SAMPLE
NON-EXCLUSIVE LICENSE AGREEMENT FOR [*SOFTWARE NAME*]*

This non-exclusive license agreement ("AGREEMENT") is effective on [***DATE***] ("Effective Date"), and is by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, whose legal address is 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200, acting through its Office of Technology Licensing, at the University of California, Berkeley, 2150 Shattuck Avenue, Suite 408, Berkeley, CA 94704-1362 ("REGENTS") and [***LICENSEE name***], a [***State of incorporation***] corporation having a principal place of business at [***LICENSEE address***] ("LICENSEE"). The parties agree as follows:

1. BACKGROUND

1.1 REGENTS has an assignment of the software titled [***SOFTWARE NAME***], as described in REGENTS' Case No. [***BK-XXXX-XXX***]) including all intellectual property rights therein (the "SOFTWARE"). The SOFTWARE was made in the course of research at the University of California, Berkeley by [***Authors' NAMES***].

1.2 REGENTS and LICENSEE wish to have the SOFTWARE commercialized and marketed as soon as possible so that the resulting products may be available for public use and benefit.

1.3 LICENSEE is desirous of obtaining a license to the SOFTWARE for commercial purposes.

1.4 LICENSEE has provided REGENTS with a commercialization plan for the SOFTWARE in order to evaluate its capabilities as a LICENSEE.

2. DEFINITIONS

2.1 "AFFILIATE" means any entity which, directly or indirectly, CONTROLS LICENSEE, is CONTROLLED by LICENSEE, or is under common CONTROL with LICENSEE. "CONTROL" means (i) having the actual, present capacity to elect a majority of the directors, or the power to direct greater than fifty percent (50%) of the voting rights entitled to elect directors, of such entity; or (ii) in any country where the local law will not permit foreign equity participation of a majority, the ownership or control (directly or indirectly) of the maximum percentage of such outstanding stock or voting rights permitted by local law. For clarity, an entity will be deemed an AFFILIATE of LICENSEE solely for the term during which it satisfies the foregoing definition.

2.2 "CHANGE of CONTROL" means (i) a consolidation, acquisition or merger of the LICENSEE with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, acquisition, merger or reorganization in which the shares of capital stock of the LICENSEE immediately prior to such consolidation, acquisition, merger or reorganization continue to represent a

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* The license agreement will not be limited to the provisions of this Sample License Agreement, and may include other provisions as appropriate on a case by case basis, such as provisions required for inventions arising from Howard Hughes Medical Institute appointees, and the like.

majority of the voting power of the surviving entity immediately after such consolidation, acquisition, merger or reorganization; (ii) any transaction or series of related transactions to which the LICENSEE is a party in which in excess of 50% of the LICENSEE's voting power is transferred; or (iii) the sale or transfer of all or substantially all of the LICENSEE's assets, or the exclusive license of all or substantially all of the LICENSEE's intellectual property; provided that a CHANGE of CONTROL shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the LICENSEE or any successor, indebtedness of the LICENSEE is cancelled or converted, or a combination thereof.

2.3 "DERIVATIVE WORK(S)" means any revision, enhancement, modification, translation, abridgement, condensation, or expansion created by LICENSEE that is based upon the SOFTWARE or a portion thereof that would be a copyright infringement if prepared without the authorization of the copyright owners of the SOFTWARE or portion thereof or that otherwise is considered a DERIVATIVE WORK as defined in 17 U.S.C. § 101.

2.4 "LICENSED FIELD OF USE" means [***TBD***].

2.5 "LICENSED PRODUCTS" means the SOFTWARE [***If applicable, "and DERIVATIVE WORKS"]*** covered by REGENTS' COPYRIGHT RIGHTS or any product whose creation, use, manufacture, performance, production, reproduction, display, distribution, import, offer for sale or sale would, absent the license granted under this AGREEMENT, constitute an infringement, inducement of infringement, or contributory infringement, of any work covered within REGENTS' COPYRIGHT RIGHTS. If the LICENSED PRODUCT is a component of another product or work, such product or work is deemed to be the LICENSED PRODUCT for purposes of this AGREEMENT.

2.6 "LICENSED SERVICE" means a service provided using a LICENSED PRODUCT.

2.7 "LICENSED TERRITORY" means the United States of America, its territories and possessions, and any foreign countries where REGENTS' COPYRIGHT RIGHTS are licensed to LICENSEE under this AGREEMENT.

2.8 "NET SALES" means the total amount invoiced or otherwise charged (including fair market value of any non-cash consideration) by LICENSEE on the SALE, lease, provision, transfer, or other disposition of a LICENSED PRODUCT after deduction of the following in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") to the extent separately itemized in the applicable invoice, and not otherwise reimbursed, and allowed:

(a) cash, trade or quantity discounts;
(b) sales, use, tariff, import/export duties or other excise taxes when included in gross sales, but not income taxes derived from such sales, and value added taxes, but only to the extent such value-added tax is not subject to a credit or deduction to a taxing authority;
(c) discounts actually granted, rebates, refunds, chargebacks actually allowed or granted;

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(d) freight and other transportation or handling expenses or charges (actually incurred), including insurance; and
(e) allowances or credits to customers because of rejections or returns.

