

**Boston University**  
**EZ Start License Agreement**

**University Case Title:**\_\_\_\_\_

**University Case Number(s):**\_\_\_\_\_

**[Licensee Name]**

**[Effective Date]**

**This document is for discussion purposes only and does not constitute a binding agreement or letter of intent between the parties. The terms of any transaction between the parties will be subject to the negotiation and execution of a definitive agreement satisfactory to the parties. Unless and until a definitive agreement is executed by the parties, neither party is under any legal obligation of any kind with respect to any transaction relating to the subject matter stated herein. Until such a definitive agreement is executed, either party may determine not to proceed with the proposed transaction at any time and for any reason [To be removed in Final document sent for signatures].**

**LICENSE AGREEMENT  
Principal Terms & Milestones List**

<b>University Case Number(s):</b>	<b>BU</b> _____
<b>University Case Title:</b>	_____
<b>Licensee Name:</b>	_____
<b>Entity Type:</b>	_____
<b>State or Country of Organization:</b>	_____
<b>Licensee Fiscal Year:</b>	_____
<b>Licensee Notice Address:</b>	_____
<b>Licensee Notice Facsimile:</b>	_____
<b>Licensee Notice E-mail:</b>	_____
<b>Prior Patent Costs incurred as of _____</b>	<b>\$</b> _____
<b>License Issue Fee as equity under the Equity Agreement [or Percentage of Stock]:</b>	<b>\$</b> _____
<b>Threshold (Anti-Dilution Protection)</b>	_____
<b>Minimum Royalty Amount, from the Effective Date:</b>	
<b>For MRA Years 0 – 2:</b>	<b>\$</b> _____
<b>For MRA Years 3 – 5:</b>	<b>\$</b> _____
<b>For MRA Years 6 and all subsequent years:</b>	<b>\$</b> _____
<b>Patent-Based Royalty Percentage</b>	_____ %
<b>Software-Based Royalty Percentage [DELETE IF NO COPYRIGHT]</b>	_____ %
<b>Sublicensee Royalty Revenue Percentage</b>	_____ %
<b>Sublicensee Lump Sum Percentage</b>	_____ %
<b>Funding Event Amount</b>	<b>\$</b> _____
<b>Commercial Activity Reference Date (§ 3.05):</b>	_____
<b>Territory:</b>	_____
<b>Field of Use [This should be defined with great care]:</b>	_____

<u>Milestones</u>	<u>Date</u>	<u>Payment</u>
Submit Commercialization Plan	___/___/___	-
Submit Business Plan for Licensed Products, Licensed Process and/or Software	___/___/___	-
Provide list of management team	___/___/___	-
Raise \$__ million by sale of Equity	___/___/___	-
Raise \$__ million by sale of Equity	___/___/___	-
Develop working prototype	___/___/___	\$ _____
Submit IND/IDE/510(k) Application	___/___/___	\$ _____
Initiate Phase I Clinical Study	___/___/___	\$ _____
Initiate Phase II Clinical Study	___/___/___	-
Initiate Phase III Clinical Study	___/___/___	\$ _____
Submit NDA/PLA/PMA	___/___/___	\$ _____
Make First Commercial Sale in US	___/___/___	\$ _____
Achieve Net Sales of ___ units in US		
Achieve Net Sales of ___ units in US		

# LICENSE AGREEMENT

## General Terms & Conditions

LICENSE AGREEMENT dated as of \_\_\_\_\_, 2012 (the “*Effective Date*”), by and between Trustees of Boston University, a Massachusetts non-profit corporation with a principal address at One Silber Way, Boston, MA 02215 (the “*University*”) and \_\_\_\_\_, a corporation existing under the laws of \_\_\_\_\_, having a place of business at \_\_\_\_\_ (as further defined herein, *Licensee*).

WHEREAS, the University is the owner by assignment from [Inventors] and/or [Authors] of his/her/their individual right, title and interest in the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] (as each is defined herein) and desires to promote the public interest by granting a license thereto;

WHEREAS, Licensee desires to obtain a license to use and practice the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] to develop, produce, market and sell products; and

[*If for a healthcare technology* WHEREAS University and Licensee understand and accept that it may serve the public good for there to be competitive sources of Licensed Product in certain markets, with appropriate safeguards to Licensee’s economic interests in other markets, as more fully specified herein and that the result of this will be the availability of drugs at affordable prices to poor segments of the world’s populations;]

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the University and Licensee hereby agree as follows:

**ARTICLE I. DEFINITIONS.**

**1.01** Capitalized terms used in this Agreement will have the meanings set forth in Schedule 1 annexed hereto. The definition of terms defined in the singular tense will include the plural tense and *vice versa*.

**ARTICLE II. LICENSE.**

**2.01 Grant.** Subject to all of the terms, conditions set forth in this Agreement, the University hereby grants to Licensee, and Licensee hereby accepts, a right and license: (a) under the Patent Rights, to make, have made, use, lease, offer to sell, sell and import Licensed Products; and/or to practice Licensed Processes; and/or (b) under the Copyright, to use, reproduce, prepare derivative works, perform, display, and distribute all or any part of the Software [Remove all references to Software and/or Copyright if not part of license], separately or with or as part of any product or service; in each case: (i) directly or by sublicense (subject to Section 2.03 hereof); and (ii) only in the Field of Use within the Territory during the Term.

**2.02 Exclusivity.** Subject to the Reserved Rights and the Government Rights (if any), which are expressly reserved in this Agreement, the license granted under Section 2.01(a) hereof is exclusive during the Exclusive Period, and thereafter is non-exclusive. All other aspects of the license granted in Section 2.01 are non-exclusive to Licensee.

**2.03 Sublicenses.** Subject to sections 2.03 (A)-(K), below, the grant under Section 2.01, above, includes a right for Licensee to enter into Sublicenses provided that Licensee shall not grant any Sublicenses (other than a Label License) after the expiration or termination of the Exclusive Period.

**(A) Obligations To University.** Any Sublicense (excluding Label Licenses which are separately addressed in Section 2.03(J), below) will specify that it is subject to

this Agreement and that any Permitted Sublicensee agrees to be bound directly to the University in respect of all obligations to the University set forth in ARTICLE II, Sections 2.03, 2.04, 2.05, 2.06, 2.07 [Remove 2.07 if no healthcare technology] and 2.08 [DELETE IF NO COPYRIGHT], ARTICLE III, Section 3.01(E), ARTICLE IV, Sections 4.01(D) and (E) as applicable, ARTICLE V (all), ARTICLE VI, Sections 6.01, 6.02 and 6.03, ARTICLE VII (all), ARTICLE IX (all), ARTICLE X (all) and ARTICLE XI, Section 11.01.

- (B) Copy To University.** A copy of each Sublicense and each amendment thereto or waiver issued in connection therewith will be sent to the University within thirty (30) days of execution by the parties thereto and Licensee will send a contemporaneous copy to University of any termination notice sent to a Permitted Sublicensee.
- (C) Consideration.** Subject to Section 2.03(K), Licensee is not permitted to grant sublicenses to the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] for no consideration without prior written consent of University. Moreover, without the prior written consent of the University, consideration for any Sublicense will not include anything of value in lieu of cash payments. For the avoidance of any doubt, the requirements of this Section 2.03(C) forbid Licensee from sublicensing the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] as part of a cross-license agreement or as part of a settlement agreement without the University's prior written consent after full disclosure of the entire transaction contemplated by Licensee that in any way involves the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT].
- (D) No Waivers.** Without the prior written consent of the University, Licensee will not waive any material default or breach under any Sublicense and will not waive any breach or default of any of the requirements of Section 2.03(A).
- (E) Termination.** Any Sublicense may specify that in the event of termination of this Agreement, so long as Sublicense complies with this Agreement said Sublicense will continue in full force and effect and all rights and obligations of the

Sublicensee, including without limitation the payment of royalties specified in said Sublicense, will inure to the benefit of the University or its designee.

Notwithstanding any other provision of this Agreement, University shall not assume any obligation under any Sublicense without its prior written consent.

- (F) Further Sublicensing.** Without the prior written consent of University, a Permitted Sublicensee shall not grant any sublicense except that a Permitted Sublicensee may: 1) grant a Label License so that any product it sells to an End-User may be used for its intended purpose only with respect to amounts of product purchased; and/or 2) grant a royalty-free sublicense solely to conduct Clinical Trials as specified in Section 2.03(K). Any purported sublicense granted by a Permitted Sublicensee (other than as expressly permitted herein) that has not been authorized by written consent of the University will be null and void and constitute a material breach of this Agreement.
- (G) No Enforcement of Patents.** Without prior written consent of University, no Sublicense granted by Licensee may grant any Permitted Sublicensee a right to enforce the Patent Rights and/or rights in the Copyright [DELETE IF NO COPYRIGHT].
- (H) Compulsory Licensing.** Licensee or its Permitted Sublicensee(s) (as applicable) will promptly notify University should a compulsory license be granted, or be the subject of a possible grant, by Licensee or a Permitted Sublicensee to a third party under the applicable laws, rules, regulations, guidelines, or other directives of any governmental or supranational agency in the Territory under the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT]. Said notice will include any material information concerning such compulsory license, and the running royalty rates payable. To the extent that any terms and/or conditions of said compulsory license are: 1) inconsistent with Licensee's obligations under this Agreement; and 2) dictated by said applicable laws, rules, regulations, guidelines, or other directives of any governmental or supranational agency, there is no breach of this Agreement. Notwithstanding the foregoing, to the extent permitted by law

Licensee must still pay to University all applicable royalties and fees due under Section 4.01 on amounts actually collected under said compulsory license(s).

