MEMORANDUM OF UNDERSTANDING

Between
Essential Patent Pool for AIDS
And
Company "A"

1 Purpose

1.1 This Memorandum of Agreement (MoU) establishes an agreement between the Essential Patent Pool for AIDS (EPPA), a non-profit corporation established under the laws of ***(Need to designate EPPA country of organization,)*** and Company "A", a corporation established under the laws of _____.

1.2 This arrangement establishes a co-operative agreement between the parties in connection with the licensing of specified patents for the treatment of AIDS held by Company "A" to the EPPA for licensing by EPPA to entities that will deliver essential medical treatments for AIDS to patients in countries not designated as high income by the World Bank.

2 Background

2.1 The global AIDS pandemic is a global public health crisis.

2.2 The licensing of essential patents for the treatment of HIV/AIDS will assist the development and delivery of essential medical treatment and devices for persons suffering from AIDS.

3 Co-operation

3.1 The parties intend to actively maintain a co-operative relationship in order to enhance the efficient and effective delivery of health care for patients with HIV/AIDS.

4 Access to and exchange of information

4.1 The parties intend that each will provide to the other, on request in writing, copies of available information that might assist the other party to carry out its functions.

4.2 The provision of information is subject to statutory provisions as they apply to each agency restricting access to confidential information. To the extent that these statutory provisions allow or require, any confidential information provided under paragraph 4.1 will be provided to the other party on a confidential basis. Each party will keep confidential any such information provided by the other party, and will not release it to any person other than members of its organization who need to know the information for work purposes, except with the agreement of the owner of the information or the written consent of the disclosing party.

4.3 This MoU will not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of any confidential information that is the subject of this MoU.

5 Responsibilities of Company A for Implementation

5.1 Company "A" will provide information on patents on essential medical treatments for AIDS in countries not designated as high income by the World Bank. This information will include at least the following:

i) The owners of the patent,
ii) Relevant contractual obligations regarding the patent licenses,
iii) The countries where the patents are filed,
iv) The title of the patent,
v) The patent number, and
vi) The term of the patent, and other relevant information concerning the legal status of the patent.

5.2 Company "A" will enter into an agreement with the EPPA to allow certain patents identified in 5.1 to be licensed to third parties by the EPPA, according to the following conditions,

i) Any qualified party may use the patents for the manufacture, export, importation, or sale of essential treatments for AIDS within countries not designated as high income by the World Bank.
ii) Remuneration will be paid according to the terms of sections 6 and 7.
iii) Parties will be required to take such steps as are required under section 8 to ensure that products manufactured using such licenses are of acceptable quality.

6 Responsibilities of Essential Patent Pool for AIDS for Implementation

6.1 The EPPA will license the patents identified in paragraph 5.2 to third parties. The licenses will be non-discriminatory "open" licenses available to any qualified person,

for the manufacture, sale, export or import of essential treatments for AIDS solely within countries not designated by the World Bank as high income.

6.2 The EPPA will collect royalties from licenses.

6.3 For products with markets in countries determined by the World Bank to be high income, remuneration for use of relevant patents will be determined by the "Equitable Royalty" (ER) method, and paid quarterly.

6.4 For inventions not used in products with markets in countries determined by the World Bank to be high income, remuneration will be based upon the royalty guidelines published by the Japanese Patent Office (JPO) for the licensing of government owned inventions.

6.5 The EPPA will disperse quarterly royalty funds to Company "A" for utilization of its patents by licensees of the patent pool.

7 Equitable Royalty Method of Remuneration

7.1 The "Equitable Royalty" method is a system of determining equitable remuneration for products based upon the relative therapeutic benefits of products, and the affordability of royalties in countries depending upon average incomes and the extent of HIV/AIDS infection.

7.2 For a product with a market in a country designed as high income by the World Bank, the base royalty will be .04 multiplied by the median price of the product in the following seven high income countries: Canada, Germany, Italy, France, Spain, the United Kingdom and the United States.

7.3 The royalty for sales of a product in a country not designed as high income by the World Bank, that has an HIV/AIDS **infection rate no higher** than the average rate for countries designed as high income, will be calculated as follows. The base royalty, multiplied by the fraction that is the ratio of that country's per capita GDP, divided by the average per capita GDP for all high-income countries. For example, for a product with high income price of $8,000 annually, and a country with a per capita income that is .1 of the average per capita income for high income countries, the annual royalty would be $8,000 x .04 x .1 = $32.

7.4 The royalty for sales of a product in a country not designed as high income by the World Bank, that has an HIV/AIDS **infection rate higher** than the average rate for countries designed as high income, will be calculated as follows. The base royalty, multiplied by the fraction that is the ratio of that country's per GDP per person infected with HIV/AIDS, divided by the average GDP per person infected with HIV/AIDS, for all high-income countries.

8 Multiple inventions in a product.

8.1 When a product consists entirely of multiple patented inventions, the royalties will be allocated among between patent owners according to one of the following methods

i) Upon agreement among the patent owners, or failing agreement among the patent owners, either

ii) Mutually agreed upon arbitration of the dispute, with the costs of arbitration paid by the paid owners, or

iii) According to the recommendation of an expert panel appointed by the EPPA.

8.2 When a product consists of a combination of patented an unpatented inventions, such as a fixed dose combination medicine that combines a patented medicine with an unpatented medicine, the total royalty will be adjusted down to account for the partial patent coverage. For example, in the case of a three drug HAART combination with 2 patented and one unpatented drug, the royalty will be reduced by 1/3.

9 Additional Provisions Regarding Product Quality

9.1 The EPPA and Company A will consult regarding measures that will enhance confidence that products manufactured and distributed under licenses from the EPPA are of acceptable quality.

9.2 The EPPA will withdraw licenses from companies that do not manufacture or distribute products of acceptable quality.

9.3 The EPPA and Company A will work with the World Health Organization, national governments, non-government public health organizations and industry groups to identify mechanism that will ensure product quality.

10 Administration of Agreement

10.1 The co-operative arrangements in this MoU will occur without costs or charges being levied between the parties

10.2 The MoU will come into effect on the day on which it is signed.

10.3 The term of the agreement will be five years from the effective date.

10.4 Any dispute over the terms of the MoU will be resolved by Arbitration under the International Commercial Arbitration and Conciliation rules of UNCITRAL.

10.5 The contact person for each party who is responsible for the administration of this

MoU is:

(Name)_____ (Name)_____

Address)_____ (Address)_____

(Phone)_____ (Phone)_____

(Email)_____ (Email)_____

Signed on this ___ , day of _____ 2005.

(Signature)_____

(Name)_____

(Title)_____

Essential Patent Pool for AIDS

Signed on this ___ , day of _____ 2005.

(Signature)_____

(Name)_____

(Title)_____

Company “A”