If LICENSEE makes any SALES to any third party in a transaction in a given country that is not an arms'-length transaction, or a LICENSED PRODUCT or LICENSED SERVICE is SOLD, transferred or otherwise provided to a third party without charge or at a discount, then NET SALES means the gross amount normally charged in arm's length transactions in such country less the allowable deductions set forth above.

In the case of transfers between any of LICENSEE or its' respective AFFILIATES, (i) a SALE to an AFFILIATE for end use (but not resale) by the AFFILIATE will be treated as a SALE at list price, and (ii) a SALE to an AFFILIATE for resale by the AFFILIATE will not be treated as a SALE; provided that NET SALES shall include the amounts invoiced by such AFFILIATE to a third party upon resale.

2.9 "REGENTS' COPYRIGHT RIGHTS" means the REGENTS' interest under 17 U.S.C. § 100 *et seq*. in any of the SOFTWARE listed in APPENDIX C attached to this AGREEMENT ***[If applicable, and DERIVATIVE WORKS are to be included "and any DERIVATIVE WORK(S) created therefrom; all of which will be automatically incorporated in and added to APPENDIX C and made a part of this AGREEMENT"]***.

2.10 "SALE" means, for LICENSED PRODUCTS and LICENSED SERVICES, the act of selling, leasing or otherwise transferring, providing, or furnishing such product or service for any use or for any consideration. Correspondingly, "SELL" means to make or cause to be made a SALE, and "SOLD" means to have made or caused to be made a SALE.

3. GRANT

3.1 **License Grant.** Subject to the limitations set forth in this AGREEMENT and the rights reserved in Paragraph 3.2 (Reservation of Rights), REGENTS hereby grants and LICENSEE hereby accepts a non-exclusive, royalty-bearing license, with no right to sublicense, under REGENTS' COPYRIGHT RIGHTS to [***Choose the applicable software grant out of the following: reproduce, make copies, distribute, [and, if applicable, prepare DERIVATIVE WORKS, perform, display]***] LICENSED PRODUCTS and LICENSED SERVICES in the LICENSED FIELD OF USE in the LICENSED TERRITORY.

3.2 The REGENTS reserves on behalf of itself and any other educational or nonprofit institutions the right to produce, reproduce, use, compile, modify, enhance, execute and practice the SOFTWARE, any DERIVATIVE WORKS, the REGENTS' COPYRIGHT RIGHTS, and any technology or software created by the REGENTS relating to any of the foregoing for educational and research purposes, including publication and other communication of any research results.

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3.3 **License Back**. LICENSEE will provide REGENTS a non-transferable license to use LICENSED PRODUCTS that contain SOFTWARE, at no charge to REGENTS, for academic, educational and research purposes within the University of California system (including facilities operated by REGENTS) for the term of this AGREEMENT. Further, LICENSEE hereby agrees to provide maintenance, bug fixes, upgrades and technical support of LICENSED PRODUCTS for a period of five (5) years from the date of first commercial availability of LICENSED PRODUCTS, or until this AGREEMENT expires, whichever is sooner. LICENSEE may offer REGENTS its standard written maintenance, upgrade and support ("MUS") agreement for this purpose, however, such MUS agreement will be subject to REGENTS prior review and approval.

4. LICENSE ISSUE FEE

4.1 **License Issue Fee**. LICENSEE will pay to REGENTS a non-creditable, non-refundable license issue fee of [***Written amount***] **($** ***Number***) due upon signing of this AGREEMENT. This fee is non-refundable and not an advance against royalties or other payments due under this AGREEMENT.

5. ROYALTIES, LICENSE MAINTENANCE FEES, MINIMUM ANNUAL ROYALTIES

5.1 **Earned Royalty.** LICENSEE will pay to REGENTS earned royalties at the rate of [***Written percent***] (***Number*****%**) of the NET SALES of LICENSED PRODUCTS and LICENSED SERVICES. Royalties will be payable on SALEs covered by both pending patent applications and issued patents. Royalties accruing to REGENTS will be paid to REGENTS quarterly within sixty (60) days after the end of each calendar quarter.

5.2 **License Maintenance Fee.** LICENSEE will pay to REGENTS an annual license maintenance fee of [***Written amount***] U.S. Dollars (**$*****Number***) on the one (1) year anniversary date of the Effective Date and on each anniversary of the Effective Date thereafter. Notwithstanding the foregoing, the license maintenance fee will not be due and payable on any anniversary of the Effective Date, if on such date the LICENSEE is selling LICENSED PRODUCTS and LICENSEE pays an earned royalty to REGENTS.