- (I) Sublicensing To A Large Entity.** Licensee will notify University within ten (10) business days if it grants a Sublicense to any entity that is not a ‘small entity’ within the meaning set forth in 37 C.F.R.§1.27. Licensee will likewise require its Permitted Sublicensees to notify University within ten (10) business days in the event that said Permitted Sublicensee grants a sublicense to any entity that is not a ‘small entity’ within the meaning set forth in 37 C.F.R. §1.27. For the avoidance of any doubt, a Label License is not a Sublicense for purposes of this Section 2.03(I).
- (J) Label Licenses.** Any Label License (or the product associated therewith) is subject to this Agreement and, in particular, must comply, or be consistent, with Sections 2.03(G), 6.01 and 6.02. All Licensed Product sold under a Label License will be subject to all of ARTICLE VII provided that the Licensee or its Permitted Sublicensee, rather than the End User, will be the responsible/liable party. Any right or license under a Label License applies only to the amount of Licensed Product contained in the container or packaging bearing the Label License. Any dispute with University associated with any Label License or product under a Label License will be resolved in accordance with ARTICLE X.
- (K) Clinical Trials.** Licensee and its Permitted Sublicensees may grant to a third party a royalty-free sublicense solely for the purpose of conducting a clinical trial or other research and/or development activity associated with the use of Licensed Products and/or Licensed Processes as may be required by the Food and Drug Administration (FDA) or other governmental regulatory agency from time to time (collectively “*Clinical Trials*”). This grant is limited to the duration of and activities directly associated with any Clinical Trials.

**2.04 Reserved Rights.** University reserves the right to itself, Boston Medical Center Corporation and other non-profit academic research institutions (individually and



collectively the “***Institutions***”) to in any way practice and/or use the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] for any non-profit purpose, including sponsored research and/or collaborations (collectively, the “***Reserved Rights***”). Licensee agrees that, notwithstanding any other provision of this Agreement, it has no right to enforce any of the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] against the Institutions when used by them for a non-profit purpose. Licensee also agrees that the Institutions have the right to publish any information included in the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT].

**2.05 Government Rights.** This Agreement is subject to, and University hereby reserves, any applicable Government Rights.

**2.06 Other Rights.** The license granted in this Agreement shall not be construed to confer any rights upon Licensee by implication, estoppel or otherwise: (a) to any technology or other intellectual property right of University not specifically set forth in the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] regardless of whether such technology or patent rights shall be dominate or subordinate to any Patent Rights; or (b) beyond such rights as are expressly set forth herein. Without limitation, Licensor further reserves the right to practice, license or otherwise commercialize or use (A) all intellectual property rights that are not Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] and/or (B) any of the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] outside the Field of Use and/or the Territory.

**2.07** *[If for a healthcare technology* **Non-suit.** University and Licensee on behalf of themselves and any successors-in-interest to the Licensed Products and Licensed Processes covenant that they will not, before or after the Effective Date of this Agreement, assert any claim of patent infringement (including direct infringement, contributory infringement, and induced infringement) under any of the patents in the Patent List, any Licensed Processes or any Orange Book Patent Right for manufacture,

use, sale, offer for sale or importation of Licensed Products against any third party engaged in the manufacture, use, sale offer for sale, or importation of Licensed Products in or for Non-Suit Countries for sale to Public Sector entities. The above notwithstanding, this non-suit provision will only apply to products which when offered for sale to End Users are in a Trade Dress that is different from Licensee's Trade Dress in every respect.

**2.08 [DELETE IF NO COPYRIGHT] Licensee Derivative Works.**

- (A) Licensee shall be entitled to establish all proprietary rights for itself in the copyright represented by Licensee Derivative Works, provided that all such rights are subject to University's Copyright. Any copyright registration by Licensee for Licensee Derivative Works shall give full attribution to University's Copyright.
- (B) Licensee grants University a perpetual, royalty-free, non-exclusive, worldwide right and license to the copyright in Licensee Derivative Works, to use, reproduce, distribute, publicly display and/or publicly perform, and create derivative works of the Licensee Derivative Works, in print, digital, electronic (including via the internet) or any other medium, whether now known or hereafter existing, for University's educational and academic research purposes and as otherwise necessary or expedient for University to fully practice and comply with the Reserved Rights. In furtherance of the foregoing, Licensee agrees to provide University with copies of object code, executable code, source code, and user and programmer documentation, of each Licensee Derivative Work, and related user and programmer documentation, at the time any of those are made available, directly or indirectly, by Licensee or its Permitted Sublicensees.
- (C) In the event Licensee receives a patent on any invention expressed in a Licensee Derivative Work, Licensee hereby grants University a non-exclusive, royalty-free, irrevocable right sufficient for University to fully use and practice the rights

granted to University in this Section 2.08, under the Reserved Rights and/or under the Government Rights [DELETE IF NO COPYRIGHT].

**2.09 Delivery of Software.** Licensee acknowledges that on or before the Effective Date, Licensee has received and accepted from University the Software in its requested format. [DELETE IF NO COPYRIGHT]

### **ARTICLE III. REPRESENTATIONS & DUE DILIGENCE**

**3.01 Licensee Representations.** Licensee represents and warrants to University at all times that:

- (A) **Commercialization Plan.** Licensee is a start-up venture having the strategic commitment to commercialize the Licensed Products and Licensed Processes in the Field of Use in the Territory, as appropriate, and Licensee has provided to the University a copy of its most recent Commercialization Plan;
- (B) **Organization & Power.** Licensee is a corporation duly organized, validly existing, and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to enter into this Agreement;
- (C) **Authorization.** The execution, delivery and performance by Licensee of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the Licensee and do not conflict with or cause a default with respect to Licensee's obligations under any other agreement;
- (D) **Execution & Delivery.** This Agreement has been duly executed and delivered by the Licensee;
- (E) **Insurance.** The insurance coverage required pursuant to Section 7.03 has been obtained, and will be maintained in accordance with Section 7.03, and Licensee has presented proof of coverage in a form satisfactory to the University;

**(F) Progress Reports.** Licensee will submit a Progress Report to University on or before each March 15th during the Term of this Agreement provided however that if the Effective Date of this Agreement occurs during the period from November 1 to March 15, inclusive, Licensee's first Progress Report will not be due until the next March 15 following said period; and

**(G) Small Entity.** Licensee is a 'small entity' within the meaning set forth in 37 C.F.R. §1.27. Licensee agrees to give University prompt notice if, and when, Licensee no longer qualifies as a 'small entity' within the meaning set forth in 37 C.F.R. §1.27 or Licensee grants a Sublicense to any entity that is not a 'small entity'.

**3.02 Commercially Reasonable Efforts.** Licensee will use commercially reasonable efforts to bring the Licensed Products to market in the United States and throughout the remainder of the Territory through a diligent program for exploiting the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] in the Field of Use and will, throughout the Term, use commercially reasonable efforts to continue development and marketing efforts with respect to the Licensed Products and/or Licensed Processes, in each case consistent with reasonable business practices and judgments.

**3.03 Milestones.**

**(A)** Licensee will meet or accomplish each of the Milestones by its Milestone Date and will notify the University in writing when each Milestone is met.

**(B)** Notwithstanding Section 3.03(A), if Licensee learns that it will not meet a Milestone by its Milestone Date because of delay caused by the FDA or another relevant regulatory authority, Licensee shall notify the University and describe the nature of the delay and the expected time to meet the Milestone. If the University takes no action under Section 3.04 and 9.02(A) before the Milestone is achieved, then the subsequent Milestone Dates will be extended by the amount of time between the original Milestone Date and the date it was actually achieved.

**3.04 Material Breach.** Breach of any provision of Sections 3.01, 3.02 or 3.03 is a material breach of this Agreement thereby permitting University to terminate the Agreement in whole, or in part, in accordance with Section 9.02(A).

**3.05 Continuing Commercial Activity.** [Section 3.05 is eliminated in all licenses related to therapeutic inventions] Provided that this Agreement has not previously been terminated for a material breach under Section 3.04, if in any applicable period after the Commercial Activity Reference Date, Licensee fails to achieve Running Royalties as per Section 4.01(D) during any applicable Calendar Year in an amount that represents at least fifty percent (50%) of the applicable Minimum Royalty Amount for said Calendar Year, then University may, at its option, immediately terminate the Exclusive Period by written notice delivered to Licensee within 90 days after the end of the applicable Calendar Year. If University does not deliver such notice to Licensee within such period, University shall be deemed to have waived its rights under this Section 3.05 with respect to such Calendar Year (but not with respect to any subsequent Calendar Year). University may, at its option, elect not to terminate the Exclusive Period as a result of Licensee's failure to achieve Running Royalties as specified herein for one or more Calendar Years without being deemed to have forgone its right to enforce this Section 3.05 with respect to any subsequent Calendar Year.

