching, testing and assessment of nursing, other health care and veterinary students and professionals relating to their ability to (i) work with eHRs and to access, record and query them, (ii) engage in patient teaching and care planning and mapping in connection with eHRs, and (iii) participate in medical billing and coding in connection with eHRs, as such software exists as of the date of execution of this Agreement, including source code, object code, any related interfaces and workflow tools, all technical, development, operational, end-user, and marketing documentation, third party license rights, dashboards, screen views, what appears to be actual patient health information (but in fact is based on fictional persons with fictional health conditions), database support, stored lists, and business rules.

"eHR" means electronic health or medical records.

"Intellectual Property" means (a) patents, patent applications, inventions and statutory invention registrations, (b) registered trademarks (where the term "trademark" as used in this Agreement includes all trademarks of any type, including service marks, certification marks and all other indicia of source or origin) and applications for same, including all goodwill associated therewith, (c) unregistered copyrights, registered copyrights and applications for same, (d) trade names, logos, common law and unregistered trademarks, Internet domain names, Internet and World Wide Web URLs or address, unregistered works of authorship, (e) computer software, records and data, including business rule data and user interface data, (f) confidential and proprietary information, including trade secrets and know how, and (g) all other intellectual property.

APPENDIX TO BASIC AGREEMENT

Part 3: Distribution of the Originator(s) Share of Revenue

[It is agreed that UTRF may unilaterally modify this Appendix (Part 3) to reflect changes in the distribution of the Originator(s) Share in accordance with the terms of this Agreement.]

The Originator(s) and any Other Recipient(s) as a unit are entitled to receive, as the "Originator(s) Share," fifty percent (50%) of Net Revenue.

UTRF will distribute the Originator(s) Share, if any, not less frequently than once each calendar year as follows:

<u>Originator:</u>	<u>Allotted Percentage of the Originator(s) Share:</u>
Tami H. Wyatt	Twenty-five percent (25%)
Mathew A. Bell	Twenty-five percent (25%)
Chayawat Indranoj	Twenty-five percent (25%)
Xueping Li	Twenty-five percent (25%)

<u>Other Recipient:</u>	<u>Allotted Percentage of the Originator(s) Share:</u>
NONE	NONE

APPENDIX TO BASIC AGREEMENT

Part 4: Patent Rights

[It is agreed that UTRF may unilaterally modify this Appendix (Part 4) to add patent applications and patents, domestic and foreign, that it believes should be included in Patent Rights or to delete patent applications or patents that it believes should not be included in Patent Rights.]

<u>United States Provisional Patent Application(s):</u>	NONE, as of Effective Date
<u>United States Patent Application(s):</u>	NONE, as of Effective Date
<u>United States Patent(s):</u>	NONE, as of Effective Date
<u>Foreign Patent Applications:</u>	NONE, as of Effective Date
<u>Foreign Patents:</u>	NONE, as of Effective Date
<u>Copyright Registration:</u>	NONE, as of Effective Date

APPENDIX TO BASIC AGREEMENT

Part 5: Third Party Rights in Subject Technology

Third parties holding right, title, or interest in the Subject Technology as of the Effective Date:

iCare Academic, LLC (pursuant to Software License between University of Tennessee Research Foundation and iCare Academic, LLC effective January 13, 2010)

APPENDIX TO BASIC AGREEMENT

Part 6: Allocation of Revenue and Expenses to Subject Technology

[It is agreed that UTRF may unilaterally modify this Appendix (Part 6) to reflect changes in the procedure(s) for allocating Revenue and/or Expenses under particular Commercialization Agreement(s) to Subject Technology in accordance with the terms of this Agreement.]