

EXHIBIT “A”

FOR SETTLEMENT PURPOSES ONLY; SUBJECT TO FRE 408

Execution Version (CoMentis)

SETTLEMENT, RELEASE AND LICENSE AGREEMENT

This SETTLEMENT, RELEASE AND LICENSE AGREEMENT (the "Agreement") is made and entered into as of April 3, 2012 (the "Effective Date") by and between:

University of South Florida Board of Trustees, a member institution of the State University System of Florida, with a place of business at 4202 E. Fowler Avenue, Tampa, FL 33620 ("USF");

and

CoMentis, Inc., a Delaware corporation, with its principal place of business at 280 Utah Avenue, Suite 275, South San Francisco, CA, 94080 ("Licensee"),

(USF and Licensee are collectively referred to as the "Parties," and each, a "Party").

WHEREAS, Alzheimer's Institute of America, Inc. ("AIA") has commenced actions against various defendants as detailed below:

Alzheimer's Institute of America, Inc. v. Elan Pharmaceuticals, Inc. and Eli Lilly and Company, Case No. 3:10-cv-00482-EDL, pending in U.S. District Court for the Northern District of California, wherein AIA has asserted against Elan and Lilly four patents: U.S. Patent No. 5,455,169; U.S. Patent No. 5,795,963; U.S. Patent No. 6,818,448; and U.S. Patent No. 7,538,258, for each of which Michael J. Mullan is the named inventor (the "California Action");

Alzheimer's Institute of America v. CoMentis, Inc. and Oklahoma Medical Research Foundation, Case No. CIV-09-1366-F, pending in U.S. District Court for the Western District of Oklahoma, wherein AIA has asserted against CoMentis and OMRF three patents: U.S. Patent No. 5,455,169; U.S. Patent No. 5,795,963; and U.S. Patent No. 6,818,448, for each of which Michael J. Mullan is the named inventor (the "Oklahoma Action"); and

Alzheimer's Institute of America, Inc. v. Avid Radiopharmaceuticals and the Trustees of the University of Pennsylvania, Case No. 2:10-cv-06908-TJS, pending in the U.S. District Court for the Eastern District of Pennsylvania, wherein AIA has asserted against Avid and Penn two patents: U.S. Patent No. 5,455,169; and U.S. Patent No. 7,538,258, for each of which Michael J. Mullan is the named inventor (the "Pennsylvania Action"),

(the California Action, Oklahoma Action and Pennsylvania Action are collectively referred to as the "Actions", and the four United States Patents asserted by AIA, namely, U.S. Patent No. 5,455,169, U.S. Patent No. 5,795,963, U.S. Patent No. 6,818,448, and U.S. Patent No. 7,538,258 are collectively referred to as the "Asserted Patents");

WHEREAS, USF has claimed ownership of the Asserted Patents and has intervened in the Pennsylvania Action;

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WHEREAS, Licensee (together with each of the other defendants) disputes that the Claimed USF Patents are valid, enforceable and/or infringed and denies that Licensee has any liability to AIA, and correspondingly to USF, for the claims alleged in the relevant Action, or that Licensee has harmed AIA, and correspondingly USF, in any way; and

WHEREAS, to avoid the expense, inconvenience, and uncertainty of further litigation, and in consideration of certain business decisions and objectives, USF on the one hand and the Licensee on the other hand, have each decided to enter into this Agreement to finally settle, release and compromise the claims and disputes between them.

NOW, THEREFORE, in consideration of the good and valuable consideration set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

1.1 **"USF Licensed Patents"** means (a) U.S. Patents Nos. 5,455,169; 5,795,963; 6,818,448; and 7,538,258 (i.e. the Asserted Patents); (b) any patent applications to which any of the foregoing patents claim priority and (c) any other patents and patent applications throughout the world of any kind (including, without limitation, any reissue, extension, provisional, continuation, continuation-in-part, divisional, or reexamination of any of the foregoing) claiming priority to any of the patents and patent applications of clause 1.1(a) and (b).

1.2 **"Licensed Products"** means any past, present or future drug, therapeutic, prophylactic, medical device, diagnostic, assay, animal or other model, service, technology, system, apparatus, or other product the manufacture, use, sale, offer for sale, import, export, supply, development, distribution, purchase, provision, or other exploitation, disposition of, or commercialization of which would, in the absence of the license, covenants, and releases granted in this Agreement, infringe (directly or indirectly) any claim of a USF Licensed Patent, and any method, functionality or process the performance, practice, or use of which by or for Licensee, any of its Affiliates, or any of their respective Related Beneficiaries would, in the absence of the license, covenants, and releases granted in this Agreement, infringe (directly or indirectly) any claim of a USF Licensed Patent.