**3.06 Required Sublicensing.** University would like its licensees to address unmet needs, such as those of neglected patient populations or geographic areas, giving particular attention to improved therapeutics, diagnostics and agricultural technologies in the developing world. If Licensee is unable or unwilling to serve or develop a potential market or market territory for which there is a company willing to be a sublicensee, Licensee will, at University's request, negotiate in good faith a sublicense with any such sublicensee.

## ARTICLE IV. ROYALTIES & PAYMENTS

**4.01 Royalties.** In consideration for the license and rights granted under this Agreement, Licensee will: 1) execute and deliver to University all documents (as appropriate); and 2) promptly pay all of the following royalties (collectively, the “*Royalties*”) and/or fees to the University:

- (A) **Equity as an Issue Fee.** In consideration of the license granted to Licensee, Licensee will: (i) issue equity shares of Licensee to the University in the amounts and upon the terms set forth in the Principal Terms & Milestones List; and (ii) execute and deliver an Equity Agreement in a form acceptable to University. Additionally, Licensee will, concurrent with its execution and delivery of this Agreement to University, deliver to University a complete and accurate copy of Licensee’s capitalization table, reflecting the above referenced issuance of shares to University. Execution of the Equity Agreement and delivery of the shares required to be delivered to University in accordance therewith is a condition precedent to the validity and enforceability of the license granted pursuant to ARTICLE II of this Agreement and Licensee’s failure to both issue the equity shares and to execute and deliver to University an Equity Agreement will render this Agreement null and void *ab initio*.
- (B) **Milestone Payments.** Within thirty (30) days after the occurrence of each Milestone, Licensee will pay to the University an amount equal to the Milestone Payment for each respective Milestone event.
- (C) **Minimum Royalty Amounts.** During the Exclusive Period, on or before each January 1 following the Effective Date, Licensee will pay to the University the Minimum Royalty Amount as specified in the Principal Terms & Milestones List for the indicated MRA Year, wherein MRA Year 0 begins on the January 1 following the Effective Date, MRA Year 1 begins on the second January 1 following the Effective Date, etc.

- (D) Running Royalties.** Within forty-five (45) days after the end of each Calendar Quarter during the Term, Licensee will pay to the University an amount equal to:
- a. **Net Sales by Licensee.** The Running Royalty Amount for such Calendar Quarter (if any); plus
  - b. **Net Sales By Permitted Sublicensee.** An amount equal to the product of the Sublicensee Royalty Revenue Percentage (expressed as a decimal) multiplied by the Sublicensee Running Royalty Amount for such Calendar Quarter that Licensee received from a Permitted Sublicensee at any time during the just completed Calendar Quarter (if any) (collectively, 4.01D (a) and (b) refer to the “*Running Royalties*”);
- provided that amounts payable under 4.01(D)(a-b) with respect to any Calendar Year are fully creditable against the Minimum Royalty Amount paid by Licensee to University in said Calendar Year such that Licensee need only make payments to University when the cumulative amount payable under this Section 4.01(D)(a-b) exceeds the Minimum Royalty Amount and further provided that any available credit not taken against the Minimum Royalty Amount in any Calendar Year will be forfeited and thus not available as an offset in any subsequent Calendar Year.
- (E) Sublicense Lump Sums.** With respect to any payment Licensee receives from a Permitted Sublicensee under any Permitted Sublicense that constitutes Sublicensing Revenue, Licensee will, within forty-five (45) days after the end of each Calendar Quarter during the Term, pay to University an amount equal to: the product of the Sublicense Lump Sum Percentage (expressed as a decimal) multiplied by the applicable amount of Sublicensing Revenue (the “*Lump Sum Amount*”).
- (F) Combination Product.**
- a. If a Licensed Product is sold as part of a Combination Product, Net Sales will be calculated by multiplying Net Sales for such Combination Product by the fraction  $A/(A+B)$ , where A is the average sale price of the Licensed Product when sold separately and B is the average sale

price of the other Independent Subproduct(s) included in the Combination Product when sold separately. For purposes of this calculation, the average sale price will be calculated using sales in the same country during the applicable royalty reporting period or, if sales of both the Licensed Product and the other Independent Subproduct(s) did not occur in such period, then in the most recent royalty reporting period in which sales of both occurred.

- b. If such average sale price cannot be determined according to Section 4.01(F)(a), for both the Licensed Product, on the one hand, and the other Independent Subproduct(s), on the other hand, Net Sales will be calculated by multiplying Net Sales for such Combination Product sold by the fraction  $C/(C+D)$ , where C is the fair market value of the Licensed Product and D is the fair market value of all other Independent Subproduct(s) included in the Combination Product in the same country during the applicable royalty reporting period. Prior to First Commercial Sale of a Combination Product, Licensee shall in good faith make a determination of the respective fair market values of the Licensed Product and the other Independent Subproduct(s) included in the Combination Product, and shall notify the University of such determination and provide the University with data to support such determination. The University shall have the right to review and approve such calculation, such approval not to be unreasonably withheld. If the University does not agree with such determination, the University shall inform Licensee within 30 days of receiving Licensee's determination and data, and the parties shall meet to discuss the basis of the calculations. If the University and Licensee are still unable to agree as to such respective fair market values within sixty (60) days after the end of the thirty (30) day period, then the parties shall resolve the dispute in accordance with Section 10.05. A similar



adjustment mechanism shall apply with respect to Sublicensing Revenue and Sublicensing Royalty Revenue arising from Combination Products.

**(G) Royalty Stacking.** Except as set forth in Schedule 2 (*Scheduled Fees*), Licensee knows of no third party to whom license fees must be paid to produce any Licensed Product or to practice any Licensed Process. In the event that Licensee is required to pay Third Party Royalties, then Licensee may deduct an amount equal to fifty percent (50%) of any Third Party Royalties from any Running Royalties due University hereunder (See: Section 4.01(D)) if and only if: (a) the third party is not an Affiliate of Licensee or any Permitted Sublicensee; and (b) the application for the third party patent upon which such claim is based has a priority filing date no more than eighteen (18) months prior to the Effective Date. Notwithstanding the foregoing, Running Royalties otherwise due University may never be less than fifty percent (50%) of the Running Royalties that would be payable to University absent the effects of this Section 4.01(G). For clarify, a deduction for particular Third Party Royalties may only be taken for such Third Party Royalties that are applicable and payable to the third party during the applicable Calendar Quarter (i.e. Licensee may not deduct any accrued Third Party Royalties from prior periods). In the event that it is determined after the Effective Date that University does not own all right, title, and interest in the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT], and Licensee obtains, by license(s), assignment(s), or otherwise, rights to any third party(ies') interest(s) in the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT], any amounts paid by Licensee to such third party(ies) to obtain any rights in any third party interest(s) in such Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] will be treated as Third Party Royalties.

**(H) Board Observation Rights.** Licensee will, concurrent with its execution and delivery of this Agreement to University, execute and deliver to University a

Board Observation Rights Letter Agreement pertaining to board observer rights for the University.

**4.02 Payments.** All payments due under this Agreement will be paid: (a) in full without deduction of exchange, collection, taxes or other fees that may be imposed by any government; and (b) in United States dollars in Boston, Massachusetts or at such other place as the University may designate consistent with applicable law. All amounts paid to University shall be non-refundable. Currency conversions will be made by reference to the prevailing exchange rate for bank transfers from the foreign currency to U.S. Dollars, as quoted at the Bank of America or its successor on the last business day of the Calendar Quarter immediately preceding the payment due date. In the event that Bank of America (or its successor) ceases to publish currency quotes, Licensee will use currency quotes from another US headquartered multinational bank. Specifically, Licensee will use J.P. Morgan Chase, Citicorp, Wells Fargo or US Bank (using this order to determine which bank's currency conversion to use taking into account any mergers, acquisitions or renaming that may occur from time to time and using the first in this list until it ceases to exist then moving to the next and so on) to calculate royalty payments due. If by law, regulation or fiscal policy of any country, conversion from that country's currency into U.S. dollars is restricted or forbidden, written notice thereof will be given to the University and payment of amounts from that country shall be made through such lawful means as the University will designate, including, without limitation, deposit of local currency in such recognized banking institution as the University will designate. When in any country the law or regulation prohibits both the transmittal and the deposit of royalties on sales in that country, royalty payments from that country will be suspended for as long as the prohibition is in effect and, as soon as the prohibition ceases, all royalties that Licensee or its Permitted Sublicensees would have been obligated to pay, but for the prohibition, will promptly be deposited or transmitted, as the case may be, to the extent then allowed. If payments are made by check, said check will be made payable to "Trustees of Boston University" and will be sent to University mailing address

pursuant to Section 11.07. If Licensee elects to make payments by wire, Licensee will pay all fees associated with processing the wired payment and will follow the wire instructions below:

Bank: Citizens Bank, 1 Citizens Drive, Riverside, RI 02915  
Account Name: Trustees of Boston University  
Account Number: 110780-798-8  
ABA#: 011500120  
SWIFT CODE: CTZIUS33

**Message:** All incoming wires will specify: "Attn: Susan Mulrean: University Case Number:

**4.03 Interest.** Any payments by Licensee that are not paid on or before the date such payments are due under this Agreement will bear interest at the lower of (a) one and one half percent (1.5%) per month and (b) the maximum rate allowed by law. Interest will accrue beginning on the first date following the due date for payment and will be compounded quarterly. Payment of interest will not foreclose any other right that the University may have as a consequence of late payment. In the event of default in payment of any payment owing to University under the terms of this Agreement, and if it becomes necessary for University to undertake legal action to collect said payment, Licensee agrees to, and will, pay reasonable, documented legal fees and costs incurred by University in connection therewith.

