THE UNIVERSITY OF MICHIGAN

REGENTS COMMUNICATION

Approved by the Regents
October 20, 2006

ACTION REQUEST

Subject: Option Agreement between the University of Michigan and Acera, Inc.

Action Requested: Approval of Option Agreement

Preamble:

A statutory conflict of interest situation was identified by the Office of Technology Transfer while reviewing the technology transfer agreement which then triggered a review by the OVPR Conflict of Interest Review Committee. A plan for management of the possible risks associated with the conflict of interest was then developed by the Committee and agreed to by the parties involved.

This proposed option agreement ("Agreement") falls under the State of Michigan Conflict of Interest Statute because Professor David Sherman is both an employee of the University of Michigan ("University") and a partial owner of Acera. The law permits such an Agreement provided it is disclosed to the executive officers and approved in advance by a 2/3 vote of the Regents of the University of Michigan.

Background:

Dr. David Sherman, the John G Searle Professor of Medicinal Chemistry, is the partial owner of a for-profit company called Acera. Acera was formed to commercialize certain antibiotic therapeutic technologies and desires to option the following technology from the University:

> UM File No. 2863, entitled: "Nucleic Acids and Polypeptides Involved in the Production of Cryptophycin" (Sherman, Zachary Beck)
>
> UM File No. 3487, entitled: "Cryptophycin Biosynthetic Cluster DNA and Cryptophycin Epoxidase" (Sherman, Beck Yousong Ding)

Parties to the Agreement:

The Regents of the University of Michigan and Acera

Option Terms:

Option terms include giving Acera an exclusive option with the right to obtain an exclusive license with the right to grant sublicenses. Acera will pay an option fee and reimburse patent costs. The University will retain ownership of the optioned technology and may continue to further develop it and use it internally. No use of University services or facilities, nor any assignment of University employees, is obligated or contemplated under the agreement. Standard disclaimers of warrantees and indemnification apply, and the contract may be amended by consent of the parties. University procedures for approval of the changes will be followed and additional conflict of interest review will be done as appropriate.

Pecuniary Interest:

The pecuniary interests of Dr. Sherman arises from his ownership interest in Acera.

Net Effect:

The Office of Technology Transfer has negotiated and finalized the terms of an exclusive option agreement for patents related to UM OTT File Nos. 2863 and 3487 for the fields of use of therapeutics.

Acera will evaluate the above-referenced technology in order to determine if it wishes to obtain a license.

Recommendations:

This matter has been reviewed and approved by the OVPR Conflict of Interest Review Committee. In light of this disclosure and our finding that the Agreement was negotiated in conformance with standard University practices, I recommend that the Board of Regents approve the Option Agreement between the University and Acera.

Respectfully Submitted,

Stephen R. Forrest
Vice President for Research

October 2006