5.3 **Minimum Annual Royalty.** Beginning in the calendar year after the first occurrence of SALEs, and in each succeeding calendar year thereafter, LICENSEE will pay to REGENTS a minimum annual royalty of [***Written amount***] U.S. Dollars (**$** ***Number***) for the life of this AGREEMENT. This minimum annual royalty will be paid to REGENTS by February 28 of each year and will be credited against the earned royalty due and owing for the calendar year in which the minimum payment is made.

5.4 **Milestone Payments**. [***TBD***].

5.5 **Payments**. All payments due REGENTS will be payable in United States dollars by check payable to "REGENTS of the University of California" or by wire transfer to REGENTS at the addresses shown in Article 21 (Notices). When LICENSED

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PRODUCTS or LICENSED SERVICES are SOLD for monies other than United States dollars, earned royalties will first be determined in the foreign currency of the country in which the SALE was made and then converted into equivalent United States dollars. The exchange rate will be that rate quoted in the *Wall Street Journal* on the last business day of the reporting period. REGENTS may provide invoices upon request or as a courtesy, but failure to receive an invoice from REGENTS does not relieve or otherwise change LICENSEE'S obligation to make accurate and complete payments at the time such payments are due.

(a) **Taxes**. Earned royalties, and other consideration accrued in any country outside the United States may not be reduced by any taxes, fees or other charges imposed by the government of such country. LICENSEE will also be responsible for all bank transfer charges.

(b) **Late Payments**. If monies owed to REGENTS under this AGREEMENT are not received by REGENTS when due, LICENSEE will pay to REGENTS interest charges at a rate of ten percent (10%) per annum. Such interest will be calculated from the date payment was due until actually received by REGENTS. Such accrual of interest will be in addition to, and not in lieu of, enforcement of any other rights of REGENTS related to such late payment. Acceptance of any late payment will not constitute a waiver under Article 22 (Waiver) of this AGREEMENT.

6. DILIGENCE

6.1**. Development of Licensed Products and/or Licensed Services.** LICENSEE, upon execution of this AGREEMENT, will diligently proceed with the development, manufacture, and SALE of LICENSED PRODUCTS or LICENSED SERVICES and will diligently market them in quantities sufficient to meet the market demand.

6.2 **Failure to Meet Development Milestones.**

(a) If LICENSEE fails to meet its' diligence obligations hereunder, then REGENTS has the right to terminate this Agreement. This right supersedes the rights granted by REGENTS in Paragraph 3.1 (License Grant); and

(b) To exercise the right to terminate this AGREEMENT for lack of diligence under Paragraph 6.1, REGENTS will give LICENSEE written notice of the deficiency. LICENSEE thereafter has sixty (60) days to cure the deficiency. If REGENTS has not received satisfactory tangible evidence that the deficiency has been cured by the end of the sixty (60) - day period, then REGENTS may, at its option, terminate the AGREEMENT by giving written notice to LICENSEE. These notices will be subject to Article 21 (Notices).

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7. PROGRESS AND ROYALTY REPORTS

7.1 **Progress Reports**. For the period beginning [***Date***], LICENSEE will submit to REGENTS a semi-annual progress report covering LICENSEE's activities related to the development and testing of all LICENSED PRODUCTS and LICENSED SERVICES and the obtaining of necessary governmental approvals, if any, for marketing in the United States. These progress reports will be made for all development activities until the first SALE occurs in the United States. Each progress report will be a sufficiently detailed summary of activities of LICENSEE so that REGENTS may evaluate and determine LICENSEE's progress in development of LICENSED PRODUCTS and LICENSED SERVICES, and in meeting its diligence obligations under Article 6 (Diligence), and will include (but not be limited to) the following: summary of work completed and in progress; current schedule of anticipated events and milestones; anticipated market introduction dates for the LICENSED TERRITORIES. LICENSEE also will report to REGENTS in its immediately subsequent progress and royalty reports, the date of first SALE.

7.2 **Royalty Reports.** After the first SALE anywhere in the world, LICENSEE will make quarterly royalty reports to REGENTS within sixty (60) days after the quarters ending March 31, June 30, September 30, and December 31, of each year. If no SALEs have occurred during the report period, a statement to this effect is required in the royalty report for that period. Each such royalty report will be substantially similar to APPENDIX A and include at least the following:

(a) The number of LICENSED PRODUCTS manufactured and the number SOLD;
(b) Gross revenue from SALE of LICENSED PRODUCTS and LICENSED SERVICES;
(c) NET SALES pursuant to Paragraph 2.8; and
(d) Total royalties due REGENTS.

8. BOOKS AND RECORDS

8.1 **Accounting.** LICENSEE will keep accurate books and records showing all payments due REGENTS and all LICENSED PRODUCTS manufactured, used, offered for SALE, imported, SOLD, and/or otherwise exploited under the terms of this AGREEMENT. Books and records may encompass data maintained on LICENSEE's accounting and enterprise resource planning systems including, but not limited to production and manufacturing data, general ledger data, and data showing territory of sale, customer name and location, invoice number and date, ship date, part number and/or description, quantity SOLD, gross SALES, deductions taken, and NET SALES. Books and records will be preserved for at least seven (7) years after the date of the payment to which they pertain.

