SAMPLE

EXCLUSIVE LICENSE AGREEMENT WITH EQUITY*

This exclusive license agreement ("AGREEMENT") is effective [ ] ("Effective Date"), by and between 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 510, Berkeley, CA 94720-1366 ("REGENTS") and [ ], a [ ] corporation having a principal place of business at [ ] ("LICENSEE"). The parties agree as follows:

1. BACKGROUND

1.1 REGENTS has an assignment of the [ ] invented by [ ], employed by the University of California, Berkeley (the "INVENTION"), as described in REGENTS' Case No. [**BK-**] and to the patents and patent applications under REGENTS' PATENT RIGHTS as defined below, which are directed to the INVENTION.

1.2 LICENSEE entered into a [ ] agreement and extension thereof with REGENTS effective [ ], terminating on [ ], for the purpose of evaluating the INVENTION and granting LICENSEE an exclusive right to negotiate an option or exclusive license in REGENTS' PATENT RIGHTS to the INVENTION, which [ ] agreement covers LICENSEE's commitment to reimburse REGENTS' patent costs during the period of good-faith negotiation for an exclusive license.

1.3 LICENSEE has provided REGENTS with a commercialization plan for the INVENTION and business strategy in order to evaluate its capabilities as a LICENSEE.

1.4 The development of the INVENTION was sponsored in part by various grants by U.S. Government agencies, and as a consequence, REGENTS elected to retain title to the INVENTION subject to the rights of the U.S. Government under 35 U.S.C. 200-212 and implementing regulations, including that REGENTS, in turn, has granted back to the U.S. Government a non-exclusive, non-transferable irrevocable, paid-up license to practice or have practiced the INVENTION for or on behalf of the U.S. Government throughout the world. These U.S. Government grants are _____ _____ Contract No. _____ and _____ Contract No. _____.

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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.

1.5 REGENTS and LICENSEE wish to have the INVENTION perfected and marketed as soon as possible so that products resulting therefrom may be available for public use and benefit.

1.6 LICENSEE wishes to acquire a license under REGENTS' PATENT RIGHTS for the purpose of undertaking development and to manufacture, use, SELL, offer for SALE and import LICENSED PRODUCTS as defined below.

2. DEFINITIONS

2.1 "AFFILIATE" of LICENSEE means any entity that, 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 of such AFFILIATE, (ii) having the power to direct at least forty percent (40%) of the voting rights entitled to elect directors, or (iii) in any country where the local law will not permit foreign equity participation of a majority, ownership or CONTROL, directly or indirectly, of the maximum percentage of such outstanding stock or voting rights permitted by local law.

2.2 "HUMANITARIAN PURPOSES" means:

(a) the use of LICENSED PRODUCTS and LICENSED SERVICES for research and development purposes by any nonprofit organization or other third party, anywhere in the world that has the express purpose of developing the LICENSED PRODUCTS or LICENSED SERVICES for use solely for protection from, treatment of, or diagnosis of Neglected Diseases in a Low- or Middle-income country as that term is defined by the World Bank (hereinafter “LMI COUNTRY(IES)”); and

(b) SALE of LICENSED PRODUCTS and LICENSED SERVICES in LMI COUNTRIES at or below the cost of manufacture and distribution.

2.3 "LICENSED FIELD OF USE" means _____.

2.4 "LICENSED METHOD" means any process or method the use or practice of which, but for the license pursuant to this AGREEMENT, would infringe, or contribute to or induce the infringement of, any issued or pending claim under REGENTS' PATENT RIGHTS in that country in which the LICENSED METHOD is used or practiced.

2.5 "LICENSED PRODUCTS" means all kits, compositions of matter, articles of manufacture, materials, and products, the manufacture, use, SALE, offer for SALE,

or import of which: a) would require the performance of the LICENSED METHOD; or b) but for the license granted pursuant to this AGREEMENT, would infringe, or contribute to or induce the infringement of, a valid claim of any issued, unexpired patent under REGENTS' PATENT RIGHTS or a claim being prosecuted in a pending patent application under REGENTS' PATENT RIGHTS. A claim in an issued patent under REGENTS' PATENT RIGHTS will be presumed valid unless and until it has been held to be invalid by a final judgment of a court of competent jurisdiction from which no appeal can be or is taken.

2.6 "LICENSED SERVICE" means a service provided using LICENSED PRODUCTS or LICENSED METHOD.

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

2.8 "NET SALES" means the gross invoice price charged, and the value of non-cash consideration owed to, LICENSEE or a SUBLICENSEE for SALEs of LICENSED PRODUCTS, LICENSED SERVICES, and LICENSED METHODS, the less the sum of the following actual and customary deductions where applicable: cash, trade or quantity discounts; SALEs, use, tariff, import/export duties or other excise taxes when included in gross SALEs, but not value-added taxes assessed or income taxes derived from such SALEs; transportation charges; and allowances or credits to customers because of rejections or returns. For purposes of calculating NET SALEs, a SALE to a SUBLICENSEE for end use by the SUBLICENSEE will be treated as a SALE at list price.

2.9 "REGENTS' PATENT RIGHTS" means REGENTS' rights in U.S. Patent Applications, Serial Numbers [ ], entitled "[ ]" filed on [ ] and assigned to REGENTS; and continuing applications thereof including divisions, substitutions, extensions and continuation-in-part applications (only to the extent, however, that claims in the continuation-in-part applications are entitled to the priority filing date of the parent patent application), any patents issuing on said application or continuing applications including reissues; and any corresponding foreign patents or applications.

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, and for LICENSED METHOD the act of performing such method, 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.

2.11 “SUBLICENSE” means any transaction with a third party in which LICENSEE: (a) grants, transfers or agrees not to assert any of the rights licensed to LICENSEE hereunder, or (b) is under an obligation to grant or transfer such rights or to forebear from granting or transferring such rights, including by means of an option.

2.12 “SUBLICENSEE” means any third party, including AFFILIATES, granted a SUBLICENSE to all or any portion of REGENTS’ PATENT RIGHTS.

3. GRANT

3.1 Subject to the limitations set forth in this AGREEMENT, including the license granted to the U.S. Government and the rights reserved in Paragraph 3.3, REGENTS hereby grants and LICENSEE hereby accepts an exclusive license under REGENTS' PATENT RIGHTS to make, use, offer for SALE, import, and SELL LICENSED PRODUCTS and LICENSED SERVICES, and to practice LICENSED METHOD, in the LICENSED FIELD OF USE in the LICENSED TERRITORY(IES).