1.3 **"Person"** means an individual, trust, corporation, partnership, joint venture, limited liability company, association, unincorporated organization, or other legal or governmental entity.

1.4 **"Related Beneficiary"** with respect to any Party or its Affiliates, means any one or more Persons that, now or in the past or in the future, (a) are customers or clients of such Party or its Affiliates with respect to any Licensed Products of such Party or its Affiliates, (b) are third-party sellers of such Party or its Affiliates that utilize a service of such Party or its Affiliates to sell Licensed Products, or (c) act on behalf of such Party or its Affiliates in (i) making, using, selling, importing, exporting, supplying, distributing, providing, or transmitting Licensed Products of such Party or its Affiliates; (ii) providing services to or for such Party or its Affiliates with respect to Licensed Products of such Party or its Affiliates; (iii) developing technology for such Party or its Affiliates for use in connection with Licensed Products of such Party or its Affiliates; or (iv) reselling or redistributing Licensed Products of such Party or its Affiliates, including but not

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limited to any direct or indirect reseller, distributor, client or customer of such Party or its Affiliates. Any such Person constitutes a Related Beneficiary of a Party or its Affiliates only to the extent that it is engaged (and in its capacity of engaging) in the activities described in clause (a), (b) or (c) above to or for such Party or its Affiliates with respect to Licensed Products, and not otherwise.

1.5 "Affiliate" means, as to a subject Person, any other Person controlled by, controlling or under common control with such subject Person, whether now or in the future, provided that (a) any such other Person shall constitute an Affiliate only when and for so long as such control exists, and (b) any such other Person shall have the benefits of this Agreement only if it is bound by the terms and conditions of this Agreement to the same extent as the Party of which it is an Affiliate. For purposes of the foregoing, "control" (including, with correlative meaning, "controlled by," "controlling," etc.) as to an entity means the power, whether or not normally exercised, to direct the management and affairs of such entity, directly or indirectly, whether through ownership of voting shares, contract, or otherwise. Direct or indirect ownership of more than fifty percent (50%) of the outstanding voting shares of a corporation or, in the case of a non-corporate entity, equivalent interests shall be deemed to confer control (provided that, for avoidance of doubt, such ownership shall not be the sole criterion for determining what constitutes control).

2. **Settlement Payments.** In consideration of the releases, covenants, licenses, and other rights provided hereunder, Licensee shall pay to USF the Guaranteed Payment as specified below. Licensee shall also pay USF the Contingent Payment as specified below if the Contingency occurs.

(a) **Guaranteed Payment.** Within thirty (30) days after the Effective Date, Licensee shall pay to USF the one-time, non-refundable payment in the amount of [REDACTED] (the "Guaranteed Payment").

(b) **Contingent Payment.** Within thirty (30) days after the date USF has notified Licensee in writing that: (i) by order of a court of competent jurisdiction binding upon AIA and from which no further appeal or challenge may be taken, it has been determined that USF did not waive its ownership interests in the Asserted Patents and has held at all material times a valid ownership interest in said patents; or (ii) by consent judgment entered by USF and AIA in a court of competent jurisdiction (and binding upon AIA and from which no further appeal or challenge may be taken), it has been agreed and adjudged that (1) USF did not waive its ownership interests in the Asserted Patents and has held at all material times a valid ownership interest in said patents, and (2) each of the Actions has been dismissed with prejudice to AIA (the events in the foregoing clause (i) or the events in the foregoing clause (ii) each separately comprise the "Contingency"), Licensee shall pay to USF the one-time, non-refundable payment in the amount of [REDACTED] (the "Contingent Payment");

The Guaranteed Payment and the Contingent Payment (if any) (together, the "Payments") shall be made by wire transfer of immediately available funds to the bank account designated by USF in writing to Licensee. In the event that the Contingency has not been fully satisfied, the Contingent Payment shall not be owing, due or payable. Further, Licensee shall have no obligation to pay any amount in excess of the amounts expressly set forth in this Section 2.