8.2 **Auditing.** Books and records kept in accordance with Paragraph 8.1 will be open to inspection by representatives or agents of REGENTS at reasonable times to determine the completeness and accuracy of those payments and to assess the LICENSEE's compliance with terms of this AGREEMENT. As necessary and reasonable, LICENSEE will make

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its personnel available to interpret documents, understand accounting methodologies employed, and to run reports from LICENSEE's accounting and enterprise resource planning systems to permit REGENTS agents and representatives to verify the completeness and accuracy of LICENSEE's payments due REGENTS. The agents or representatives of REGENTS may retain one copy of books and records supporting their findings until the matters identified during the course of the inspection are resolved. Notwithstanding any other provision of this AGREEMENT or any confidentiality agreement between LICENSEE and agents or representatives of REGENTS, such agents and representatives are permitted to disclose their findings regarding the completeness and accuracy of LICENSEE's payments to REGENTS as well as the evidentiary basis therefore. REGENTS right to conduct an inspection will be preserved for one year following the later of the termination or expiration of this AGREEMENT or the LICENSEE's final report setting forth royalties due in connection with LICENSED PRODUCTS manufactured or in inventory at the expiration or termination of the AGREEMENT. The fees and expenses of representatives of REGENTS performing such an inspection will be borne by REGENTS. If, however, the payments made to REGENTS under this AGREEMENT by the LICENSEE are found after REGENTS initiate their inspection to be less than ninety-five percent (95%) of the total payments due to REGENTS under this AGREEMENT for any year, LICENSEE will bear the cost of the inspection. Should an overpayment by LICENSEE be discovered after REGENTS initiate their inspection, LICENSEE will be entitled to a credit equal to such excess payment, minus the expenses of such inspection, against the payment obligations next accruing under the AGREEMENT, provided such payments are due and payable.

8.3 **LICENSEE Audit**. LICENSEE will conduct an independent audit of SALEs and royalties at least every two (2) years if annual SALEs of LICENSED PRODUCT are over Five Million ($5,000,000) US Dollars. The audit will address, at a minimum, the amount of gross SALEs by or on behalf of LICENSEE during the audit period, the amount of funds owed to REGENTS under this AGREEMENT, and whether the amount owed has been paid to REGENTS and is reflected in the records of LICENSEE. LICENSEE will submit the auditor's report promptly to REGENTS upon completion. LICENSEE will pay for the entire cost of the audit.

9. LIFE OF THE AGREEMENT

9.1 **Term.** Unless otherwise terminated by the operation of law or by acts of the parties in accordance with the terms of this AGREEMENT, this AGREEMENT will be in force from the Effective Date and will remain in effect for ten (10) years from the Effective Date. Any termination of this AGREEMENT will not relieve LICENSEE of its obligation to pay any monies due or owing at the time of such termination and will not relieve any obligations, of either party to the other party, established prior to termination or expiration.

9.2 **Survival.** Any termination or expiration of this AGREEMENT will not affect the rights and obligations set forth in the following articles:

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Article 2	Definitions
Article 4	License Issue Fee
Paragraph 5.5	Payments
Article 8	Books and Records
Article 9	Life of the Agreement
Article 12	Disposition of Licensed Products and Licensed Services Upon Termination or Expiration
Article 14	Use of Names and Trademarks
Article 15	Limited Warranties
Article 17	Indemnification and Insurance
Article 21	Notices
Article 23	Confidentiality
Article 26	Applicable Law; Venue; Attorney's Fees

10. TERMINATION BY REGENTS

10.1 If LICENSEE should violate or fail to perform any term of this AGREEMENT, then REGENTS may give written notice of such default ("Notice of Default") to LICENSEE. If LICENSEE should fail to repair such default within sixty (60) days of the effective date of such notice, REGENTS will have the right to terminate this AGREEMENT and the licenses herein by a second written notice ("Notice of Termination") to LICENSEE. If a Notice of Termination is sent to LICENSEE, this AGREEMENT will automatically terminate on the effective date of such notice. Such termination will not relieve LICENSEE of its obligation to pay any royalty or license fees owing at the time of such termination and will not impair any accrued rights of REGENTS. These notices will be subject to Article 23 (Notices).

for reference only

11. TERMINATION BY LICENSEE

11.1 LICENSEE will have the right at any time to terminate this AGREEMENT, by giving notice in writing to REGENTS. Such notice of termination will be subject to Article 21 (Notices) and termination of this AGREEMENT will be effective ninety (90) days after the effective date of such notice.