3.2 The licenses under Paragraph 3.1 will be exclusive for a term commencing on the Effective Date and ending on the date of the last-to-expire patent under REGENTS' PATENT RIGHTS.

3.3 The REGENTS reserves on behalf of itself and any other educational or nonprofit institutions the right to make, use, and practice the INVENTION, the REGENTS’ PATENT RIGHTS, and any technology created by the REGENTS relating to any of the foregoing for educational and research purposes, including publication and other communication of any research results.

3.4 REGENTS further reserves the right to license REGENTS’ PATENT RIGHTS to any third parties solely for HUMANITARIAN PURPOSES. Such licenses for HUMANITARIAN PURPOSES shall (i) expressly exclude the right of the third party licensee to export or SELL the LICENSED PRODUCTS from a LMI COUNTRY into a market outside of the LMI COUNTRY where LICENSEE has introduced or will introduce a LICENSED PRODUCT and where REGENTS’ PATENT RIGHTS exist (such markets hereinafter the "LICENSEE MARKETS") and (ii) require the third party licensee to create and maintain distinctive trade dress and trademarks that clearly distinguish third party LICENSED PRODUCTS and LICENSED SERVICES from LICENSEE'S LICENSED PRODUCTS and LICENSED SERVICES, (iii) require such third party LICENSEE's sale of LICENSED PRODUCTS and LICENSED SERVICES in such LMI COUNTRIES at or below cost. For avoidance of doubt, such third party LICENSEE may be permitted to export LICENSED PRODUCTS from the LMI COUNTRY of origin to other LMI COUNTRIES and all other countries that are mutually agreed to by REGENTS and LICENSEE.

3.5 Notwithstanding the foregoing, prior to issuance of any such license to REGENTS' PATENT RIGHTS to a third party REGENTS will notify LICENSEE of its intention to grant such license so that LICENSEE may have the opportunity to fill the anticipated market need itself and/or to engage in discussions for a sublicense with such third party in accordance with the procedures set forth in Paragraph 4.8. In the event any LICENSED PRODUCT SOLD in any LMI COUNTRY by any such third party according to the provisions of Paragraph 3.4 is exported, re-SOLD or otherwise introduced in any LICENSEE MARKETS, LICENSEE will provide REGENTS with written notification thereof, and if such exportation, re-sale or introduction does not cease within ninety (90) days after the date of such notice, then an amount equal to the retail price of LICENSED PRODUCT so exported, re-SOLD or introduced to such LICENSEE Market shall be credited to royalties due to REGENTS hereunder.

3.6 LICENSEE will have a continuing responsibility to keep REGENTS informed of the large/small entity status, as defined in 15 U.S.C. §632, of itself and its SUBLICENSEES.

3.7 The INVENTION was funded in part by the U.S. Government. In accordance with PL 96-517 as amended by PL 98-620, to the extent required by law or regulation, any products covered by patent applications or patents claiming the INVENTION and SOLD in the United States will be substantially manufactured in the United States.

4. SUBLICENSES

4.1 REGENTS also grants to LICENSEE the right to SUBLICENSE to AFFILIATES and third parties the right to make, use, offer for SALE, import, and SELL LICENSED PRODUCTS and LICENSED SERVICES, and to practice LICENSED METHOD, provided that LICENSEE has exclusive rights under this AGREEMENT at the time of sublicensing. Every such SUBLICENSE will include:

(a) a statement setting forth the date upon which LICENSEE's exclusive rights, privileges, and license hereunder will expire;

(b) as applicable, all the rights of, and require the performance of all the obligations due to, REGENTS (and, if applicable, the United States Government) under this AGREEMENT other than those rights and obligations specified in Article 5 (License Issue Fee) and Paragraph 6.5 (minimum annual royalty);

(c) a provision requiring payment of royalties to LICENSEE in an amount sufficient to permit LICENSEE to meet its royalty obligations to REGENTS at the rates and bases set forth in this AGREEMENT;

(d) a prohibition on the grant of further SUBLICENSES; and

(e) the same provision for indemnification of REGENTS as has been provided for in this AGREEMENT.

4.2 LICENSEE will pay to REGENTS ____ percent (___ %) of any cash consideration, and of the cash equivalent of all other consideration, due to LICENSEE for the grant of rights under each SUBLICENSE.

4.3 LICENSEE will notify REGENTS of each SUBLICENSE granted hereunder and furnish to REGENTS a copy of each such SUBLICENSE AGREEMENT.

4.4 AFFILIATES will have no licenses under REGENTS' PATENT RIGHTS except as granted by SUBLICENSE pursuant to this AGREEMENT.

4.5 For the purposes of this AGREEMENT, the operations of all SUBLICENSEES shall be deemed to be the operations of LICENSEE, for which LICENSEE shall be responsible.

4.6 LICENSEE will collect and guarantee payment of all monies and other consideration due REGENTS from SUBLICENSEES, and deliver all reports due REGENTS and received from SUBLICENSEES.

4.7 Upon termination of this AGREEMENT for any reason, all SUBLICENSES that are granted by LICENSEE pursuant to this AGREEMENT where the SUBLICENSEE is in compliance with its SUBLICENSE AGREEMENT as of the date of such termination will remain in effect and will be assigned to REGENTS, except that REGENTS will not be bound to perform any duties or obligations set forth in any SUBLICENSEs that extend beyond the duties and obligations of REGENTS set forth in this AGREEMENT.

4.8 If REGENTS (to the extent of the actual knowledge of the licensing professional responsible for administration of this case) or a third party discovers and notifies that licensing professional that the INVENTION is useful for an application covered by the LICENSED FIELD OF USE, but for which LICENSED PRODUCTS have not been developed or are not currently under development by LICENSEE, then REGENTS, as represented by the Office of Technology Licensing, shall give written notice to LICENSEE, except for: 1) information that is subject to restrictions of

confidentiality with third parties, and 2) information which originates with REGENTS' personnel who do not assent to its disclosure to LICENSEE.

LICENSEE shall have ninety (90) days to give REGENTS written notice stating whether LICENSEE elects to develop LICENSED PRODUCTS for the application.

If LICENSEE elects to develop and commercialize the proposed LICENSED PRODUCTS for the new application, LICENSEE shall submit progress reports to REGENTS pursuant to Article 8.