## **ARTICLE V. REPORTS, RECORDS & AUDIT**

**5.01 Books & Records.** Licensee will keep, in accordance with generally accepted accounting principles, up-to-date, complete, true and accurate books of account in sufficient detail to permit calculation of all amounts due hereunder, including without limitation, copies of all invoices, which will be properly itemized. Such books of account will be maintained at Licensee's principal place of business (or at its election, the principal place of business of the division of Licensee to which this Agreement relates)

and Licensee will inform the University in writing of the location of such books and records within two (2) business days of a request for such location.

**5.02 Quarterly Reports.** (a) Within forty-five (45) days after the end of each Calendar Quarter during the Term (without regard to whether any payments are due to the University in respect of such quarter), Licensee will deliver to the University, a complete and accurate report which will contain the following:

- (i) identification of all Sublicenses related to the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] entered into during such quarter, together with a summary of the principal economic terms of each;
- (ii) a summary of those activities of Licensee and its Permitted Sublicensees directed toward promoting the sale and use of the Licensed Products and Licensed Processes; and
- (iii) identification of all Milestone Dates occurring during such quarter and an indication of whether the corresponding Milestone was met (and if not, a summary of the progress as of the end of such quarter and projected completion dates); and

(b) Only after the First Commercial Sale by Licensee and/or its Permitted Sublicensee(s) that gives rise to royalties or fees under 4.01(D) or 4.01(E), within forty-five (45) days after the end of each Calendar Quarter during the Term, Licensee will deliver to the University, a complete and accurate report which will contain the following:

- (i) the number of each type of: 1) Licensed Product made, used, leased sold or offered for sale or imported; and/or 2) Licensed Process (as appropriate) practiced by Licensee and/or a Permitted Sublicensee during such quarter;
- (ii) the total amount of Net Sales during such quarter; and

- (iii) calculations of each amount due under this Agreement in respect of such quarter, including without limitation, deductions applicable to Net Sales.

The reports described in this Section 5.02 are each referred to herein as a “*Quarterly Report*”. To the extent feasible, all said Quarterly Reports will accompany, or be sent to University concurrently with, the payment of royalties under Sections 4.01(D) and 4.01(E). If Licensee elects to wire transfer payments to University, the Quarterly Report will be transmitted to University in accordance with Section 11.07 on that same day that the wire transfer is made. If properly marked, a Quarterly Report will be considered Licensee Confidential Information under this Agreement.

**5.03 Annual Reports.** Within ninety (90) days after the end of Licensee's Fiscal Year, Licensee will provide to the University a copy of its financial statements for such year, certified as to their completeness and accuracy by Licensee's chief financial officer. Licensee will also provide to the University written evidence of the annual renewal of insurance within thirty (30) days of such renewal. Notwithstanding the foregoing, the obligations contained in this Section 5.03 which pertain to financial statements will terminate upon the consummation of the Licensee's Initial Public Offering.

**5.04 Other Reports.** Promptly upon written request of the University or as otherwise required by the terms of this Agreement, Licensee will provide to the University any annual report to stockholders of Licensee or, if there is no annual report to stockholders, annual updates to the Business Plan and Commercialization Plan, including any changes to the management team. Licensee will also promptly provide to University all relevant notices consistent with the Board Observer Rights Letter Agreement.

**5.05 Audit.** The University may, upon five (5) business days advance written notice specifying any time of day during Licensee's business hours (or if Licensee has no set

business hours then during the hours of 8AM to 4PM), either itself or using a third party agent, audit Licensee's books and records at Licensee's place of business for the purpose of verifying Licensee's reports and compliance by Licensee in all other respects with this Agreement. In no event shall such audits be conducted hereunder more frequently than once every twelve (12) months and in no case shall University be permitted to repeat an audit of books for a period previously audited unless Licensee has undergone a restatement of its records for that period. Notwithstanding the foregoing, Licensee will grant University, or its auditor, access to all of Licensee's records for all prior periods to the extent necessary to perform a proper audit. If any audit identifies an underpayment by Licensee, Licensee will promptly pay the underpayment to University including interest as provided for in Section 4.03. If any audit identifies an overpayment by Licensee, Licensee may deduct such overpayment from the next scheduled payments due University until such overpayment has been recovered by Licensee. If any audit leads to the discovery of an underpayment in respect of any Calendar Quarter of more than five percent (5%) between amounts due in respect of such quarter and amounts reported to be due by Licensee in its quarterly report for such quarter or otherwise reveals a previously undisclosed material breach of this Agreement, Licensee will, within thirty (30) days after written notice from the University, reimburse the University for all of its costs related to the audit. Otherwise, any audit will be at the University's expense. Licensee will, in any event and without regard to the size of the discrepancy, immediately pay to the University the amount of any previous underpayment, including interest from the time such amount was due until paid in full in accordance with Section 4.03. Any audit conducted pursuant to this Section 5.05 will be conducted, at University's option, by the University itself or by an auditor selected by University and reasonably acceptable to the Licensee. For the avoidance of any doubt, University's right to audit books under this Section 5.05 applies to all Affiliates that sell Licensed Products or practice Licensed Processes and to all Permitted Sublicensees to the same extent that it applies to Licensee. Failure by Licensee, an Affiliate or a Permitted Sublicensee to permit University to conduct an audit as set forth in this Section 5.05 will immediately give University the

right to suspend the non-compliant party's rights under the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] until such time as said party becomes compliant with this Section 5.05. University's right to audit Licensee's books in accordance with this Section 5.05 will extend for three (3) years after the expiration or termination of this Agreement for any reason. With respect to any University's rights under a continuing Sublicense under Section 2.03(A) and 2.03(E), University's right to audit the Sublicensee's books will extend for three (3) years after the expiration or termination of said Sublicense for any reason.

## **ARTICLE VI. REGULATORY MATTERS & PATENT COSTS**

**6.01 United States Manufacture.** Licensee agrees to comply with any obligations imposed on University and/or Licensee by 35 U.S.C. §204 and/or other provisions of the Bayh-Dole Act as codified in 35 U.S.C. § 200-212, and implemented by 37 C.F.R. 401 in connection with any Licensed Products used or sold in the United States. In the event that the Licensee or Permitted Sublicensee seeks a waiver of such requirement, the University agrees to reasonably assist the Licensee or Permitted Sublicensee to obtain such waiver to the extent permissible under current law.

**6.02 Compliance with Laws: Export Control.** Licensee and its Permitted Sublicensee(s), will comply with all applicable laws and regulations. It is understood that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling both actual and deemed exports, including the Export Administration Regulations of the United States Department of Commerce, the International Traffic in Arms Regulations of the Department of State, and the Office of Foreign Assets Control of the Department of Treasury. Licensee hereby agrees and gives written assurance that it will comply with all United States laws and regulations controlling the export of commodities and/or technical data, that it will be solely responsible for any violation of such by Licensee, its Affiliate(s) and/or its Permitted

Sublicensee(s), and that it will defend, indemnify and hold University harmless in the event of any legal action of any nature occasioned by such violation.

**6.03 Compliance & Marking.** Licensee will comply with, and will require its Affiliates and Permitted Sublicensees to comply with, all applicable laws and regulations concerning the manufacture (including without limitation, if applicable, Good Manufacturing Practices set forth by the United States Food and Drug Administration), marking, marketing and safety of all Licensed Products. Without limiting the foregoing, all Licensed Products sold, leased or shipped in, through or to: (a) the United States may be marked with all applicable patent numbers; and (b) any other country may be marked in conformity with all of the laws and regulations of such country provided however that Licensee will comply with all statutorily mandated product markings. Licensee further agrees to promptly remove the relevant patent markings from Licensed Products upon expiration or invalidation of a Licensed Patent. Licensee still further agrees to remove patent markings from Licensed Products as may be reasonably requested by University from time to time.

**6.04 Patent Filings.** The University will, using patent attorneys selected by it, use commercially reasonable efforts to apply for, seek issuance of and maintain the Patent Rights during the Term in the United States and such other countries as are agreed to by the Parties in writing or as Licensee may request in writing; provided that: (a) Licensee will cooperate with the University in such filing, prosecution and maintenance; and (b) Licensee will be given at least thirty (30) days to advise and comment upon such filings and actions as are undertaken by the University and further provided that in all cases University retains the absolute right to make all decisions with respect to preparation, filing, prosecution and maintenance. The University shall direct its patent counsel to: a) provide Licensee with a copy of the application or other filing as filed, together with notice of its filing date and serial number when available; and b) provide to Licensee copies of all communications between patent counsel and any foreign associates



responsible for the filing, prosecution and/or maintenance of any foreign Patent Rights. The University may, in its discretion, decline to apply for, prosecute or maintain any Patent Rights in any country, but will give timely notice to Licensee of any such determination, whereupon Licensee may undertake such action, in the name and on behalf of the University, at Licensee's own expense. The University agrees to cooperate with Licensee as reasonably necessary to permit Licensee to be able to file, prosecute or maintain any Patent Rights in those countries that the University declines to undertake action. Licensee further acknowledges and agrees that University may file for and obtain patent protection in countries that are not of interest to Licensee (the "***Unfunded Countries***") but for which another of University's Licensees in a field of use that differs from the Field of Use has interest. In such case, if Licensee has elected to not reimburse University for Patent Costs associated with the Unfunded Countries as set forth in Section 6.05, below, said Unfunded Countries are immediately removed from the Territory under this Agreement for the remainder of the Term.