11.2 Any termination pursuant to Paragraph 11.1 will not relieve LICENSEE of any obligation or liability accrued prior to such termination or rescind anything done by LICENSEE or any payments made to REGENTS prior to the time such termination becomes effective, and such termination will not affect in any manner any rights of REGENTS arising under this AGREEMENT prior to such termination.

12. DISPOSITION OF LICENSED PRODUCTS AND LICENSED SERVICES UPON TERMINATION OR EXPIRATION

12.1 Upon termination of this AGREEMENT, for a period of one hundred twenty (120) days after the date of termination LICENSEE may complete and SELL any partially made LICENSED PRODUCTS and continue to render any previously commenced LICENSED SERVICES only to the extent necessary to do so; provided, however, that all such SALEs will be subject to the terms of this AGREEMENT including, but not limited to, the payment of royalties at the rate and at the time provided herein and the rendering of reports thereon.

12.2 Notwithstanding anything to the contrary in the AGREEMENT, to the extent the manufacture of a LICENSED PRODUCT occurs before the expiration of REGENTS' COPYRIGHT RIGHTS, the SALE of that LICENSED PRODUCT after the expiration date of the REGENTS' COPYRIGHT RIGHTS still constitutes a royalty-bearing SALE under Paragraph 5.1 (Earned Royalty) and all such SALEs will be subject to the terms of this AGREEMENT including, but not limited to, the payment of earned royalties at the rate and at the time provided herein and the rendering of reports thereon.

13. COPYRIGHT REGISTRATION AND NOTICE

13.1 COPYRIGHT REGISTRATION

LICENSEE will bear all costs incurred prior to and during the term of this AGREEMENT in the preparation and filing, of copyright registration in REGENTS' COPYRIGHT RIGHTS, should registration be filed. LICENSEE must send payment to REGENTS within thirty (30) days of LICENSEE's receipt of an invoice for such costs.

13.2 COPYRIGHT NOTICE

LICENSEE shall incorporate into the LICENSED PRODUCTS or their packages, in accorance with the applicable copyright marking laws in a manner substantially similar to the following:
Copyright © [***Insert Year***] THE REGENTS OF THE UNIVERSITY OF CALIFORNIA. ALL RIGHTS RESERVED.

for reference only

14. USE OF NAMES AND TRADEMARKS

14.1 Nothing contained in this AGREEMENT will be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trademark, trade name, or other designation of either party hereto by the other (including any contraction, abbreviation, or simulation of any of the foregoing), except that REGENTS may publicly identify LICENSEE's name and contact information as an entity whom REGENTS has an agreement with that involves the commercialization of technology developed at REGENTS. Unless required by law or consented to in writing by REGENTS, the use by LICENSEE of the name "REGENTS of the University of California" or the name of any

University of California campus in advertising, publicity or other promotional activities is expressly prohibited.

15. LIMITED WARRANTIES

15.1 This license and the associated SOFTWARE are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESSED OR IMPLIED. REGENTS MAKES NO REPRESENTATION OR WARRANTY THAT THE REGENTS' COPYRIGHT RIGHTS, SOFTWARE, LICENSED PRODUCTS OR LICENSED SERVICES WILL NOT INFRINGE ANY PROPRIETARY RIGHTS.

15.2 REGENTS WILL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, ENHANCED DAMAGES FOR INTELLECTUAL PROPERTY INFRINGEMENT, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY LICENSEE, JOINT VENTURES, OR AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, AND BREACH OF WARRANTY) EVEN IF REGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGENTS WILL NOT BE LIABLE FOR ANY DIRECT DAMAGES SUFFERED BY LICENSEE, JOINT VENTURES OR AFFILIATES ARISING OUT OF OR RELATED TO COPYRIGHTS TO THE EXTENT ASSIGNED OR LICENSED BY REGENTS' AUTHORS TO THIRD PARTIES.

15.3 Nothing in this AGREEMENT is or will be construed as:

(a) a warranty or representation by REGENTS as to the validity, enforceability or scope of any the SOFTWARE or REGENTS' COPYRIGHT RIGHTS; or

(b) a warranty or representation that anything made, used, or SOLD under any license granted in this AGREEMENT is or will be free from infringement of copyright, patent, trademark, or other rights of third parties; or

(c) an obligation to bring or prosecute actions or suits against third parties for copyright infringement, except as provided in Article 16 (Copyright Infringement); or

(d) conferring by implication, estoppel, or otherwise any license or rights under any patents of REGENTS other than REGENTS' COPYRIGHT RIGHTS as defined herein; or

(e) an obligation to furnish any know-how not provided in SOFTWARE; or

(f) an obligation to update SOFTWARE, offer fixes, or provide support of any kind.

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16. COPYRIGHT INFRINGEMENT

16.1 If either party learns of infringement of potential commercial significance of any of the REGENTS' COPYRIGHT RIGHTS, it will provide the other with (i) written notice of such infringement and (ii) any evidence of such infringement available to it (the "Infringement Notice").