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3. **Licenses.**

3.1 **Grant.** USF hereby grants to Licensee, its Affiliates and their respective Related Beneficiaries, an irrevocable, perpetual, royalty-free, non-exclusive license under the USF Licensed Patents to make, have made, use, sell, offer for sale, import, export, supply, develop, distribute, purchase, provide, or otherwise exploit, dispose of, or commercialize Licensed Products, and to use, practice and exploit any method, process or functionality in connection therewith, without restriction. This grant conveys with it forgiveness for any infringement of any claim of a USF Licensed Patent by Licensee, its Affiliates or their respective Related Beneficiaries prior to the Effective Date of this Agreement that may have occurred, individually or collectively, from the beginning of time. Licensee shall be entitled to extend the benefit of the foregoing licenses, by way of a sublicense through multiple tiers or by other written authorization, to each of the Licensee's respective manufacturers, suppliers, development and commercialization consultants, research collaboration and commercialization partners, and to any party to whom Licensee has sold an ownership interest in assets that include Licensed Products or any rights in a program to research, develop and commercialize Licensed Products in connection with the exercise of the rights under the foregoing license.

3.2 **Retained Rights.** The license and forgiveness conveyed herewith is non-exclusive. To avoid any confusion whatsoever, USF retains the right to practice USF Licensed Patents and both the license and forgiveness conveyed herewith are transferable and sublicenseable only in accordance with the terms set forth herein. USF retains all rights to enforce or further license USF Licensed Patents, and as well as the right to practice USF Licensed Patents itself.

3.3 **Product Liability.** Licensee shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold USF and its trustees, officers, employees and affiliates, harmless against all claims and expenses, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever, resulting from any of Licensee's production, manufacture, use, lease, consumption or advertisement of Licensee's own Licensed Products commercialized by or for Licensee in connection with the licenses granted herein.

3.4 **WARRANTY AND WARRANTY DISCLAIMER.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, USF MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND VALIDITY OF CLAIMS, ISSUED OR PENDING, IN RESPECT OF THE USF LICENSED PATENTS.

3.5 **Non-Use of Names.** Neither Party shall use the name of the other Party, nor of any of the other Party's employees, nor any adaptation thereof, in any advertising, promotional, or sales literature without prior written consent obtained from the other Party in each case, except that each Party may state that Licensee has a license granted by USF under one or more of the patents and patent applications comprising the USF Licensed Patents.

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3.6 Export Controls. It is understood that USF is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by Licensee that Licensee shall not export data or commodities to certain foreign countries without prior approval of such agency. USF neither represents that an export license shall be required, nor that, if required, an export license shall be issued.

4. Covenants.

4.1 USF Covenant. USF, on behalf of itself and its Affiliates hereby agrees not to bring, cause to be brought or threaten to bring against Licensee, any of its Affiliates or any of their respective Related Beneficiaries any claim, action or proceeding alleging that any making, using, selling, offering for sale, importing, exporting, supplying, developing, distributing, purchasing, providing or otherwise exploiting, disposing or commercializing any Licensed Product, or practicing or using any method, process or functionality in connection therewith infringes any USF Licensed Patents. USF does not by this covenant agree to waive its rights to assert against Licensee any of its intellectual property rights other than the USF Licensed Patents.

4.2 Successors. The covenants in the foregoing Section 4.1 shall be binding on successors in interest to, all transferees or assignees of, and any exclusive licensee of any USF Licensed Patents, or any rights granted in any USF Licensed Patents. USF agrees to inform all such successors in interest, transferees, assignees and licensees of such covenants and to obtain their written consent to be bound by such covenants. For clarity, any Related Beneficiary shall be regarded as an intended third party beneficiary of these covenants with the full right to enforce these covenants against USF.

5. Releases.

5.1 By USF. USF, on behalf of itself and its Affiliates, hereby forever releases Licensee and its Affiliates, together with their respective officers, directors, trustees, faculty, students, employees and agents, of and from: (a) any and all manner of causes of action and claims (together with related liabilities, costs and expenses, including attorneys' fees) for infringement of any claim of a USF Licensed Patent based on any acts or omissions occurring before the Effective Date; and (b) any and all manner of causes of action and claims (together with related liabilities, costs and expenses, including attorneys' fees) (i) asserted by AIA (and that USF may become entitled to bring in place of AIA after the Contingency has been established) in the Actions, and (ii) that are based on acts or omissions occurring before the Effective Date which would have been licensed under this Agreement had they occurred after the Effective Date. The releases set forth in this Section 5.1 shall extend to Related Beneficiaries of Licensee or its Affiliates for acts and omissions of such Related Beneficiaries occurring before the Effective Date that would have been immunized had they occurred after the Effective Date.

5.2 Exception. The foregoing releases do not apply with respect to any causes of action or claims relating to enforcement of this Agreement.

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5.3 Waiver. The release provided for in this Agreement applies to claims whether they are known or unknown. In this regard, each Party shall be deemed expressly to have waived and relinquished: (a) the provisions, rights and benefits conferred by California Civil Code § 1542, which reads:

“§1542. General Release - Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;”

and (b) any law of any state or territory of the United States, federal law, or principle of common law, or of international or foreign law which is similar, comparable, or equivalent to § 1542 of the California Civil Code.