#### **6.05 Patent Costs.**

- (A) Licensee will bear the cost of all reasonable, documented patent expenses incurred by University in connection with the Patent Rights accrued prior to the Effective Date and continuing for the Term of this Agreement. Patent expenses include all out of pocket costs associated with the preparation, filing, prosecuting, issuance and/or maintenance of all patent applications and patents included within the Patent Rights. For patent expenses accrued by University (the "***Deferred Patent Costs***") for the period prior to the Effective Date until the earlier of a Funding Event or the first anniversary of the Effective Date if no Funding Event occurs before the first anniversary of the Effective Date (the "***Deferred Patent Costs Period***"), University will send Licensee a single invoice (the "***Deferred Patent Costs Invoice***") for all such accrued patent expenses shortly after said Funding Event or said first anniversary of the Effective Date (as appropriate) and Licensee will pay said Deferred Patent Costs Invoice within thirty (30) days of University's

transmittal of such invoice to Licensee in accordance with Section 11.07. For ongoing patent expenses accrued on or after the Deferred Patent Costs Period, Licensee will pay to University, within thirty (30) days of University's transmittal of an invoice to Licensee in accordance with Section 11.07 (the "*Patent Costs Invoice*"), all such accrued patent expenses recorded on said Patent Costs Invoice sent to Licensee. Notwithstanding the foregoing, if University grants any third party (other than Government Rights or Reserved Rights) a license to commercially exploit any patent or patent application included within the Patent Rights and said license includes an obligation on said third party to pay patent costs, Licensee's obligation to bear ongoing patent costs (i.e. patent expenses accrued by University after the effective date of said third party license) with respect to any said patent or patent application will be reduced by a pro rata amount, based on the number of University licensees having rights with respect to such patent or patent application (e.g. if University has granted rights to two parties (one of which is Licensee) with respect to a particular patent or patent application, then Licensee will thereafter only be obligated to reimburse University with respect to fifty percent (50%) of the relevant patent costs associated with said patent or application) for so long as that/those license(s) to the specific patents and/or patent applications remain in effect.

- (B) Overdue amounts will accrue interest pursuant to Section 4.03. Licensee may decline payment of Patent Costs by giving thirty (30) days written notice in advance of the University incurring such costs, whereupon Licensee's right to benefit from the applications or patents (of the Patent Rights) affected by such Patent Costs will terminate, including but not limited to, the deletion of such patent from the Patent List and the termination of the license granted with respect to such patent or patent application. If Licensee's decision to decline payment of Patent Costs would result in the abandonment of all of patent(s) and/or patent application(s) (of the Patent Rights) in any one or more country(ies) and/or region(s) (regardless of whether or not University actually abandons said patent(s))

and/or patent application(s)), then the grant under Section 2.01 with respect to said country(ies) and/or region(s) of the Territory will also terminate.

- (C) Notwithstanding the foregoing, if during the Deferred Patent Costs Period the due date for National Phase Entry of one or more of the patent applications of the Patent Rights is scheduled to occur or if any other Substantial Patent Prosecution Event occurs, University will take the following actions:

(i) With Respect to a National Phase Entry, University will ask Licensee into which countries Licensee wishes the patent application to be nationalized and obtain estimates for entry into the national phase in those countries. Upon receipt of instructions from Licensee, University will (to the extent there is, in University's opinion or in University counsel's opinion, sufficient time to take such action and further provided that University is in receipt of the *Estimated National Phase Entry Payment* (as defined below)), with respect to said patent application, instruct its counsel to enter the national phase in those countries (other than the United States) so designated by Licensee provided that Licensee pays to University fifty percent (50%) of the estimated costs of said national phase filings (the "*Estimated National Phase Entry Payment*") at the time of such instructions from the Licensee.

(ii) With respect to a Substantial Patent Prosecution Event, University will obtain an estimate from counsel for services associated with said Substantial Patent Prosecution Event and then confer with Licensee to determine whether or not Licensee will support the action by paying fifty percent (50%) of the estimated costs to University. If Licensee pays University said fifty percent (50%) of the estimated costs, University will proceed to address the Substantial Patent Prosecution Event. If Licensee elects to not pay University said fifty percent (50%) of the estimated costs when due, University may, at its option, elect to proceed to address the Substantial Patent Prosecution Event or may decline to take any other action it deems proper.

For the avoidance of doubt, any payments made under this Section 6.05(C) are fully creditable against the fulfillment of Licensee's obligations under 6.05(A) as they come due but are not intended to release Licensee of any of its payment obligations under 6.05(A).

**(D) Funding Event.** Licensee will provide University with written notice of any Funding Event within one (1) business day of said Funding Event.

**6.06 Copyright Notices.** All copies of the Software distributed by Licensee as part of Licensed Product shall contain Copyright notices, as applicable, in appropriate locations and forms. Such notices shall be consistent with any instructions which might be provided by University; and shall include all Copyright and other notices in the form supplied by University.

## **ARTICLE VII. WARRANTIES, LIMITATIONS & INDEMNIFICATION**

**7.01 University Limitation.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WITH RESPECT TO: (1) THE SCOPE OR VALIDITY OF ANY OF THE PATENT RIGHTS AND/OR COPYRIGHT [DELETE IF NO COPYRIGHT]; (2) WHETHER THE PATENT RIGHTS AND/OR COPYRIGHT [DELETE IF NO COPYRIGHT] MAY BE EXPLOITED BY LICENSEE OR ANY PERMITTED SUBLICENSEE WITHOUT INFRINGING THE RIGHTS (INCLUDING PATENT RIGHTS AND/OR COPYRIGHTS [DELETE IF NO COPYRIGHT]) OF OTHERS; OR (3) THE RESULTS TO BE OBTAINED BY USE OF THE PATENT RIGHTS, THE SOFTWARE [DELETE IF NO COPYRIGHT], THE LICENSED PRODUCTS AND/OR THE LICENSED PROCESSES. THE PATENT RIGHTS AND THE SOFTWARE [DELETE IF NO COPYRIGHT] ARE DELIVERED "AS IS" IN EVERY RESPECT. IF BIOLOGICAL MATERIALS ARE TRANSFERRED (BY WAY OF LICENSE, BAILMENT OR OTHERWISE) HEREUNDER, UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES THAT SUCH BIOLOGICAL MATERIALS AND/OR THE METHODS USED TO MAKE OR USE SUCH BIOLOGICAL MATERIALS ARE FREE FROM LIABILITY FOR PATENT INFRINGEMENT.

**7.02 Indemnification.** Licensee will at all times during the Term and thereafter, defend, indemnify and hold the University and its affiliated hospital, Boston Medical Center Corporation, their current and former trustees, officers, employees, students, agents and affiliates (together, “*Indemnitees*”) harmless from and against all claims, suits, demands, liability and expenses, including legal expenses and reasonable attorneys' fees, arising out of: (a) the death of or injury to any person or persons; (b) damage to property; or (c) any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from: (i) the design, production, manufacture, shipping, labeling, patent marking, handling, use (in commerce or otherwise), misuse, sale, lease, consumption, promotion or advertisement of the Licensed Products or the Licensed Processes or any product, service or process relating to or developed under this Agreement or with the Software [DELETE IF NO COPYRIGHT] or the Patent Rights; or (ii) any obligation or activity of Licensee under this Agreement or of any Permitted Sublicensee under any Sublicense. The obligation under this Section 7.02 will apply without regard to whether any liability is attributable to University’s, Licensee’s, Licensee’s Affiliates or its Permitted Sublicensee's negligence.

**7.03 Insurance.**

**(A) Scope & Expense.** (a) As of the Effective Date, Licensee will have procured and will maintain in full force and effect commercial general liability insurance policies that protect and name the Indemnitees as additional insureds with coverage amounts of no less than \$1,000,000 per incident and \$1,000,000 in annual aggregate but the University may in its reasonable discretion, by thirty (30) days written notice to Licensee, require greater liability coverage. (b) Prior to the earlier of: (i) the first use of a Licensed Process or Licensed Product by or on humans (including human testing) or (ii) the First Commercial Sale of any Licensed Process or Licensed Product, Licensee will, at its own expense, procure and maintain in full force and effect commercial general liability insurance policies that protect and name the Indemnitees as additional insureds with

coverage amounts of no less than \$5,000,000 per incident and \$5,000,000 in annual aggregate, but the University may in its reasonable discretion, by thirty (30) days written notice to Licensee, require greater liability coverage. Coverage under the commercial general liability insurance will include product liability and contractual liability for Licensee's indemnification obligations under Section 7.02. If the product liability insurance is not for occurrence liability coverage, Licensee will maintain commercial general liability insurance for not less than fifteen (15) years after it has ceased commercial distribution or use of any Licensed Product or Licensed Processes. University may in its reasonable discretion, by thirty (30) days written notice to Licensee, require greater liability coverage.