17. INDEMNIFICATION AND INSURANCE

17.1 **Indemnification.** LICENSEE will indemnify, hold harmless, and defend REGENTS and its officers, employees, and agents; sponsor(s) of the research that led to the SOFTWARE; and the inventors of any patents and patent applications under REGENTS' COPYRIGHT RIGHTS and their employers against any and all claims, suits, losses, damages, costs, fees, and expenses resulting from or arising out of exercise of this AGREEMENT. This indemnification will include, but not be limited to, any product liability.

17.2 **Insurance**. LICENSEE, at its sole cost and expense, will insure its activities in connection with any work performed hereunder and will obtain, keep in force, and maintain the following insurance:

(a) Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

Each Occurrence……..$1,000,000
Products/Completed Operations Aggregate.....$0
Personal and Advertising Injury……..$1,000,000
General Aggregate……...$2,000,000

If the above insurance is written on a claims-made form, it will continue for three (3) years following termination or expiration of this AGREEMENT. The insurance must have a retroactive date of placement prior to or coinciding with the Effective Date of this AGREEMENT; and

(b) Worker's Compensation as legally required in the jurisdiction in which LICENSEE is doing business.

17.3 **Certificates**. The coverage and limits referred to in Subparagraphs 17.2(a) and 17.2(b) above will not in any way limit the liability of LICENSEE under this Article. Upon the execution of this AGREEMENT, LICENSEE will furnish REGENTS with certificates of insurance evidencing compliance with all requirements. Such certificates will:

(a) provide for thirty (30) days' (ten (10) days for non-payment of premium) advance written notice to REGENTS of any cancellation of insurance coverages and LICENSEE will promptly notify REGENTS of any material modification of the insurance coverages; and

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(b) indicate that REGENTS has been endorsed as an additional insured under the coverage described above in Paragraph 17.2; and
(c) include a provision that the coverage will be primary and will not participate with, nor will be excess over, any valid and collectable insurance or program of self-insurance maintained by REGENTS.

17.4 **Notifications**. REGENTS will promptly notify LICENSEE in writing of any claim or suit brought against REGENTS for which REGENTS intends to invoke the provisions of this Article 17. LICENSEE will keep REGENTS informed of its defense of any claims pursuant to this Article 17.

18. COMPLIANCE WITH LAWS

18.1 LICENSEE will comply with all applicable international, national, state, regional, and local laws and regulations in performing its obligations hereunder and in its use, manufacture, SALE or import of the LICENSED PRODUCTS and LICENSED SERVICES. LICENSEE understands that REGENTS is subject to United States laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), controlling the export of technical data, computer software, laboratory prototypes and other commodities, and REGENTS' obligations under this AGREEMENT are contingent on compliance with such 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 will not export such technical data and/or commodities to certain foreign countries without prior approval of such agency. REGENTS neither represents that a license will not be required nor that, if required, it will be issued.

19. GOVERNMENT APPROVAL OR REGISTRATION

19.1 If this AGREEMENT or any associated transaction is required by the law of any nation to be either approved or registered with any governmental agency, LICENSEE will assume all legal obligations to do so. LICENSEE will notify REGENTS if it becomes aware that this AGREEMENT is subject to a United States or foreign government reporting or approval requirement. LICENSEE will make all necessary filings and pay all costs including fees, penalties, and all other out-of-pocket costs associated with such reporting or approval process.

20. ASSIGNMENT/CHANGE OF CONTROL

20.1 This AGREEMENT is binding upon, and will inure to the benefit of, REGENTS, its successors and assigns. LICENSEE may assign or transfer this AGREEMENT only with the prior written consent of REGENTS. The prior written consent of REGENTS will not be required if the assignment or transfer of this AGREEMENT is in conjunction with a bona fide arms' length transaction involving a CHANGE of CONTROL, so long as LICENSEE is in good standing with its obligations under this AGREEMENT and REGENT is legally, contractually, and, per its policies, able to enter into an agreement

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with such assignee. In any assignment or transfer of this AGREEMENT or CHANGE of CONTROL, the conditions (a)-(c) below must be timely met:

(a) provide REGENTS written notice identifying the proposed acquirer's or successor entity's name and contact information prior to any such assignment or transfer;

(b) provide REGENTS with a written agreement signed by the proposed acquirer or successor entity agreeing to be bound by all of the provisions of this AGREEMENT, as well as assume all responsibilities and liabilities that arose under this AGREEMENT prior to the effective date of the proposed assignment, as if such acquirer or successor entity were the original LICENSEE within thirty (30) days after any such assignment or transfer; and

(c) pay to REGENTS an assignment/change of control fee of [***Written amount***] (***$Number***) ("ASSIGNMENT/CHANGE of CONTROL FEE") within thirty (30) days after any such assignment or transfer.

20.2 For avoidance of doubt, the requirements (a) – (c) above are triggered when the LICENSEE is acquired but remains a subsidiary such that no assignment occurs. Any attempted assignment or transfer by LICENSEE other than in accordance with this Article will be null and void.