6. Term & Termination.

6.1 Term. This Agreement shall become effective on the Effective Date and shall continue in full force and effect until expiration of the last of the USF Licensed Patents; provided, however, that the effectiveness of the license granted herein shall be suspended during the pendency of any material payment default by Licensee. For purposes of clarity, the Parties agree that expiration of this Agreement pursuant to this Section 6.1 shall not affect the obligation of Licensee to make the Contingent Payment set forth in Section 2(b), in the event the Contingency therein set forth does occur but not until after such expiration of this Agreement. Further, expiration of this Agreement shall not in any way affect the validity or enforceability of the rights and benefits conferred hereunder, including but not limited to the payments, licenses, covenants and releases set forth herein.

6.2 Termination. At any time prior to payment of the Contingent Payment, USF shall have the right to terminate this Agreement in the event that (a) Licensee shall file in any court, pursuant to any statute either of the United States or any state, a petition in bankruptcy, insolvency or for the appointment of a receiver or trustee of all or substantially all of Licensee's property, or if Licensee shall make an assignment for the benefit of creditors, or if Licensee shall commit any other affirmative act of insolvency; or (b) if there shall be filed against Licensee in any court, pursuant to any statute either of the United States or any state, an involuntary petition in bankruptcy or insolvency or for reorganization, or if there shall be involuntarily appointed a receiver or trustee of all or substantially all of Licensee's property, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within one hundred twenty (120) days of the date of the filing or the appointment.

7. Confidentiality.

7.1 No Party shall disclose the specific terms and conditions of the Agreement, including the financial terms, except (a) with the prior written consent of the other Party; (b) to any court or governmental body having jurisdiction and specifically requiring such disclosure; (c) in response to a valid subpoena or as otherwise may be required by law; (d) to satisfy disclosure requirements in connection with the Securities and Exchange Act of 1934, as amended, the Securities Act of 1933, as amended, and any other reports required to be filed with the Securities

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and Exchange Commission, or any other filings, reports or disclosures that may be required under applicable laws or regulations; (e) to a Party's accountants, legal counsel, tax advisors, and other financial and legal advisors, only as necessary, subject to obligations of confidentiality at least as stringent as those contained herein; (f) as required by a court of competent jurisdiction during the course of litigation or other legal proceeding; (g) with obligations of confidentiality at least as stringent as those contained herein, to a counterparty in connection with a proposed merger, acquisition, financing, collaboration, or similar transaction or a proposed license, sale, or transfer of rights with respect to patents or patent applications subject to this Agreement; (h) with obligations of confidentiality at least as stringent as those contained herein, to a customer, supplier or service provider of those terms related to the effect of this Agreement on such customer, supplier, or service provider; or (i) as necessary for a Party to file this Agreement portions thereof with regulatory agencies (e.g., U.S. PTO or foreign equivalents), as reasonably necessary to enjoy the benefits of the licenses, releases, covenants and other rights granted herein (e.g., by way of example only, against *bona fide* purchasers of the Asserted Patents); provided, however, that (i) the Party making or seeking any disclosure shall take commercially reasonable actions to minimize the nature and extent of such disclosure, by, among other things, the use of non-disclosure agreements; and (ii) prior to any disclosure pursuant to clause (b), (c), (d), or (f), the Party seeking to make any such disclosure shall provide reasonable advance written notice to the other Party, if practicable under the circumstances, and shall take commercially reasonable actions to minimize the nature and extent of such disclosure by, among other things, seeking confidential treatment of the Agreement and seeking a protective order that limits disclosure to "Attorneys' Eyes Only." Where a disclosure is nevertheless made, the Party shall further take commercially reasonable actions not to disclose, if possible, the amount of the Payments as part of the disclosure.

7.2 Notwithstanding the foregoing, a Party may state (publicly or otherwise) that USF and Licensee have entered into a settlement and release and a license of the USF Licensed Patents. Such statement shall in any event not disclose the financial terms of this Agreement. Further, notwithstanding the foregoing, the Parties acknowledge and agree that Licensee and USF have disclosed and are permitted to disclose the terms of the respective agreements reached by USF with each of the defendants in the Actions.