- (B) Notice & Cancellation.** Licensee will provide the University with written evidence of such insurance upon issuance and upon each annual renewal. Licensee will give the University at least thirty (30) days written notice prior to any cancellation, non-renewal or material change in such insurance. Notwithstanding anything to the contrary in Section 9.02(A), if Licensee does not obtain replacement insurance providing comparable coverage within such thirty (30) day period, the University may terminate this Agreement without notice or any additional cure or waiting period.

#### **7.04 University Liability.**

- (A) THE UNIVERSITY'S TOTAL LIABILITY FOR ANY AND ALL CAUSES OF ACTION ARISING IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, IN AGGREGATE, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES NOT EXCEEDING IN THE AGGREGATE ONE HUNDRED PERCENT (100%) OF THE AMOUNTS PAID TO THE UNIVERSITY UNDER ARTICLE IV. LICENSEE WAIVES AND DISCLAIMS (AND WILL CAUSE ALL ITS PERMITTED**

SUBLICENSEES TO WAIVE AND DISCLAIM) ANY RIGHT TO RECOVER ANY DAMAGES IN THE AGGREGATE IN EXCESS OF SUCH AMOUNT FROM THE UNIVERSITY.

- (B) UNIVERSITY SHALL NOT BE LIABLE TO LICENSEE AND/OR PERMITTED SUBLICENSEES FOR, INCLUDING BUT NOT LIMITED TO, ANY LOST OR ANTICIPATED REVENUES, PROFITS OR SAVINGS, OR ANY INCIDENTAL, INTANGIBLE, EXEMPLARY, PUNITIVE, SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE AND WHETHER OR NOT THE UNIVERSITY WAS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

#### **ARTICLE VIII. INFRINGEMENT**

**8.01 Notice.** Each Party will notify the other party promptly in writing of any alleged infringement of the Patent Rights and/or Copyright in the Software [DELETE IF NO COPYRIGHT] by a third party of which it becomes aware and will provide any available evidence thereof.

#### **8.02 Prosecution by Licensee.**

- (A) **Procedure.** For so long as the grant in ARTICLE II of this Agreement remains exclusive to Licensee and Licensee is not in breach of this Agreement, Licensee will have the right, at its sole discretion, to prosecute, at its own expense, any alleged infringement of the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] within the Territory and Field of Use. The University agrees to allow the Licensee to include the University, at the Licensee's expense, as a party plaintiff in any suit brought with respect to any such infringement. The University will have the right to participate in any action, at Licensee's expense,



and prior to commencing any such action, Licensee shall consult with University and shall consider the views of University regarding the advisability of the proposed action. In addition, Licensee agrees to consult with counsel for the University on any significant matters related to the litigation. Notwithstanding anything in the foregoing to the contrary, no settlement, consent judgment or other voluntarily final disposition of any such suit may be entered into without the prior written consent of the University, which consent will not be unreasonably withheld. Licensee will indemnify, defend and hold harmless the University against any order for any costs that may be made against the University in such proceedings brought by Licensee in accordance with this Section 8.02(A). For the avoidance of any doubt, if the grant under ARTICLE II of this Agreement becomes non-exclusive for any reason, Licensee will not have any right to prosecute infringers under this Section 8.02(A).

**(B) Damages.** In the event that Licensee undertakes litigation pursuant to Section 8.02(A) for the enforcement of Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT], any recovery of monetary damages by Licensee for each suit will be applied as follows: (a) first, on a pro rata basis, to Licensee and University to reimburse Licensee and University for their respective expenses of the litigation or suit, including reasonable attorneys' fees; (b) then, an amount to University equal to the Sublicense Lump Sum Percentage (expressed as a decimal) multiplied by the balance of any recovery; and (c) then, the balance to Licensee.

### **8.03 Prosecution By University.**

**(A) Procedure.** If the Licensee; (i) within six (6) months after having been notified of any alleged infringement, has been unsuccessful in negotiating with the alleged infringer to cease and desist such infringement and has not brought an infringement action (or has not defended against any material counterclaim), and/or Licensee continues to be unsuccessful in persuading the alleged infringer to desist and continues not to initiate an infringement action within sixty (60) days

after written notice from University that University intends to exercise its rights under this paragraph, or (ii) if the Licensee notifies the University at any time prior to the end of such six (6) month period of its intention not to bring suit against any alleged infringer in the Territory for the Field of Use, then, and in those events only, the University will have the right, but not be obligated, to prosecute at its own expense any such infringement of the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] in the Territory for the Field of Use. In such circumstances, and provided that the license granted pursuant to ARTICLE II remains in force, the University will have the right to name the Licensee as a party plaintiff if necessary for the prosecution of the infringement suit. Notwithstanding anything in the foregoing to the contrary and further provided that the Exclusive Period of the license granted pursuant to ARTICLE II remains in force, no settlement, consent judgment or other voluntarily final disposition of any such suit may be entered into without the consent of the Licensee, which consent will not be unreasonably withheld.

**(B) Damages.** In the event that University undertakes litigation pursuant to Section 8.03(A) for the enforcement of Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT], any recovery of monetary damages by University for each suit will be applied as follows: (a) first, on a pro rata basis, to University and Licensee to reimburse Licensee and University for the expenses of the litigation or suit, including reasonable attorneys' fees; and (b) then, the balance to University.

**8.04 Actions Against Licensee or University.** In the event that an action alleging invalidity or noninfringement of any of the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] is brought against the University or against Licensee (whether as an independent action or as a counterclaim of a suit filed by Licensee), relating to the Field of Use, the University, at its sole option, will have the right, within thirty (30) days after the commencement of such action, to take or regain control of the action at its own expense. If the University determines not to exercise this right and the grant under

ARTICLE II remains exclusive to Licensee, Licensee may take over or remain as lead counsel for the action at Licensee's sole expense, with any settlement or recovery subject to the approval provisions of Section 8.02(A) and allocation provisions of Section 8.02(B); *provided* that the University will have the right to refuse, in its sole discretion, to accept any settlement offer that would, in its sole judgment, result in the lessening or weakening of any Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT].

**8.05 Cooperation.** In any infringement suit, either party shall provide cooperation and assistance to the other party, at the requesting party's expense, as may be reasonably necessary for the suit. Each party agrees to make available relevant records, papers, information, samples and specimens, as well as to have its employees testify upon request, except as restricted by law.

**8.06 Sublicense Settlements.** In the event that Licensee elects to grant a Permitted Sublicense to any alleged infringer in the Territory for the Field of Use for future use of the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT] as permitted by Section 2.03(C), any amounts paid by the alleged infringer as a part of the Sublicense or settlement of allegations regarding infringement of the Patent Rights or the Copyright in Software [DELETE IF NO COPYRIGHT] will be shared by Licensee and the University in the same ratio as amounts received as Sublicense Lump Sums payments under Section 4.01(E). Sublicense Revenues received from such Permitted Sublicensees will otherwise be shared by Licensee and University in accordance with Section 4.01(D) or 4.01(E), as applicable.

## **ARTICLE IX. TERMINATION**

**9.01 License.** Unless earlier terminated as provided for in this Agreement, the license granted pursuant to: i) Section 2.01(a) for Patent-Based Products and Patent-Based Processes will continue in each country until the occurrence in the applicable country of

the following: the expiration, invalidation (where invalidation requires the final decision rendered by a court of competent jurisdiction from which no further appeal has or may be taken) or termination of the last to expire, invalidate or terminate of the Patent Rights upon which the Patent-Based Products and/or Patent-Based Processes are based (if any); and ii) Section 2.01(b) for Software-Based Products and Software-Based Processes will continue for a thirty (30) year period from the Effective Date, or if earlier, in each country until the occurrence in the applicable country of the following: the expiration, invalidation (where invalidation requires the final decision rendered by a court of competent jurisdiction from which no further appeal has or may be taken) or termination of the copyright or other intellectual property based right upon which the Software-Based Products and/or Software-Based Processes (if any) is/are based. Nothing herein shall limit Licensee's obligation to pay the Minimum Royalty Amounts set forth in Section 4.01(C).

**9.02 Early Termination.** Notwithstanding the foregoing, all licenses granted pursuant to ARTICLE II and this Agreement will terminate as follows:

(A) **Material Breach.** If Licensee materially breaches this Agreement, fails to account for or make any payment to University that is required by this Agreement, fails to make any payment referred to in the Principal Terms & Milestones List, fails to meet any Milestone as set forth in the Principal Terms & Milestones List, fails to maintain insurance as required in Section 7.03 or if a Sublicensee materially breaches any of the provisions to which it is required to be bound directly to the University as set forth in Section 2.03 (a "*Breaching Sublicensee*"), the University will have the right, at its election, to terminate: (i) the Exclusive Period; (ii) any or all licenses granted by the University under this Agreement (including the right to sublicense); (iii) a Breaching Sublicensee's sublicense; or (iv) this Agreement in its entirety upon thirty (30) days prior written notice, subject to the survival of the obligations set forth in Section 9.05. Termination will take effect thirty (30) days after written notice unless Licensee cures the

breach within said 30-day period. University's right to terminate in accordance with this Section 9.02(A) is in addition to, and not in lieu of, the exercise of any other right University may have for breach of this Agreement by Licensee.

