

1 Amend 17 Cal. Code of Regs. section 100306 to read:

2 **§ 100306. Licensing CIRM-Funded Patented Inventions.**

3 (a) A Grantee Organization shall assume responsibility for licensing activities including  
4 identification of potential licensees, negotiation of license agreements and documentation of  
5 development progress for licenses relating to CIRM-funded patented inventions. In licensing  
6 CIRM-funded patented inventions, a Grantee Organizations agrees that it shall retain the right to  
7 practice the use of its CIRM-funded patented inventions for its non-commercial purposes. A  
8 Grantee Organization agrees to make its CIRM-funded patented inventions readily accessible on  
9 reasonable terms, directly or through a licensee or licensees, to other Grantee Organizations for  
10 non-commercial purposes, upon request from a Grantee Organization. Grantee organizations are  
11 required to submit an Invention Utilization Report relevant to CIRM-funded patented inventions  
12 on an annual basis.

13 (b) Grantee organizations shall negotiate non-exclusive licenses of CIRM-funded  
14 inventions whenever possible. Nevertheless, grantee organizations may negotiate and award  
15 exclusive licenses for CIRM-funded inventions if such licenses are necessary to provide  
16 economic incentives required to enable commercial development and availability of the  
17 inventions. In due diligence relating to such exclusive licenses, grantee organizations shall  
18 document development and commercialization capabilities of the intended licensee, and include  
19 terms in the license agreement addressing all relevant therapeutic and diagnostic uses for which  
20 the invention is applicable and the licensee agrees to diligently develop.

21 (c) In exclusive license agreements, grantee organizations shall include terms for  
22 commercial development plans to bring the invention to practical application. Such provisions

1 shall include commercial development milestones and benchmarks so that development can be  
2 assessed and monitored.

3 (d) Grantee organizations shall grant exclusive licenses involving CIRM-funded patented  
4 inventions relevant to therapies and diagnostics only to persons that agree to have a plan in place  
5 at the time of commercialization to provide access to resultant therapies and diagnostics for  
6 uninsured California patients. In addition, such licensees will agree to provide drugs at prices  
7 negotiated pursuant to the California Discount Prescription Drug Program (commencing with  
8 California Health and Safety Code section 130500, et seq.) to eligible Californians under that  
9 program. This regulation is not intended, and this regulation shall not be construed, to preempt  
10 any other requirement under state or federal law or regulation that would otherwise require  
11 provision of drugs at a lower price than provided hereunder. The CIRM may make access plans  
12 available for review by the ICOC on an annual basis by the provisions of Title 17,  
13 California Code of Regulations, section 100407.

14 (e) Grantee organizations shall monitor the performance of exclusive licensees of CIRM-  
15 funded patented inventions to ensure that the licensed invention is developed in a timely fashion.  
16 Remedies for failure to develop may include modification or termination of a license by the  
17 grantee in the event that a licensee is unable to fully develop the rights granted.

18 (f) Grantee organizations shall negotiate relevant and specific grounds for modification  
19 or termination of the license. Examples would include failure to meet agreed-upon  
20 commercialization benchmarks, failure to keep the licensed invention reasonably accessible to  
21 the public for research purposes, and failure to reasonably meet the agreed-upon plan for access  
22 to resultant therapies as described in subdivision (d) of this regulation.

1           (g) Grantee organizations shall monitor the commercial development activities of the  
2 licensees to determine compliance with the terms of the license agreement and include reports of  
3 monitoring activities annually to the CIRM.

4           (h) Grantee organizations shall take administrative action to modify or terminate license  
5 rights where necessary and report such action to the CIRM.

6 Note: Authority cited: California Constitution, article XXXV; Section 125290.40, subd.(j),  
7 Health and Safety Code.

8 Reference: Section 125290.30, Health and Safety Code.

1 Amend 17 Cal. Code of Regs. section 100308 to read:

2 **§ 100308. Revenue Sharing.**

3 (a) Grantee organizations shall share a fraction of any net revenues with the inventor(s) in  
4 accordance with their established policies. Net revenues are defined as gross revenues minus the  
5 direct costs incurred in the generation and protection of the patents from which the revenues are  
6 received.

7 (b) The grantee organization may retain a threshold amount of its share (after payments  
8 to inventors) of any net revenues received under a license agreement or agreements of any  
9 CIRM-funded patented invention(s). Thereafter, the grantee organization shall pay 25% of its  
10 share after payments to inventors of such net revenues to the State of California for deposit into  
11 the State's General Fund unless such action violates any federal law. The threshold amount is  
12 \$500,000 (in the aggregate) multiplied by a fraction, the denominator of which is the Consumer  
13 Price Index, All Urban Consumers, All Items (San Francisco-Oakland-San Jose; 1982-84=100)  
14 as prepared by the Bureau of Labor Statistics of the United States Department of Labor and  
15 published for the month of February, 2006, and the numerator of which is such Index published  
16 for the month in which the grant award is accepted by the grantee.

17 (c) If funding sources in addition to CIRM were used in the creation of a CIRM-funded  
18 patented invention, the return to the State of California of any resultant revenues shall be

19 proportionate to the support provided by CIRM for the discovery of the invention as follows:

20 The amount of CIRM funding of the patented invention shall be divided by the total of funding  
21 provided by all sources, and that fraction shall be multiplied by 25. That numeral is the  
22 percentage due to the State of California of the revenue received by the grantee.

- 1 (d) Grantees shall apply the grantee organization's share of any revenues earned as a
- 2 result of CIRM-funded patented inventions to the support of scientific research or education.
- 3 Note: Authority cited: Article XXXV, California Constitution; Section 125290.40(j), Health and
- 4 Safety Code. Reference: Section 125290.30, Health and Safety Code.