SAMPLE
NONEXCLUSIVE LICENSE*

This non-exclusive patent license (“Agreement”) is effective [] (“Effective Date”), by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, whose legal address is 1111 Franklin St., 12th Floor, Oakland, CA 94607-5200, acting through its Office of Technology Licensing, at the University of California, Berkeley, 2150 Shattuck Avenue, Suite 510, Berkeley, CA 94704-1366 ("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 "[]" invented by [] of the University of California, Berkeley, Department of [] ("INVENTION"), as described in REGENTS' Case No. B [] and REGENTS' PATENT RIGHTS as defined below, which are directed to the INVENTION.

1.2 REGENTS and LICENSEE wish to have INVENTION commercialized so that products may be available for public use and benefit.

1.3 LICENSEE wishes to acquire a non-exclusive license to the REGENTS' PATENT RIGHTS to manufacture, use and sell LICENSED PRODUCTS, and REGENTS is willing to grant such rights.

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 USC 200-212 and implementing regulations, including that REGENTS, in turn, grants 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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2. DEFINITIONS

2.1 "REGENTS' PATENT RIGHTS" means REGENTS' rights in U.S. Patent Applications, Serial Numbers [ ], entitled "[ ]" and "[ ]" filed on [ ] by Drs. [ ] 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.

2.2 "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.

2.3 "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.

2.4 "LICENSED FIELD OF USE" means ________________________________.

2.5 "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

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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.

2.6 "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.

2.7 "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 "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.

2.9 “LICENSED SERVICE” means a service provided using LICENSED PRODUCTS or LICENSED METHOD.

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 3.2, REGENTS hereby grants, and LICENSEE accepts, a non-exclusive license REGENTS' PATENT RIGHTS to make, use, offer for sale, sell and import LICENSED PRODUCT(S) and to practice LICENSED METHOD in the LICENSED FIELD OF USE in the LICENSED TERRITORY.

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3.2 The licenses under Paragraph 3.1 will be non-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 Nothing in this Agreement will be deemed to limit the right of REGENTS to publish any and all technical data resulting from any research performed by REGENTS relating to the INVENTION, and to make and use the INVENTION, LICENSED PRODUCTS, and LICENSED SERVICES and practice LICENSED METHOD and associated technology and to allow other educational and non-profit institutions to do so for educational and research purposes.

3.4 This Agreement will terminate immediately if LICENSEE files a claim, including in any way, the assertion that any portion of the REGENTS' PATENT RIGHTS is invalid or unenforceable where the filing is by the LICENSEE, a third party on behalf of the LICENSEE, or a third party at the written urging of the LICENSEE.

3.5 LICENSEE will have a continuing responsibility to keep REGENTS informed of the large/small entity status, as defined in 15 U.S.C. 632.

3.6 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. LICENSE ISSUE FEE

4.1 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.

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5. ROYALTIES

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

5.2 Royalties will be payable on SALES of LICENSED PRODUCTS, LICENSED SERVICES and LICENSED METHODS covered by both pending patent applications and issued patents.

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

5.4 Beginning in the first 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 was made.

5.5 All royalties due the REGENTS will be payable in United States dollars. When LICENSED SERVICES, or LICENSED METHOD are SOLD for monies other than United States dollars, the 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 funds. The exchange rate will be that rate quoted in the Wall Street Journal on the last business day of the reporting period.

5.6 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. The LICENSEE will also be responsible for all bank transfer charges.

5.7 LICENSEE will make all payments under this Agreement by check payable to "The Regents of the University of California" and forward it to REGENTS at the address shown in Article 22 (Notices).

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5.8 If any patent, 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 or claims 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 for that accrued before such expiration or decision or that are based on another valid patent or claim not expired or involved in such decision.

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

6. DUE DILIGENCE

6.1 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.

6.2 If LICENSEE fails to meet its due diligence obligations hereunder, then REGENTS has the right to terminate this Agreement. This right supersedes the rights granted by REGENTS in Article 3 (Grant).

7. PROGRESS AND ROYALTY REPORTS

7.1 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 the 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.