If LICENSEE elects not to develop and commercialize the proposed LICENSED PRODUCTS for use in the new application, REGENTS may seek (a) third party(ies) to develop and commercialize the proposed LICENSED PRODUCTS for the new application. If REGENTS is successful in finding a third party, it shall refer such third party to LICENSEE. If the third party requests a SUBLICENSE under this AGREEMENT, then LICENSEE shall report the request to REGENTS within thirty (30) days from the date of such written request. If the request results in a SUBLICENSE, then LICENSEE shall report it to REGENTS pursuant to Paragraph 4.3.

If LICENSEE refuses to grant a SUBLICENSE to the third party, then within thirty (30) days after such refusal LICENSEE shall submit to REGENTS a report specifying the license terms proposed by the third party and a written justification for LICENSEE's refusal to grant the proposed SUBLICENSE. If REGENTS, at its sole discretion, determines that the terms of the SUBLICENSE proposed by the third party are reasonable under the totality of the circumstances, taking into account LICENSEE's LICENSED PRODUCTS in development, then REGENTS shall have the right to grant to the third party a license to make, have made, use, SELL, offer for sale and import products for use in the LICENSED FIELD OF USE at substantially the same terms last proposed to LICENSEE by the third party providing royalty rates are at least equal to those paid by LICENSEE.

5. LICENSE ISSUE FEE; EQUITY

5.1 LICENSEE will pay to REGENTS a non-creditable, non-refundable license issue fee of $_____[ ] due upon signing of this AGREEMENT. This fee is non-refundable and not an advance against royalties or other payments due under this AGREEMENT.

5.2 As partial consideration for this Agreement, equity granted on terms as set forth in the Summary of Equity Terms attached hereto as Appendix C.

These Paragraphs 5.1 and 5.2 will survive the termination, expiration or assignment of this Agreement.

6. ROYALTIES, MAINTENANCE FEES, MINIMUM ANNUAL ROYALTIES

6.1 LICENSEE will pay to REGENTS earned royalties at the rate of [ ] percent (__%) of the NET SALEs of LICENSED PRODUCTS, LICENSED SERVICES, and LICENSED METHODS.

6.2 Royalties will be payable on SALEs covered by both pending patent applications and issued patents.

6.3 Royalties accruing to REGENTS will be paid to REGENTS quarterly within sixty (60) days after the end of each calendar quarter.

6.4 LICENSEE will pay to REGENTS an annual license maintenance fee of [ ] U.S. Dollars ($_) 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 or LICENSED METHODS, and LICENSEE pays an earned royalty to REGENTS.

6.5 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 $____[ ] 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.

6.6 All payments due REGENTS will be payable in United States dollars. When LICENSED PRODUCTS, LICENSED SERVICES, or LICENSED METHOD 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.

6.7 Payments due for SALEs occurring in any country outside the United States will not be reduced by any taxes, fees, or other charges imposed by the government of such country on the remittance of royalty income. LICENSEE will also be responsible for all bank transfer charges.

6.8 LICENSEE will make all payments under this AGREEMENT by check payable to "REGENTS of the University of California" and forward it to REGENTS at the address shown in Article 23 (Notices).

6.9 If any patent or patent application, or any claim thereof, included within REGENTS' PATENT RIGHTS expires or is held invalid in a final decision by a court of competent jurisdiction and last resort and from which no appeal has been or can be taken, all obligation to pay royalties based on such patent, patent application or claim, or any claims patentably indistinct therefrom will cease as of the date of such expiration or final decision. LICENSEE will not, however, be relieved from paying any royalties that accrued before such expiration or decision or that are based on another valid patent or claim not expired or involved in such decision.

6.10 No earned royalties will be collected or paid hereunder on SALEs to, or for use by, the United States Government. LICENSEE will reduce the amount charged for such SALEs by an amount equal to the earned royalty otherwise due REGENTS as provided herein.

6.11 Milestone Payments. [**TBD**]

6.12 Earned Royalty if LICENSEE or the SUBLICENSEE challenges any REGENTS' PATENT RIGHTS:
Notwithstanding the above, should LICENSEE or the SUBLICENSEE bring an action seeking to invalidate any REGENTS' PATENT RIGHTS,

(a) LICENSEE or the SUBLICENSEE will pay royalties to REGENTS at the rate of 2 x Y percent (2xY%) of the NET SALES of all LICENSED PRODUCTS SOLD during the pendency of such action. Moreover, should the outcome of such action determine that any claim of a patent challenged by LICENSEE is both valid and infringed by a LICENSED PRODUCT, LICENSEE or the SUBLICENSEE will pay royalties at the rate of 3 x Y percent (3xY%) of the NET SALES of all LICENSED PRODUCTS SOLD, when Y is the royalty rate in 6.1,

(b) LICENSEE or the SUBLICENSEE will have no right to recoup any royalties paid before or during the period challenge,

(c) any dispute regarding the validity of any REGENTS' PATENT RIGHTS shall be litigated in the courts located in California, and the parties agree not to challenge personal jurisdiction in that forum, and;

(d) LICENSEE or the SUBLICENSEE will provide written notice to REGENTS at least three months prior to bringing an action seeking to invalidate any REGENTS' PATENT RIGHTS. LICENSEE or the SUBLICENSEE will include with such written notice an identification of all prior art it believes invalidates any claim of REGENTS' PATENT RIGHTS.

7. DUE DILIGENCE

7.1 LICENSEE, upon execution of this AGREEMENT, will diligently proceed with the development, manufacture, and SALE of LICENSED PRODUCTS, LICENSED SERVICES, and LICENSED METHOD, and will diligently market them in quantities sufficient to meet the market demand.