21. NOTICES

21.1 All notices under this AGREEMENT will be deemed to have been fully given and effective when done in writing and delivered in person, or mailed by registered or certified U.S. mail, or deposited with a carrier service requiring signature by recipient, and addressed as follows:

For the LICENSEE: **See APPENDIX B**

For the REGENTS: **Office of Technology Licensing**
2150 Shattuck Avenue, Suite 408
Berkeley, CA 94704-1362
Attn.: Director (UC Case No.: *BK-XXXX-XXX*)

Either party may change its address upon written notice to the other party.

Remittance address for royalty and fee payments, as well as legal reimbursements associated with this license AGREEMENT are to be sent to (**Please reference the UC Berkeley Invoice Number, UC Berkeley Case Number or UC Berkeley AGREEMENT Control Number with your payment**):

University of California
Innovation Transfer and Entrepreneurship
Attn: ITE Accounting Services
1111 Franklin Street, 11th Floor
Oakland, CA 94607

Payments due under this AGREEMENT may also be sent via wire transfer as follows. In order to

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ensure that funds are properly credited to your account, **please reference the UC Berkeley Agreement Control Number on all wire transfers.**

Wire:

Bank of America
100 West 33rd Street,
New York, New York, 10001
Account: OTT Depository Account No. 1233717062
Beneficiary Name: Regents of the University of California
Domestic Wire ABA: 026009593 (within U.S. only)
Foreign Wire Swift: BOFAUS3N

ACH:
Bank of America CA4-704-05-41
2000 Clayton Rd.,
Concord, CA 94520
Account: OTT Depository Account No. 1233717062
Beneficiary Name: Regents of the University of California
ACH/EFT Routing No.: 121000358

21.2 **LICENSEE Contact Information:** LICENSEE must provide to the REGENTS the completed LICENSEE contact information form attached hereto as APPENDIX B concurrent to execution of this AGREEMENT and incorporated herein by this reference, showing the contacts responsible for (i) Progress Reports, (ii) Royalty Reports, and (iii) Invoices.

22. WAIVER

22.1 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this AGREEMENT will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party. None of the terms and conditions of this AGREEMENT can be waived except by the written consent of the party waiving compliance.

23. CONFIDENTIALITY

23.1 LICENSEE and the REGENTS will hold the other party's proprietary business information ("Proprietary Information") in confidence, using at least the same degree of care as the receiving party uses to protect its own proprietary information of a similar nature. Proprietary Information will be protected from the date of disclosure until five (5) years after the termination or expiration of this AGREEMENT. [***INCLUDE THIS IF THERE IS AN EXECUTED A SECRECY AGREEMENT:*** *This confidentiality obligation will apply to the information defined as "Data" under the Secrecy Agreement and such Data will be treated as Proprietary Information hereunder."*]

23.2 LICENSEE and the REGENTS may disclose Proprietary Information to their employees, agents, provided that such parties are bound by a like duty of confidentiality as set forth

for reference only

in this Article 23 (Confidentiality). In addition, if a third party inquires whether a license to REGENTS' COPYRIGHT RIGHTS is available, the REGENTS may disclose to the third party the existence of this AGREEMENT and the extent of the grant in Paragraph 3.1 (License Grant) and related definitions but will not disclose the name of the LICENSEE unless that information is already public.

23.3 All written Proprietary Information will be marked confidential or proprietary. If the Proprietary Information is orally disclosed, then it will be reduced to writing, marked as confidential by the disclosing party and delivered to the receiving party within thirty (30) days after the oral disclosure.

23.4 Nothing contained herein will in any way restrict the right of the LICENSEE or the REGENTS to use or disclose any Proprietary Information that the recipient can demonstrate by written records:

(a) was previously known to it prior to its disclosure by the disclosing party;
(b) is public knowledge other than through acts or omissions of recipient;
(c) was lawfully obtained without restrictions on the recipient from sources independent of the disclosing party; or
(d) was independently developed by recipient.

23.5 Nothing in this AGREEMENT will restrict either party from producing Proprietary Information that is required to be disclosed: (i) in litigation or by a governmental entity or agency, or (ii) by law (including the California Public Records Act or similar applicable law), provided that the recipient uses reasonable efforts to give the party that disclosed the Proprietary Information sufficient notice to allow it a reasonable opportunity to object. To the extent feasible, the party with the obligation to disclose under subparagraph (i) in the previous sentence will make reasonable efforts to make such disclosure subject to confidentiality obligations at least as protective as the terms set forth in this Paragraph.

23.6 Upon termination or expiration of this AGREEMENT the LICENSEE and the REGENTS, upon request, will destroy or return any of the disclosing party's Proprietary Information in its possession within fifteen (15) days following the termination or expiration of this AGREEMENT and provide written confirmation of such to the other party. Each party may, however, retain one copy of such Proprietary Information for archival purposes in non-working files.