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7.2 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 6, 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 6.2 above; anticipated market introduction dates for the licensed territories; and sublicensee’s activities during the reporting period.

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

7.4 After the first commercial 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 31, and December 31, of each year. Each such royalty report will 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 2.5; and
   (d) Total royalties due REGENTS.

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

8. **BOOKS AND RECORDS**

8.1 LICENSEE will keep full, true, and accurate books and records containing all particulars that may be necessary for the purpose of showing the amount of royalties payable to REGENTS and LICENSEE’s compliance with other obligations under this Agreement. Said books and records will be kept at LICENSEE’s principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. Said books and records and the supporting data will be open at all reasonable times during normal business hours upon reasonable notice, for five (5) years following the end of the calendar year to which they pertain, to the inspection and audit

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by representatives of REGENTS for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement. Such representatives will be bound to hold all information in confidence except as necessary to communicate LICENSEE's non-compliance with this Agreement to REGENTS.

8.2 The fees and expenses of REGENTS' representatives performing such an examination will be borne by REGENTS. However, if an error in underpaid royalties to REGENTS of more than five percent (5%) of the total royalties due for any year is discovered, then the fees and expenses of these representatives will be borne by LICENSEE.

9. **LIFE OF THE AGREEMENT**

9.1 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.

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

- Article 2  Definitions
- Article 8  Books and Records
- Article 9  Life of the Agreement
- Article 12 Disposition of Licensed Products Upon Termination
- Article 15 Use of Names and Trademarks
- Article 16 Limited Warranties
- Article 18 Indemnification
- Article 22 Notices
- Article 23 Late Payments
- Article 25 Confidentiality
- Article 28 Applicable Law; Venue; Attorneys’ Fees

9.3 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.

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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 shall be subject to Article 22 (Notices).

11. TERMINATION BY LICENSEE

11.1 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 22 (Notices) and termination of this Agreement will be effective ninety (90) days from the effective date of such notice.

11.2 Any termination pursuant to the above paragraph 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.

12. DISPOSITION OF PRODUCTS UPON TERMINATION

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, 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

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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.

13. **PATENT PROSECUTION AND MAINTENANCE**

13.1 REGENTS will diligently prosecute and maintain the United States and foreign patent applications and patents under REGENTS’ PATENT RIGHTS, subject to LICENSEE’S reimbursement for REGENTS’ out of pocket costs under Article 13.3 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 25. 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.

13.2 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.

13.3 Subject to Paragraphs 13.4 and 13.5, 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. Payments are due within thirty (30) days after receipt of invoice from REGENTS. If REGENTS grants additional license(s), the costs of preparing, filing, prosecuting and maintaining such

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patent applications and patents will be divided equally among the licensed parties from the effective date of each subsequently granted license agreement.

13.4 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. In the event that more than one license is granted to REGENTS’ PATENT RIGHTS, the costs of filing, prosecution and maintenance shall be divided equally among the licensed parties from the effective date of each subsequently granted license agreement.

14. MARKING

14.1 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 the 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.

15. USE OF NAMES AND TRADEMARKS

15.1 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 the use, by LICENSEE, of the name “The Regents of the University of California” or the name of

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

16. **LIMITED WARRANTIES**

16.1 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, THE LICENSED PRODUCTS OR LICENSED METHOD WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

16.2 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 (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, 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.

16.3 Nothing in this Agreement is or shall 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, sold, or otherwise disposed of 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 14 (Patent Infringement); or

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(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 REGENTS' PATENT RIGHTS.

17. PATENT INFRINGEMENT

17.1 In the event that LICENSEE learns of the substantial infringement of any REGENTS' PATENT RIGHTS under this Agreement, LICENSEE will promptly provide REGENTS with notice and reasonable evidence of such infringement (“Infringement Notice”).

18. INDEMNIFICATION

18.1 LICENSEE will indemnify, hold harmless, and defend REGENTS, its officers, employees, and agents; sponsor(s) of the research that led to the INVENTION; and the inventors of any invention covered by patents and patent applications in 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. This indemnification will include, but not be limited to, any product liability.