7.2 In addition to its obligations under Paragraph 7.1, LICENSEE specifically commits to achieving the following objectives in its due diligence activities under this AGREEMENT:

(a)

(b)

7.3 If LICENSEE is unable to meet any of its diligence obligations set forth in Paragraphs 7.1 and 7.2, then REGENTS will so notify LICENSEE of failure to perform. LICENSEE will have the right and option to extend the target date of any such due diligence obligation for a period of six (6) months upon the payment of _____thousand dollars ($____000) within thirty (30) days of the date to be extended for each such extension option exercised by LICENSEE. LICENSEE may further extend the target date of any diligence obligation for an additional six (6) months upon payment of an additional ____ thousand dollars ($____000). Additional extensions may be granted only by mutual written AGREEMENT of the parties to this AGREEMENT. These payments are in addition to the minimum royalty payments specified in Paragraph 6.5. Should LICENSEE opt not to extend the obligation or fail to meet it by the extended target date, then REGENTS will have the right and option either to terminate this AGREEMENT or to reduce LICENSEE's exclusive license to a non-exclusive royalty-bearing license. This right, if exercised by REGENTS, supersedes the rights granted in Article 3. The right to terminate this AGREEMENT or reduce LICENSEE's exclusive license granted hereunder to a non-exclusive license will be REGENTS' sole remedy for breach of Paragraph 7.1 or 7.2.

7.4 At the request of either party, any controversy or claim arising out of or relating to the diligence provisions of Paragraphs 7.1 and 7.2 will be settled by arbitration conducted in San Francisco, California in accordance with the then current Licensing AGREEMENT Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) will be binding on the parties

and may be entered by either party in the court or forum having jurisdiction. In determination of due diligence, the arbitrator may determine solely the issues of fact or law with respect to termination of LICENSEE's rights under this AGREEMENT but will not have the authority to award monetary damages or grant equitable relief.

7.5 To exercise either the right to terminate this AGREEMENT or to reduce the license to a non-exclusive license for lack of diligence under Paragraph 7.1 or 7.2, REGENTS will give LICENSEE written notice of the deficiency. LICENSEE thereafter has sixty (60) days to cure the deficiency or to request arbitration. If REGENTS has not received a written request for arbitration or satisfactory tangible evidence that the deficiency has been cured by the end of the sixty (60) - day period, then REGENTS may, at its option, either terminate the AGREEMENT or reduce LICENSEE's exclusive license to a non-exclusive license by giving written notice to LICENSEE. These notices will be subject to Article 23 (Notices).

8. PROGRESS AND ROYALTY REPORTS

8.1 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, LICENSED SERVICES and LICENSED METHOD 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.

8.2 Each progress report will be a sufficiently detailed summary of activities of LICENSEE and any SUBLICENSEES so that REGENTS may evaluate and determine LICENSEE's progress in development of LICENSED PRODUCTS, LICENSED SERVICES, and LICENSED METHOD, and in meeting its diligence obligations under Article 7, and will include (but not be limited to) the following: summary of work completed and in progress; current schedule of anticipated events and milestones, including diligence milestones under Paragraph 7.2; anticipated market introduction dates for the LICENSED TERRITORIES; and SUBLICENSEE's activities during the reporting period.

8.3 LICENSEE also will report to REGENTS in its immediately subsequent progress and royalty reports, the date of first SALE.

8.4 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. 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, LICENSED SERVICES and LICENSED METHOD;
(c) NET SALES pursuant to Paragraph 2.8;
(d) Total royalties due REGENTS; and
(e) Names and addresses of any new SUBLICENSEES along with a summary of the material terms of each new SUBLICENSE AGREEMENT entered into during the reporting quarter.

8.5 If no SALEs have occurred during the report period, a statement to this effect is required in the royalty report for that period.

9. BOOKS AND RECORDS

9.1 LICENSEE shall keep, and shall require its AFFILIATES and SUBLICENSEES to 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 shall be preserved for at least seven (7) years after the date of the payment to which they pertain and 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 shall make 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 shall be permitted to disclose their findings regarding the completeness and accuracy of LICENSEE's payments to REGENTS as well as the evidentiary bases therefore. REGENTS right to conduct an inspection shall be preserved for one year following the later of the termination 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 shall bear the cost of the inspection. Should an overpayment by LICENSEE be discovered after REGENTS initiate their inspection, LICENSEE shall 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.

LICENSEE will conduct an independent audit of SALEs and royalties at least every 2 years if annual SALEs of LICENSED PRODUCT are over ($_TBD_). 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.

10. LIFE OF THE AGREEMENT

10.1 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 the life of the last-to-expire patent or last-to-be-abandoned patent application licensed under this AGREEMENT, whichever is later.

10.2 Any termination of this AGREEMENT shall not affect the rights and obligations set forth in the following articles:

Article 2	Definitions
Article 4	Sublicenses
Article 5	License Issue Fee; Equity
Article 9	Books and Records
Article 10	Life of the Agreement
Article 13	Disposition of Licensed Products Upon Termination

Article 16	Use of Names and Trademarks
Article 17	Limited Warranties
Article 19	Indemnification
Article 23	Notices
Article 24	Late Payments
Article 26	Confidentiality
Article 29	Applicable Law; Venue; Attorney's Fees

10.3 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.

11. TERMINATION BY REGENTS

11.1 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).

12. TERMINATION BY LICENSEE

12.1 LICENSEE will have the right at any time to terminate this AGREEMENT in whole or as to any portion of REGENTS' PATENT RIGHTS by giving notice in writing to REGENTS. Such notice of termination will be subject to Article 23 (Notices) and termination of this AGREEMENT will be effective ninety (90) days after the effective date of such notice.

12.2 Any termination pursuant to Paragraph 12.1 will not relieve LICENSEE of any obligation or liability accrued hereunder prior to such termination or rescind anything done by LICENSEE or any payments made to REGENTS hereunder 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.

13. DISPOSITION OF LICENSED PRODUCTS UPON TERMINATION

13.1 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, and continue the practice of LICENSED METHOD 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.

14. PATENT PROSECUTION AND MAINTENANCE

14.1 REGENTS will diligently prosecute and maintain the United States and foreign patent applications and patents under REGENTS' PATENT RIGHTS, subject to LICENSEE'S reimbursement REGENTS' out of pocket costs under Paragraph 14.3 below, and all patent applications and patents under REGENTS' PATENT RIGHTS will be held in the name of REGENTS. REGENTS will have sole responsibility for retaining and instructing patent counsel, but continued use of such counsel at any point in the patent prosecution process subsequent to initial filing of a U.S. patent application covering the INVENTION shall be subject to the approval of LICENSEE. If LICENSEE rejects three of REGENTS' choice of prosecution counsel, then REGENTS may select new prosecution counsel without LICENSEE's consent. REGENTS shall promptly provide LICENSEE with copies of all relevant documentation so that LICENSEE may be currently informed and apprised of the continuing prosecution and LICENSEE agrees to keep this documentation confidential in accordance with Article 26. LICENSEE may comment upon such documentation, provided, however, that if LICENSEE has not commented upon such documentation in reasonable time for REGENTS to sufficiently consider LICENSEE's comments prior to the deadline for filing a response with the relevant government patent office, REGENTS will be free to respond appropriately without consideration of LICENSEE's comments. LICENSEE and LICENSEE's patent counsel will have the right to consult with patent counsel chosen by REGENTS.