- (B) Insolvency, Etc.** If Licensee files a petition in bankruptcy or if an involuntary petition is filed against Licensee and such petition is not dismissed within sixty (60) days, or if the Licensee will cease or suspend the conduct of its usual business or if the Licensee will become, or in light of its usual business is likely to become, insolvent and is unable to pay its debts when due, this Agreement will terminate automatically and immediately without the opportunity for cure provided in Section 9.02(A).
- (C) Challenge to Validity of Patent Rights or Copyright.** To the maximum extent permitted by law, if Licensee, or any of its Affiliates, files a lawsuit or otherwise challenges the validity, scope or enforceability of any of the Patent Rights, University shall have the right, at its election, at any time after the filing of said lawsuit to terminate this Agreement immediately without the opportunity for cure provided in Section 9.02(A). If any Sublicensee (or an affiliate thereof) files a lawsuit or otherwise challenges the validity, scope or enforceability of any of the Patent Rights, University shall have the right, at its election, at any time after the filing of said lawsuit to demand that Licensee terminate said agreement under which said Sublicensee takes license/rights in the Patent Rights, which termination must occur and be effective within the cure provided in Section 9.02(A). In the event that, and for any period during which University does not choose to exercise its rights to terminate this Agreement or a Sublicensee pursuant to this Section 9.02(C), Licensee will pay to University two times the amounts otherwise due and payable to University under Sections 4.01(D) and 4.01(E) for the remainder of the term of this Agreement. In the event that such a patent challenge is successful, Licensee will have no right to recoup any royalties due and payable to University during the period of challenge. In the event that such a patent challenge is unsuccessful, Licensee shall also reimburse University for all

University's reasonable legal fees and expenses incurred in its defense of said challenge to the Patent Rights. This obligation to reimburse University for defense of Licensee's unsuccessful challenge to the validity, scope or enforceability of any of the Patent Rights shall survive any termination of this Agreement. A lawsuit shall be deemed 'unsuccessful' for purposes of this Section 9.02(C) if: (i) the lawsuit is terminated for any reason prior to a settlement or judgment from which no appeal can be or is taken; (ii) any of the Patent Rights challenged by said lawsuit remain enforceable after any such settlement or judgment is in effect; or (iii) if Licensee would still require a license to any of the Patent Rights to sell any of its products after any such settlement or judgment is in effect.

**(D) Claim of Implied License.** If Licensee, or any of its Affiliates, files a lawsuit claiming, or otherwise claims or argues in writing, that Licensee is granted an implied license to any invention or patent right or copyright (other than the expressly defined Patent Rights or Copyright), this Agreement will terminate immediately and without any opportunity for cure as provided for in Section 9.02(A).

**9.03 Licensee's Right To Terminate.** After the first anniversary of the Effective Date, upon sixty (60) days advanced notice, Licensee may terminate this Agreement by giving written notice to University as provided for in Section 11.07.

**9.04 Accrued Obligations.**

**(A)** Upon expiration or termination of this Agreement for any reason, each party will remain liable for those obligations which came into existence prior to the effective date of the expiration or termination including, without limitation, payment of accrued Running Royalties, Minimum Royalty Amount(s), Sublicense Lump Sums, Patent Costs and the recovery from any litigation pursuant to Section 8.02(B) or 8.04.

(B) Provided Licensee has not materially breached this Agreement, Licensee may, for a period of no longer than one (1) year after the effective date of the termination of this Agreement, complete any or all Licensed Products that it can demonstrate were in the process of manufacture on the effective date of the termination and sell any and all Licensed Products that it can demonstrate were in the process of manufacture or in inventory on the date of termination; *provided* that Licensee will remain obligated to pay any applicable Running Royalties and fees thereon and prepare and send appropriate reports to University with respect to said Running Royalties as provided in this Agreement. Within thirty (30) days after a written request by the University, Licensee will provide the University with an accounting of Licensed Products then on hand and in process and its best estimate of when within the one (1) year period such sales of Licensed Products will conclude.

**9.05 Survival.** ARTICLE I (all – Including Schedule 1); ARTICLE II, Sections 2.03(E), 2.05, 2.06 and 2.08 [if COPYRIGHT]; any accrued obligations to pay royalties under Article IV and/or to make reports under Article V; Section 5.03 (for three (3) years); Article VI, Sections 6.01, 6.02, 6.03 and 6.05; Article VII (all);; ARTICLE IX, Sections 9.02(C), 9.04, 9.05, 9.06 and 9.07; ARTICLE X (all); and ARTICLE XI, Sections 11.01, 11.02, 11.03, 11.05, 11.06, 11.07, 11.08, 11.09, 11.10, 11.11, 11.12 and 11.13 will survive the expiration or any termination of this Agreement. Exhibit C (Equity Agreement) as executed by the parties shall also survive the expiration or any termination of this Agreement as an independent agreement in accordance with its respective terms.

**9.06 Effect of Termination.** For the avoidance of any doubt, upon the termination of this Agreement, Licensee will remain liable to University for payment to University of University's portion of any royalties and/or fees collected by Licensee for Sublicenses issued as per Section 2.03 of this Agreement. However, Licensee will no longer be a

party to any Sublicense which is continued after the termination of this Agreement as permitted under Section 2.03(E).

**9.07 Information.** Upon termination of this Agreement for any reason, Licensee shall, promptly upon written request by the University, make available to the University, at the University's sole option, the rights to use, license or own all Information then in Licensee's possession that is relevant to the commercialization of Licensed Products.

## **ARTICLE X. DISPUTE RESOLUTION**

**10.01 Mediation.** In the event of any dispute arising between the parties in connection with this Agreement, the construction thereof, or the rights, duties or liabilities of either party, representatives designated by each party will meet at the University or confer by conference call within one week of a written request by either party, and attempt to amicably resolve the dispute. If the dispute is not resolved by such efforts within forty-five (45) days after such written request for a meeting or conference call, the parties will refer the matter to non-binding mediation in Boston, the costs of which will be shared equally. In the event that such dispute is not amicably resolved by such non-binding mediation, then the parties may, at their option, agree to arbitrate or unilaterally employ civil litigation or any other dispute resolution mechanism available to them.

**10.02 Injunctive Remedies.** Notwithstanding Section 10.01 above, the parties acknowledge and agree that, in the event of a breach or a threatened breach by either party of Section 11.01 or 11.06 hereof, the other party may suffer irreparable damage for which it will have no adequate remedy at law and, accordingly, will be entitled immediately to seek injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without having first complied with the provisions of Section 10.01, and without the necessity of posting any bond or surety, in addition to any other remedy it might have at law or at equity.



**10.03 Governing Law.** The validity, interpretation, performance and enforcement of this Agreement, and all rights and obligations of the parties will be governed and construed in accordance with the internal laws of the Commonwealth of Massachusetts, without regard to its rules concerning conflicts of laws.

**10.04 Exclusive Venue; Consent to Jurisdiction.** Except for mediation as stipulated in Section 10.01, any action, suit or other proceeding pursuant to, arising under, or touching or concerning this Agreement or the transactions contemplated hereby, including any challenge to the validity or enforceability of the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT], will be brought exclusively in any court of competent jurisdiction in Suffolk County, Commonwealth of Massachusetts. The parties agree to take any and all necessary or appropriate action to submit to the exclusive jurisdiction of any such court. In any such action, suit or proceeding, the successful or prevailing party will be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with that action, suit or proceeding, in addition to any other relief to which such party may be entitled.

**10.05 Disputes Regarding a Combination Product.** Notwithstanding any contrary provision of this Agreement, in the event that the parties are not able to agree on the values of C (fair market value of the Licensed Product) and D (fair market value of the Independent Subproduct) as provided in Section 4.01(F)(b), the following procedures shall apply:

- (A) At the request of either party, the parties shall promptly negotiate in good faith jointly to appoint a mutually acceptable neutral person not affiliated with either party (the "Neutral"). If the parties are not able to agree on an acceptable Neutral within thirty (30) days after such request, the CPR Institute for Dispute Resolution shall be responsible for selecting a qualified, disinterested and conflict-free Neutral within fifteen (15) days of being approached by either party. The Neutral selected pursuant to this Section 10.05(A) shall be a Person who has at least five

(5) years of experience negotiating university to industry licensing agreements. The Neutral shall conduct arbitration (the “ADR”) in accordance with the terms and conditions of this Section 10.05 and the fees and costs of the Neutral and the CPR Institute for Dispute Resolution shall be awarded to the prevailing party. The place of arbitration will be Boston, MA, USA and the language will be English.