18.2 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

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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.

18.3 The coverage and limits referred to in Subparagraphs 18.2a and 18.2b 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 Subparagraph 18.2; 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.

18.4 REGENTS will promptly notify LICENSEE in writing of any claim or suit brought against REGENTS in respect of which REGENTS intends to invoke the provisions of this Article 18. Where LICENSEE is providing a defense, LICENSEE will keep REGENTS informed on a current basis of its defense of any claims pursuant to this Article 18.

19. COMPLIANCE WITH LAWS

19.1 LICENSEE will comply with all applicable international, national, state, regional, and local laws and regulations in performing its obligations hereunder and in its use,

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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.

20. GOVERNMENT APPROVAL OR REGISTRATION

20.1 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.

21. ASSIGNMENT

21.1 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 an acquirer of all or substantially all of LICENSEE's stock, assets or business.

22. NOTICES

22.1 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. * 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.
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 94704-1366  
Attn.: Director (UC Case No.: B______)

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  
Innovation Alliances and Services  
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.

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To LICENSEE: [ ]
Attn.: [ ]

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

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

23. LATE PAYMENTS

23.1 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 24 (Waiver) of this Agreement.

24. WAIVER

24.1 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.

25. CONFIDENTIALITY

* 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.
25.1 Each party will hold the other party's proprietary business and technical information, patent prosecution material and other proprietary information, including the negotiated terms of this Agreement, in confidence and against disclosure to third parties with at least the same degree of care as it exercises to protect its own data and license agreements of a similar nature. This obligation will expire five (5) years after the termination or expiration of this Agreement.

25.2 Nothing contained herein will in any way restrict or impair the right of LICENSEE or REGENTS to use, disclose, or otherwise deal with any information or data which:
   (a) at the time of disclosure to a receiving party is generally available to the public or thereafter becomes generally available to the public by publication or otherwise through no act of the receiving party;
   (b) the receiving party can show by written record was in its possession prior to the time of disclosure to it hereunder and was not acquired directly or indirectly from the disclosing party;
   (c) is independently made available to the receiving party without restrictions as a matter of right by a third party; or
   (d) is subject to disclosure under the California Public Records Act or other requirements of law.

25.3 REGENTS will be free to release to the inventors and senior administrators employed by REGENTS the terms and conditions of this Agreement upon their request. If such release is made, REGENTS will inform such employees of the confidentiality obligations set forth above and will request that they do not disclose such terms and conditions to others. Should a third party inquire whether a license to REGENTS' PATENT RIGHTS is available, REGENTS may disclose the existence of this Agreement and the extent of the grant in Articles 3 and 4 to such third party, but will not disclose the name of LICENSEE unless LICENSEE has already made such disclosure publicly, except where REGENTS is required to release information under either the California Public Records Act or other applicable law, provided REGENTS gives prior written notice to LICENSEE of such disclosure.

25.4 LICENSEE and REGENTS agree to destroy or return to the disclosing party proprietary information received from the other in its possession within fifteen (15) days following the effective date of termination of this Agreement. However, each party may retain one

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copy of proprietary information of the other solely for archival purposes in non-working files for the sole purpose of verifying the ownership of the proprietary information, provided such proprietary information will be subject to the confidentiality provisions set forth in Article 25.1. LICENSEE and REGENTS agree to provide each other, within thirty (30) days following termination of this Agreement, with a written notice that proprietary information has been returned or destroyed.

26. **FORCE MAJEURE**

26.1 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.

27. **SEVERABILITY**

27.1 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.

28. **APPLICABLE LAW; VENUE; ATTORNEYS’ FEES**

28.1 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.

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29. **SCOPE OF AGREEMENT**

29.1 This Agreement (except for the Confidentiality Agreement dated ___________ and the Letter Agreement dated ___________ and extension thereof, 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.

30. **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.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT IN DUPLICATE ORIGINALS BY THEIR DULY AUTHORIZED OFFICERS OR REPRESENTATIVES.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By ____________________________  By ____________________________

Date __________________________  Date __________________________

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