14.2 REGENTS will use reasonable efforts to prepare or amend any patent application to include claims reasonably requested by LICENSEE to protect the LICENSED PRODUCTS contemplated to be SOLD or to be practiced under this AGREEMENT.

14.3 Subject to Paragraphs 14.4, all past, present, and future costs for preparing, filing, prosecuting, and maintaining all United States and foreign patent applications, and patents under REGENTS' PATENT RIGHTS will be borne by LICENSEE, so long

as the licenses granted to LICENSEE herein are exclusive. Payments are due within thirty (30) days after receipt of invoice from REGENTS. If, however, REGENTS reduces the exclusive licenses granted herein to non-exclusive licenses pursuant to Paragraphs 7.3, 7.4, or 7.5 and REGENTS grants additional license(s), the costs of preparing, filing, prosecuting and maintaining such patent applications and patents will be divided equally among the licensed parties from the effective date of each subsequently granted license AGREEMENT.

14.4 LICENSEE's obligation to underwrite and to pay all domestic and foreign patent filing, prosecution, and maintenance costs will continue for so long as this AGREEMENT remains in effect, provided, however, that LICENSEE may terminate its obligations with respect to any given patent application or patent in any or all designated countries upon three (3) months' written notice to REGENTS. REGENTS will use its best efforts to curtail patent costs when such a notice is received from LICENSEE. REGENTS may continue prosecution and/or maintenance of such applications or patents at its sole discretion and expense; provided, however, that LICENSEE will have no further right or licenses thereunder.

15. MARKING

15.1 Prior to the issuance of patents under REGENTS' PATENT RIGHTS, LICENSEE agrees to mark LICENSED PRODUCT(S) (or their containers or labels) made, SOLD, licensed or otherwise disposed of by it in the United States under the license granted in this AGREEMENT with the words "Patent Pending," and following the issuance in the United States of one or more patents under REGENTS' PATENT RIGHTS, with the numbers of REGENTS' PATENT RIGHTS. All LICENSED PRODUCTS shipped to, manufactured, or SOLD in other countries will be marked in such manner as to conform with the patent laws and practice of such countries.

16. USE OF NAMES AND TRADEMARKS

16.1 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). 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.

17. LIMITED WARRANTIES

17.1 This license and the associated INVENTION 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 INVENTION, REGENTS' PATENT RIGHTS, LICENSED PRODUCTS, LICENSED SERVICES OR LICENSED METHOD WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

17.2 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, SUBLICENSEES, JOINT VENTURES, OR AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDNG 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, SUBLICENSEES, JOINT VENTURES OR AFFILIATES ARISING OUT OF OR RELATED TO PATENT RIGHTS TO THE EXTENT ASSIGNED OR LICENSED BY REGENTS' INVENTORS TO THIRD PARTIES.

17.3 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 REGENTS' PATENT 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 patents of third parties; or

(c) An obligation to bring or prosecute actions or suits against third parties for patent infringement, except as provided in Article 18; or

(d) Conferring by implication, estoppel, or otherwise any license or rights under any patents of REGENTS other than REGENTS' PATENT RIGHTS as defined herein, regardless of whether such patents are dominant or subordinate to REGENTS' PATENT RIGHTS; or

(e) An obligation to furnish any know-how not provided in the patents and patent applications under REGENTS' PATENT RIGHTS.

18. PATENT INFRINGEMENT

18.1 If either party learns of infringement of potential commercial significance of any of The REGENTS' PATENT 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"). Neither party will put an alleged infringer on notice of the existence of any of The REGENTS' PATENT RIGHTS without first obtaining consent of the other. Both The REGENTS and the LICENSEE will use their diligent efforts to terminate such infringement without litigation.

18.2 If the matter described in the Infringement Notice is not resolved within ninety (90) days of receipt of the Infringement Notice, then the LICENSEE may institute suit for patent infringement. The LICENSEE may not join The REGENTS as a party in such suit without The REGENTS' prior written consent. If The REGENTS joins such suit at the LICENSEE's request, the LICENSEEwill pay all out-of-pocket costs incurred by The REGENTS arising out of such suit.

18.3 If, within a hundred and twenty (120) days of receipt of the Infringement Notice, the matter described in the Infringement Notice has not been resolved and the LICENSEEhas not filed suit against the infringer, then The REGENTS may institute suit for patent infringement against the infringer. If The REGENTS institutes such suit, then the LICENSEE may not join such suit without The REGENTS' consent and may not thereafter commence suit against the infringer for the acts of infringement that are the subject of The REGENTS' suit or any judgment rendered in that suit.

18.4 Notwithstanding anything to the contrary in this Agreement, in the event that either party receives written notice of infringement under the Drug Price Competition and Patent Term Restoration Act of 1984 (and/or foreign counterparts of this Law) ("The Act"), then the party in receipt of such notice under the Act shall promptly provide the Infringement Notice to the other party. If under the Act the LICENSEEwill lose the right to pursue legal remedies for infringement by not filing suit, the notification period and the time period to file suit under Paragraph 18.2 will be accelerated to within forty-five (45) days from receipt of the Infringement Notice to either party.

18.5 Any recovery or settlement received in connection with any suit will first be shared by The REGENTS and the LICENSEE equally to cover any litigation costs each incurred and next shall be paid to The REGENTS or the LICENSEE to cover any litigation costs it incurred in excess of the litigation costs of the other. In any suit initiated by the LICENSEE, any recovery in excess of litigation costs will be shared between LICENSEEand The REGENTS as follows: (a) for any recovery other than amounts paid for willful infringement: (i) The REGENTS will receive fifteen percent (15%) of the recovery if The REGENTS did not incur any litigation costs or all of The REGENTS' litigation costs were reimbursed by LICENSEE, (ii) The REGENTS

will receive thirty percent (30%) of the recovery if The REGENTS incurred any litigation costs in connection with the litigation that were not reimbursed by LICENSEE; and (b) for any recovery for willful infringement, The REGENTS will receive fifty percent (40%) of the recovery. In any suit initiated by The REGENTS, any recovery in excess of litigation costs will belong to The REGENTS. The REGENTS and the LICENSEE agree to be bound by all determinations of patent infringement, validity and enforceability (but no other issue) resolved by any adjudicated judgment in a suit brought in compliance with this Article 18 (Patent Infringement).