8. Miscellaneous.

8.1 Licensee may not assign this Agreement or any of its rights hereunder, whether voluntarily, by operation of law, or otherwise, without the prior written consent of USF, except that, Licensee may assign this Agreement, together with all of its rights hereunder, without such prior written consent in connection with (a) a sale, assignment, transfer, or other disposition of all or a substantial portion of the assets of Licensee to which this Agreement relates; (b) a merger, consolidation, reorganization, or business combination involving Licensee or all or a substantial portion of the assets of Licensee to which this Agreement relates; or (c) the acquisition by a Person or related group of beneficial ownership of more than fifty percent (50%) of the outstanding voting shares of Licensee or equivalent interests or similar transaction or series of transactions by which a Person or Persons come to control or be under common control with such Party. Any assignment of this Agreement or rights hereunder inconsistent with the foregoing shall be void. This Agreement shall bind and, subject to the foregoing, shall inure to the benefit of each Party and its respective successors and assigns. USF may assign, license or otherwise transfer any patent

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subject to this Agreement, provided that the transferee (i.e. the third party to whom USF assigns, licenses, or otherwise transfers such patent) agrees to be bound by this Agreement.

8.2 Neither the execution nor the performance of any term of this Agreement shall constitute or be construed as an admission of any liability whatsoever by Licensee for any alleged infringement, wrongdoing, or improper conduct. Licensee has consistently taken the position that it has no liability and will incur no liability in connection with the Actions, or any claims that USF could have asserted in the Actions. This Agreement is intended to avoid the expense, inconvenience, and uncertainty of further litigation, and to account for various business interests and considerations. Nothing in this Agreement shall be construed as a warranty, representation, or admission by Licensee as to the scope, validity, enforceability, or value of the USF Licensed Patents, and Licensee expressly reserve the right to challenge validity, enforceability, and any infringement allegation in any later lawsuit or other legal or administrative proceeding involving the USF Licensed Patents.

8.3 This Agreement (including any attachments hereto) constitutes an integrated agreement and represents the exclusive and entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous understandings and agreements of any kind, as well as all negotiations and discussions among the Parties and/or their respective legal counsel with respect to the subject matter covered hereby. No other covenants, conditions, representations, warranties, or other agreements, express or implied, oral or written, have been made by any of the Parties concerning the subject matter hereof, and each Party acknowledges that, in entering into this Agreement, it is not relying on any covenants, conditions, representations, warranties, or other agreements except as expressly set forth herein.

8.4 Any amendment to this Agreement must be in writing and signed by a duly authorized representative of the Party against which enforcement is sought and must expressly state that it is the intention of such Party to amend this Agreement. No amendment to this Agreement shall apply to, or be effective as against, any Party that did not expressly agree to such amendment in writing. No breach of any provision of this Agreement shall be deemed waived unless the waiver is in a writing signed by a duly authorized representative of the waiving Party. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

8.5 This Agreement shall be governed by and construed and interpreted in accordance with, and all disputes hereunder or relating hereto shall be resolved in accordance with, the substantive internal laws of the State of Florida (together with the applicable federal laws of the United States), without regard to any conflicts of laws rules that may otherwise require the application of the laws of any other state or jurisdiction. The Parties consent to exclusive jurisdiction and venue for any claim relating to this Agreement, including any claim for enforcement of this Agreement or any claim arising out of a breach of this Agreement, in United States District Court for the Middle District of Florida (or, if and only if such Court does not have jurisdiction, the state courts of the State of Florida).

8.6 This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on

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each of the undersigned Parties. Delivery of a signed execution page by PDF file via email or facsimile, with acknowledgement of receipt, shall be acceptable as proof of execution.

8.7 All notices, demands, or other communications regarding this Agreement shall be in writing and shall be hand delivered or sent by prepaid air courier with package tracking capabilities (postage prepaid), addressed as follows (or at such other address that each Party may from time to time specify in a written notice):

If to USF:

University of South Florida Board of Trustees
4202 E. Fowler Avenue
Tampa, FL 33620
Attention: General Counsel

If to Licensee:

CoMentis, Inc.
280 Utah Avenue, Suite 275,
South San Francisco, CA, 94080
Attention: General Counsel

8.8 Each Party acknowledges it has had the opportunity to obtain independent legal advice with respect to the advisability of entering into this Agreement and each executes this Agreement based upon the advice of counsel.

8.9 If any provision of the Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of the Agreement will continue in full force and effect and will remain enforceable. The Parties affected by any such holding of illegality or unenforceability agree to negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent of such provision.

8.10 This Agreement shall be construed as if the Parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against either Party because of the manner in which this Agreement, or any provision hereof, was drafted or prepared. Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in any gender (including the neuter) shall extend to and include all genders (including the neuter). Unless otherwise specifically stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section or paragraph. The captions and article and section headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.