24. FORCE MAJEURE

24.1 Except for LICENSEE's obligation to make any payments to REGENTS hereunder, the parties to this AGREEMENT are excused from any performance required hereunder if such performance is rendered impossible or unfeasible due to any catastrophes or other major events beyond their reasonable control, including, without limitation, war, riot, and insurrection; laws, proclamations, edicts, ordinances, or regulations; strikes, lockouts, or other serious labor disputes; and floods, fires, explosions, pandemics, or other natural

for reference only

disasters. When such events have abated, the parties' respective obligations hereunder will resume.

25. SEVERABILITY

25.1 The provisions of this AGREEMENT are severable, and in the event that any provision of this AGREEMENT will be determined to be invalid or unenforceable under any controlling body of law, such invalidity or enforceability will not in any way affect the validity or enforceability of the remaining provisions hereof.

26. APPLICABLE LAW; VENUE; ATTORNEYS' FEES

26.1 THIS AGREEMENT WILL BE CONSTRUED, INTERPRETED, AND APPLIED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, excluding any choice of law rules that would direct the application of the laws of another jurisdiction, but the scope and validity of any patent or patent application under REGENTS' PATENT RIGHTS will be determined by the applicable law of the country of such patent or patent application. Any legal action brought by the parties relating to this AGREEMENT will be conducted in San Francisco, California. The prevailing party in any legal action under this AGREEMENT will be entitled to recover its reasonable attorneys' fees in addition to its costs and necessary disbursements.

27. SCOPE OF AGREEMENT

27.1 This AGREEMENT (***except for the Agreements(s) dated _____), which will continue to the extent it is not inconsistent with this AGREEMENT***) incorporates the entire AGREEMENT between the parties with respect to the subject matter hereof, and this AGREEMENT may be altered or modified only by written amendment duly executed by the parties hereto.

28. ELECTRONIC COPY

28.1 The parties to this AGREEMENT agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

29. BANKRUPTCY

29.1 In the event of a bankruptcy or insolvency, assignment of this AGREEMENT is only permitted to a party that can provide adequate assurance of future performance, including diligent development and SALES of LICENSED PRODUCT.

for reference only

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in duplicate originals by their duly authorized officers or representatives.

REGENTS OF THE UNIVERSITY OF CALIFORNIA	[***LICENSEE NAME***]
By_____	By_____
Title _____	Title_____
Date_____	Date_____

for reference only

APPENDIX A

UNIVERSITY OF CALIFORNIA AT BERKELEY
OFFICE OF TECHNOLOGY LICENSING

1111 FRANKLIN STREET, 11TH FLOOR
OAKLAND, CA 94607-5200

DATE

Company Name
Address

Reference: Agreement between The Regents of the University of California and Company Name
UC Control No. [Case No.] [Licensing Officer], Effective Date
Agreement Reference Paragraph:

ROYALTY REPORT REQUEST FOR
THE PERIOD [DATES: From - To]

REPORT AND PAYMENT DUE DATE:

Product NAME
Royalty:
Calculated Royalty This Period: $ _____

New Products
_____ $ _____

Total Royalties this Period: $ _____

Minimum Royalty Credit Available $
Show Minimum Royalty Credit To Apply -$ _____
Show Any Credit To Apply (other than Minimum Royalty) -$ _____

Total Royalty Amount Due: $ _____

Have you removed or added products this period? If applicable, provide the commercial name and approval date of any FDA-approved product utilizing the invention that became commercially available during this period.

Product _____ Removed _____/_____/_____ Added _____/_____/_____

Commercial Name _____ FDA-Approved _____/_____/_____

Submitted By: _____

Date: _____ Title _____

PLEASE RETURN THIS COMPLETED FORM WITH A CHECK PAYABLE TO 'THE REGENTS OF THE UNIVERSITY OF CALIFORNIA [Agreement #]' AT THE ABOVE ADDRESS.
If you have questions please call (510) 587-6019, or send an e-mail to valerie.redmond@ucop.edu. Thank you for your prompt attention.

for reference only

APPENDIX B
Licensee Contact Information

LICENSEE NAME:	**UC CONTROL NO.:**
PROGRESS REPORT CONTACT	
NAME:	TELEPHONE:
TITLE:	EMAIL:
ADDRESS:	
CITY, STATE, ZIP:	
COUNTRY:	
ROYALTY REPORT CONTACT	
NAME:	TELEPHONE:
TITLE:	EMAIL:
ADDRESS:	
CITY, STATE, ZIP:	
COUNTRY:	
INVOICE CONTACT	
NAME:	TELEPHONE:
TITLE:	EMAIL:
ADDRESS:	
CITY, STATE, ZIP:	
COUNTRY:	

for reference only

APPENDIX C

REGENTS' COPYRIGHT RIGHTS

1) UC Berkeley Case No. [***Case Number***] ("[***SOFTWARE NAME***]

for reference only