18.6 Any agreement made by the LICENSEE for purposes of settling litigation or other dispute shall comply with the requirements of Article 4 (Sublicenses) of this Agreement.

19. INDEMNIFICATION

19.1 LICENSEE will, and will require its SUBLICENSEES to, indemnify, hold harmless, and defend REGENTS and its officers, employees, and agents; sponsor(s) of the research that led to the INVENTION; and the inventors of any patents and patent applications under REGENTS' PATENT 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 license or any sublicense. This indemnification will include, but not be limited to, any product liability.

19.2 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 $5,000,000
Products/Completed Operations Aggregate….$10,000,000
Personal and Advertising Injury $5,000,000
General Aggregate $10,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination or expiration of this AGREEMENT. The insurance shall 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.

19.3 The coverage and limits referred to in Subparagraphs 19.2a and 19.2b 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; LICENSEE will promptly notify REGENTS of any material modification of the insurance coverages;

(b) indicate that REGENTS has been endorsed as an additional insured under the coverage described above in Paragraph l9.2; 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.

19.4 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 19. LICENSEE will keep REGENTS informed of its defense of any claims pursuant to this Article 19.

20. COMPLIANCE WITH LAWS

20.1 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, LICENSED SERVICES, or practice of the LICENSED METHOD. 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.

21. GOVERNMENT APPROVAL OR REGISTRATION

21.1 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.

22. ASSIGNMENT

22.1 This AGREEMENT is binding upon and shall inure to the benefit of REGENTS, its successors and assigns. This AGREEMENT will be personal to LICENSEE and assignable by LICENSEE only with the written consent of REGENTS, except that LICENSEE may freely assign this AGREEMENT to its AFFILIATE or an acquirer of all or substantially all of LICENSEE's stock, assets or business to which this AGREEMENT relates. If LICENSEE assigns this AGREEMENT to a non-AFFILIATE third party, then upon execution of the assignment, LICENSEE will (i) provide REGENTS with the updated contact information, and (ii) pay REGENTS [__ hundred thousand dollars] ($_00,000) within thirty days of the execution of the assignment.

23. NOTICES

23.1 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:

To REGENTS: Office of Technology Licensing
2150 Shattuck Avenue, Suite 510
Berkeley, CA 94720-1366
Attn.: Director (UC Case No.: _____)

with notices concerning equity also sent to: IO-CampusEquity @ucop.edu and otl@berkeley.edu

Remittance address for royalties and fee payment, as well as legal reimbursements associated with this license AGREEMENT are to be sent to:

University of California
Knowledge Transfer Office
Attn: Accounts Receivable
1111 Franklin Street, 5th Floor
Oakland, CA 94607

For Electronic Funds Transfer:

Bank Information:
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
Fax your

Please reference the UC Berkeley case number and AGREEMENT control number with your payment.

To LICENSEE: [ ]
Attn.:
Either party may change its address upon written notice to the other party.

24. LATE PAYMENTS

24.1 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 25 (Waiver) of this AGREEMENT.

25. WAIVER

25.1 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.

26. CONFIDENTIALITY

26.1 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.]*

26.2 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 in this Article 25 (Confidentiality). In addition, if a third party inquires whether a license to REGENTS' PATENT RIGHTS is available, The REGENTS may disclose to the third party the existence of this Agreement and the extent of the grant in Articles (Grant)) and related definitions, but will not disclose the name of the LICENSEE unless that information is already public.

26.3 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.

26.4 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:

26.4.1 was previously known to it prior to its disclosure by the disclosing party;
26.4.2 is public knowledge other than through acts or omissions of recipient;
26.4.3 was lawfully obtained without restrictions on the recipient from sources independent of the disclosing party; or
26.4.4 was independently developed by recipient.

26.5 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 subsection (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 section.

26.6 Upon termination 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 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.

27. FORCE MAJEURE

27.1 Except for LICENSEE's obligation to make any payments to REGENTS hereunder, the parties to this AGREEMENT shall be 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, or other natural disasters. When such events have abated, the parties' respective obligations hereunder will resume.

28. SEVERABILITY

28.1 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.

29. APPLICABLE LAW; VENUE; ATTORNEYS' FEES

29.1 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.

30. SCOPE OF AGREEMENT

30.1 This AGREEMENT (except for the AGREEMENT(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.

31. ELECTRONIC COPY

31.1 The parties to this document 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.

[signature page follows]

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	[ ]
By_____	By_____
Title _____	Title_____
Date_____	Date_____

Appendix A:

Appendix __: Royalty Reporting Form

Licensee:		**Period Reported:**	
UC Agreement No.		License Agreement Date:	
UC Case No:			

Prepared by: _____ Title: _____ Date: _____

Approved by: _____ Title: _____ Date: _____

Report of Sales of Licensed Products (add lines as needed)

Country	Part No. or Code	Quantity Made	Quantity Sold	Gross Sales (Local Curr.)	Net Sales (Local Curr.)	Royalty Rate	Conversion Rate, if any	Royalty Due in USD
USA								
Other (identify)								
Other (identify)								
Other (identify)								
Other (identify)								
Sublicensee #1								
Sublicensee #2								
TOTAL								

Annual Minimum Royalty paid for this calendar year:	
Creditable Annual Minimum Royalty balance available:	
Royalty Payment:	

The following categories of deduction were taken in reducing total gross sales to total net sales (add lines as needed):

1. _____	$
2. _____	$
3. _____	$
4. _____	$
5. _____	$
Total	$

Respond YES or NO to the following, and provide additional inforamation as needed:

The invoice price used is based on the sale to an unaffiliated end user and not on our transfer price to a related party.	
The Licensed Product is one component of an assembly.	
If yes, the royalty is calculated based upon the net sales price of the entire system.	
Were Licensed Products sold in a new territory for the first time during the quarter? If yes, state which territory.	
Were any additional types of Licensed Products sold for the first time during the quarter? If yes, identify the products.	
Are Licensed Products manufactured outside the United States? If so, by whom and in what country?	
Did any non-royalty consideration (eg, milestone payment) become due under this Agreement in the period?	
Were any new sublicenses executed during the period? If so, attach a copy of the sublicense agreement.	
Was any non-royalty consideration received from any sublicensee during the period?	

APPENDIX B

Licensee Contact Information

LICENSEE NAME:	**UC CONTROL NO.:**
PATENT PROSECUTION CONTACT	
NAME:	TELEPHONE:
TITLE:	EMAIL:
ADDRESS:	
CITY, STATE, ZIP:	
COUNTRY:	
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:	

APPENDIX C

Summary of Equity Terms for Equity Issuable as Partial Consideration for License

This Summary of Equity Terms summarizes the principal terms of the securities issuable to The Regents of the University of California ("**The Regents**") as partial consideration for a potential license agreement ("**License Agreement**") pursuant to which the UC licenses certain intellectual property to the undersigned (the "**Licensee**"). No legally binding obligations will be created until a definitive License Agreement are executed and delivered by all parties at which time a final and binding Summary of Equity Terms will be attached to the License Agreement and/or reflected in a Stock Issuance Agreement among the parties. This Summary of Equity Terms is not a commitment to license any intellectual property to the Licensee or to make any investment in the Licensee, and is conditioned on the completion of due diligence, legal review and documentation that is satisfactory to The Regents. This Summary of Equity Terms shall be governed in all respects by the laws of the State of California, without giving effect to principals of conflicts of laws.

Offering Terms

Closing Date: As soon as practicable following The Regents' receipt of approval from either its requisite signatory at the campus or its Office of the President, as the case may be, and satisfaction of the Conditions to Closing (the "**Closing**").

Shares: The Licensee will issue The Regents _____ shares of the Licensee's voting common stock (the "**Shares**"). The Shares will equal ___ percent (____%) of the outstanding and issued securities of the Licensee, calculated on an as converted and "Fully Diluted Basis" as of the effective date of the License. For purposes hereof, "Fully Diluted Basis" means the total number of shares of the Licensee's outstanding and issued common stock after giving effect to the issuance of the Shares, and assuming full conversion or exercise of any convertible securities (whether then vested or not) such as warrants, outstanding options, restricted stock units, convertible notes, SAFEs (or other instruments convertible into common stock), and also including all unissued but reserved shares set aside for issuance pursuant to any stock option or other equity incentive plan of the Licensee. The parties shall construe the term "Fully Diluted Basis" mutatis mutandis in the case where the Licensee is organized as a limited liability company. To the best of the Licensee's knowledge, the fair market value of a Share as of the date of issuance is $____. To the extent the Shares issuable upon conversion of any convertible securities (SAFEs, convertible notes, etc.) cannot be calculated at the time of the initial issuance or issuance of any Antidilution Shares, the Licensee agrees to promptly issue Shares or Additional Shares to The Regents upon conversion of convertible securities, without further consideration, that are necessary to true up the Shares to maintain and accurately reflect The Regents holding

of at least [___]% of the outstanding and issued common stock of the Licensee on a Fully-Diluted Basis.

Fully Paid Shares: The Shares will be fully paid and nonassessable and will be issued as partial consideration for the License Agreement. The Licensee will not be required to pay any additional consideration for the Shares or any Antidilution Shares (as defined below).

Capitalization: The Licensee will provide The Regents with a pre- and post-Closing capitalization table.

Stock Issuance Agreement: The Shares will be issued pursuant to a Stock Issuance Agreement in a form drafted by The Regents but that is mutually agreeable to the parties and with terms consistent to those set forth in the agreed upon Summary of Equity Terms.

Antidilution Adjustment: The Licensee will issue additional shares ("**Antidilution Shares**") to The Regents, without further consideration, until such time as $____ has been raised by the Licensee in gross proceeds from the sale of securities or by conversion of instruments convertible into equity, so that, solely the Shares issued hereunder together with the issuance of the Antidilution Shares, add up to aggregate ___ percent (____%) of the outstanding and issued securities of the Licensee on as converted and Fully Diluted Basis; provided, any increase in the number of shares of stock reserved for any stock option or equity incentive plan of the Licensee authorized in connection with a financing shall be deemed to have been authorized prior to the sale of such securities.

In the event that a round of financing results in more than $____ in gross proceeds being raised, then for purposes of issuing these Antidilution Shares, a hypothetical round shall be considered to have taken place in which sufficient funds are invested to reach $____ in gross proceeds and any shares issuable upon conversion of convertible securities (SAFEs, convertible notes, etc.) will first be included in such hypothetical round prior to taking into account any shares issuable upon new consideration invested at the full price by investors in the financing.

Participation Rights: If the Company proposes to sell any equity securities or securities that are convertible into equity securities of the Company (collectively, "Equity Securities") in a financing, then the Institution and/or its Assignee (as defined below) will have the right to purchase up to that portion of the Equity Securities that equals the Institution's then current, fully-diluted percentage ownership of the

Company on the same terms and conditions as are offered with respect to such Equity Securities sold in such financing, but at a minimum the Institution and or/its Assignee will have the right to purchase 5% of the securities issued in such offering. Company shall provide thirty days advanced written notice of each such financing, including reasonable detail regarding the terms and purchasers in the financing. The term "Assignee" means (a) any entity, which may include Osage University Partners, to which the University's participation rights under this section have been assigned either by the University or another entity, or (b) any entity that is controlled by the University. This paragraph shall survive the termination of this agreement.

Right to Valuation Reports: So long as The Regents holds any of the Shares, the Licensee shall deliver to The Regents a final copy of each third-party valuation report received on or after the date hereof which values the Common Stock (the "Valuation Report"). The Regents will keep such Valuation Report and its contents confidential (except for distribution to The Regents' accountants, management and other agents to the extent necessary to monitor The Regents' investment in the Licensee).

Representations and Warranties: Standard representations and warranties by the Licensee (including, among other things, a capitalization, organization and good standing, due authorization and valid issuance of Shares representation) and The Regents. The Licensee's representations will reflect the Licensee's authority to issue Antidilution Shares.

Restrictions: Customary 180 day lockup on the Shares and Antidilution Shares (excluding securities acquired in or following the IPO) following the Licensee's initial public offering, if requested by the managing underwriter and provided, all officers, directors and greater than 1% stockholders are subject to similar lockups.

Other Terms: The Regents and its nominee will be free to transfer Shares and Antidilution Shares to its inventors of the intellectual property licensed under the License Agreement pursuant to The Regents' Patent Policy.

The Regents Shares and Antidilution Shares will not be subject to any drag along or similar voting obligations upon any

Licensee corporate transactions, such as a merger, stock or asset sale, financing transaction, etc.

The Regents has the right to approve any press release or other disclosure referencing the name of The Regents as investor.

The Stock Issuance Agreement will be governed in all respects by the laws of the State of California, without giving effect to principals of conflicts of laws.

Information Rights: So long as The Regents (through Shellwater or otherwise) owns Shares or Antidilution Shares (or any securities issued upon exchange thereof) of the Licensee, the Licensee will provide The Regents and/or its Assignee with financial statements and capitalization information of the Licensee on [**a quarterly / an annual**] basis. The Licensee shall give The Regents notice of the terms of a new offering, including: (i) the names of the investors, the allocation of equity securities among them and the total amounts to be invested by each of them in such offering; (ii) pre- and post-financing (projected) capitalization table; (iii) investor presentation (if available); (iv) an introduction to the lead investor in such offering for the purpose of discussing the lead investor's due diligence process; and (v) such other documents and information as The Regents may reasonably request for the purpose of making an investment decision or verifying the amount of equity securities it is entitled to purchase in such offering.

Piggyback Registration Rights: Whenever Licensee proposes to register any of its securities under the Securities Act of 1933 (the "**Securities Act**") for sale in a public offering (other than (i) its initial offering to the public generally, (ii) pursuant to a shelf registration pursuant to Rule 415 under the Securities Act, or (iii) a registration on Form S-8 or Form S-4, or the analogous forms permitted to small business issuers pursuant to the Exchange Act), the Licensee shall give written notice to The Regents of its intention to effect such a registration. Such notice will offer to The Regents the opportunity to have any or all of the securities held by The Regents included in such registration statement (a "**Piggyback Registration**"). If The Regents desires to have its securities registered under this Section it shall so advise the Licensee in writing within 30 days after the date of receipt of such notice from the Licensee (which request shall set forth the amount of securities for which registration is requested), and, subject to the limitations and conditions set forth herein, the Licensee shall include such securities in the Piggyback Registration without consideration from The Regents for the cost of registration. The Piggyback

Registration rights granted herein shall be subject to the following conditions and limitations:

(i) If the managing underwriter or underwriters of any such proposed public offering advises the Licensee that the total amount of securities which the purchaser intended to be included in such proposed public offering is sufficiently large to adversely affect the success of such proposed public offering, then the amount of the securities to be offered for the accounts of The Regents shall be reduced pro rata, based upon the aggregate number of security holders requesting such registration (except for those securities offered by the Licensee and holders of senior registration rights) of the securities intended to be included in such offering and the number of securities to be offered for the account of each such holder of the Shares, to the extent necessary to reduce the total amount of securities to be included in such proposed public offering to the amount recommended by such managing underwriter or underwriters before the securities offered by the Licensee are so reduced; and

(ii) The price at which the shares of The Regents are offered to the public shall be the same as the price at which the other shares of the Licensee securities then registered are offered to the public.

Notwithstanding the above, if the Licensee registers any securities under the Securities Act, the Licensee shall include the securities of The Regents in such registration at the expense of the Licensee. The Regents expressly acknowledges that the registration rights contained in this section, including the Piggyback Registration, shall be junior in all respects to the registration rights the Licensee has granted to the holders of the Licensee's preferred stock.

Tag-Along Rights:

If one or more founders propose to transfer (in a sale consummated in a single transfer, or a series of related transfers to a single purchaser or a group of purchasers as part of a single transaction) shares representing 50% or more of the then outstanding shares (a "**Transfer**"), then The Regents shall have the right ("**Tag-Along Right**") to require the proposed purchaser(s) to purchase from The Regents, at its sole discretion, all or a portion of the shares owned by The Regents participate in the Transfer (on a pro rata basis with respect to the founder(s) at the same price per share and upon the same terms of payment and conditions as such proposed Transfer by the founder(s), and each founder shall use its best efforts to cause the same to occur. The Tag-Along Right shall

not apply to an Exempt Transaction (as defined below) of an applicable founder.

The founders shall promptly notify The Regents in writing in the event they propose to make a Transfer giving rise to Tag-Along Rights, and prior to effecting any such transfer shall furnish The Regents with the Transfer terms and a copy of any written offer or agreement pertaining thereto.

The following transactions shall constitute an "**Exempt Transaction**" for purposes herein: (i) a Transfer to the Licensee, (ii) a Transfer by will or intestate succession to an executor, administrator, testamentary trustee, legatee or beneficiary, (iii) a Transfer in a public offering pursuant to an effective registration statement or exemption therefrom, (iv) a Transfer that has been approved in writing by the Licensee by disinterested members of its board of directors, (v) a Transfer to one or more related parties of a founder. As a condition to the validity of founder's transfer of ownership of shares pursuant to an Exempt Transaction hereunder (including, without limitation, any pledge or hypothecation of any shares), the transferee and his or her spouse, or board of directors, agent, or authorized party, if any, shall agree in writing to hold such shares subject to all the terms and provisions of this section as if they were a founder, and shall agree to make transfers thereof only as required and permitted for a founder under this section.

This section may be amended, terminated or waived only with the written consent of the Licensee and founders holding a majority of the then outstanding shares held by all founders.

Right of First Refusal: The Regents has a right of first refusal to purchase any of the founders' securities before a transfer to a third party.

Observer Rights: So long as The Regents (through Shellwater or otherwise) owns Shares or Antidilution Shares (or any securities issued upon exchange thereof), the Licensee will permit a representative of The Regents to attend (whether in person, via telephone, teleconference or otherwise) all meetings of the Licensee's Board of Directors and committees thereof in a non-voting, observer capacity. The Licensee will also provide to The Regents all notices, minutes and other written or tangible materials provided to the Licensee's Board of Directors and committees thereof, at the same time and in the same manner as are provided to the Licensee's Board of Directors and committees thereof.

Insurance:	The Licensee undertakes to carry adequate insurance.
Legal Expenses:	The Licensee will be responsible for up to $_____ legal fees and expenses incurred by The Regents in connection with the negotiation and execution of agreements to effect the issuance of equity to The Regents on the terms contemplated by this Summary of Equity Terms.