- (B)** Within sixty (60) days after such matter is referred to ADR, each party shall provide the Neutral with proposed values of C (fair market value of the Licensed Product) and D (fair market value of the Independent Subproduct), together with a written memorandum in support of such proposed values for C and D, as well as any documentary evidence in support thereof. The written memorandum will not be longer than 5 pages in length using 12-point font and margins of at least one (1) inch on all sides of letter-sized paper. The Neutral shall provide said proposed values to the other party only after it receives the proposed values for C and D from both parties.
- (C)** Within thirty (30) days after a party submits its proposed values for C and D, the other party shall have the right to respond thereto (but neither party may change its proposed values). The response and any material in support thereof shall be provided to the Neutral and the other party and will not be longer than 5 pages in length using 12-point font and margins of at least one (1) inch on all sides of letter-sized paper.
- (D)** The Neutral shall have the right to meet with the parties as necessary to inform the Neutral’s determination. Within fifteen (15) days of the receipt by the Neutral of both parties’ responses, the Neutral shall select the values for C and D as proposed by one of the parties that as a whole is the most fair and reasonable to the parties in light of the totality of the circumstances. The Neutral must select the values for C and D as proposed by one or the other of the parties; the Neutral may not combine or otherwise modify the parties’ proposals. The decision of the Neutral will then be final and be applied to the calculation required in Section

4.01(F)(b) under the License Agreement for any applicable time period until such time as either party raises an issue that there is a material change to fair market value of either C (fair market value of the Licensed Product) or D (fair market value of the Independent Subproduct) which the parties are not able to agree on. The Neutral's decision will also identify the winner of the arbitration and order the loser to pay all of the winner's attorneys' fees associated with the resolution of this dispute as well as all fees and costs of the Neutral and the CPR Institute for Dispute Resolution.

## **ARTICLE XI. GENERAL PROVISIONS**

**11.01 Confidentiality.** It is contemplated that in the course of the performance of this Agreement each party may, from time to time, disclose Confidential Information to the other. Each party agrees to use reasonable efforts to: i) to not use the other party's Confidential Information except in the course of the performance of this Agreement or as required to comply with laws or with legal process; and ii) to take all reasonable steps, but no less than the steps it takes to keep its own Confidential Information confidential, to prevent disclosure to a third party; *provided* that no provision of this Agreement will be construed to preclude such disclosure of Confidential Information as may be necessary or appropriate to obtain from any governmental agency any necessary approval or license or to obtain patents that are to be included in Patent Rights. The obligations of confidentiality set forth in this Section 11.01 shall survive termination of this Agreement for a period of three (3) years. Notwithstanding the forgoing, if the University terminates this Agreement in accordance with Section 9.02, the University may provide any of Licensee's information to a third party for purposes of attempting to relicense the Patent Rights. Notwithstanding any other provision of this Agreement, Licensee agrees not to disclose to University any information that may be subject to export controls under any applicable laws or regulations, including but not limited to the Export Administration

Regulations of the United States Department of Commerce, the International Traffic in Arms Regulations of the Department of State, and the Office of Foreign Assets Control of the Department of Treasury.

**11.02 Amendment and Waiver.** This Agreement may be amended only by an instrument in writing signed by an authorized officer of each party. No provision of or right under this Agreement will be deemed to have been amended or waived by any act or acquiescence on the part of either party, its agents or employees, but only by an instrument in writing signed by an authorized officer of each party. No waiver by either party of any breach of this Agreement by the other party will be effective as to any other breach, whether of the same or any other term or condition and whether occurring before or after the date of such waiver.

**11.03 Independent Contractors.** Each party represents that it is acting on its own behalf as an independent contractor and is not acting as an agent for or on behalf of any third party. This Agreement and the relations hereby established by and between the University and Licensee do not constitute a partnership, joint venture, agency or contract of employment between them.

**11.04 Assignment.**

- (A) University may assign this Agreement to any one at any time; provided however, that any such assignment may only be made together with the assignment to the same assignee of the Patent Rights and Copyright [DELETE IF NO COPYRIGHT].
- (B) This license is personal to the Licensee. Without prior written consent of University, this Agreement may only be assigned or transferred by Licensee: (i) to an Affiliate (and only for so long as said Affiliate remains an Affiliate); (ii) in connection with any merger, consolidation or reorganization of Licensee; or (iii) in connection with any sale of all, or substantially all, of a Licensee's assets

related to the Patent Rights, and/or Copyright [DELETE IF NO COPYRIGHT]. Any attempt by Licensee to transfer/assign this Agreement in violation of these restrictions will be null and void. Moreover, any attempt by Licensee to transfer/assign this Agreement in violation of these restrictions will immediately terminate this Agreement.

- (C) Except as permitted by Section 11.04(B) above, any assignment of this Agreement by Licensee requires payment to University an amount to be agreed upon by Licensee and University at the time of said proposed assignment (the “*Assignment Fee*”). For circumstances where the payment of an Assignment Fee is required, no attempt to assign this Agreement will be valid and enforceable in the absence of the payment of said Assignment Fee to University. For the avoidance of doubt, no Assignment Fee shall be owed to University for any assignment or transfer as permitted by Section 11.04(B), above.
- (D) Licensee, or its permitted assignee, will within ten (10) business days of the effective date of any assignment permitted under Sections 11.04(B) or 11.04(C), notify University of the assignment and advise if the assignee does not qualify for ‘small entity’ status in accordance with 37 C.F.R. §1.27.

**11.05 Successors and Assigns.** This Agreement will bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**11.06 Use of Names.** Neither party will use the name of the other party or any staff member, officer, employee or student of the other party or any adaptation thereof in any advertising, promotional or sales literature, publicity or in any document employed to obtain funds or financing without the prior written approval of the party or individual whose name is to be used; *provided* that Licensee may state that Licensed Products are based on research originally carried out at Boston University and that it is licensed by the University under the Patent Rights and/or Copyright [DELETE IF NO COPYRIGHT]. Licensee may, without seeking permission of University, make reference to publications

authored or co-authored by the inventor(s). Licensee will submit to the University for review and approval, which approval will not be unreasonably withheld or delayed, any references to Licensed Products, this Agreement, the University or the inventors in submissions required by the Securities and Exchange Commission or any stock exchange or market system on which its shares are listed or being considered for listing. For the University and its officers, employees and students, such approval will be obtained from the Managing Director of the University's Office of Technology Development or its successor. In addition, the University may disclose the name of Licensee in publications by the University. Licensee and University agree that they will jointly make an initial announcement about the existence of this Agreement.

**11.07 Notices.** All communications hereunder will be in writing and will be sent to the addresses set forth below, or such other address as either party may specify by notice sent in accordance with this Section:

If to the University:

Boston University  
Office of Technology Development  
53 Bay State Road  
Boston, MA 02215  
Attention: Executive Director, Intellectual Property & Licensing

Facsimile: 617-358-6207  
Email: gildeabd@bu.edu

with a copy to:

Boston University  
Office of the General Counsel  
125 Bay State Road  
Boston, MA 02115  
Attention: General Counsel

Facsimile: 617-353-5529

If to Licensee, to the Licensee Notice Address set forth in the Principal Terms & Milestones List. Notices, statements, reports or requests required or permitted hereunder will be in writing and will be deemed effective and properly given when sent by any courier (e.g. FedEx) that provides evidence of delivery, registered or certified mail, Express Mail, e-mail (provided that delivery to the recipient is confirmed) or by confirmed facsimile transmission to the recipient as indicated above or such other recipient as may, in the future, be designated by University or Licensee by such communication.

**11.08 Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other term or provision hereof. The parties agree that they will negotiate in good faith or will permit a court to replace any provision hereof so held invalid, illegal or unenforceable with a valid provision that is as similar as possible in substance to the invalid, illegal or unenforceable provision.

**11.09 Conflict or Inconsistency.** In the event of any conflict or inconsistency between the terms and conditions hereof and any terms or conditions set forth in any purchase order, sponsored research agreement, confidentiality agreement, material transfer agreement, terms sheet or other document relating to, or affecting, the transactions contemplated by this Agreement, the terms and conditions set forth in this Agreement will prevail.

**11.10 Captions.** Captions of the sections and subsections of this Agreement are for reference purposes only and do not constitute terms or conditions of this Agreement and will not limit or affect the terms and conditions hereof.

**11.11 Word Meanings.** Words such as *herein, hereinafter, hereof* and *hereunder* refer to this Agreement as a whole and not merely to a section or paragraph in which such words appear, unless the context otherwise requires. The singular will include the plural, and each masculine, feminine and neuter reference will include and refer also to the others, unless the context otherwise requires.

**11.12 Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the transactions and matters contemplated hereby, supersedes all prior agreements and understandings relating to the subject matter hereof, and no representations, inducements, promises or agreements, whether oral or otherwise, between such parties not contained herein or incorporated herein by reference will be of any force or effect. No provision of this Agreement will be interpreted in favor of, or against, either of the parties by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

**11.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile or PDF copies of this Agreement will be enforceable as originals. In making proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

**[Remainder of this page is intentionally left blank]**



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers, and have duly delivered and executed this Agreement under seal as of the date first set forth above.

TRUSTEES OF BOSTON UNIVERSITY  
(UNIVERSITY)

\_\_\_\_\_  
(LICENSEE)

\_\_\_\_\_

\_\_\_\_\_

By: Martin J. Howard  
Title: Treasurer

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## Definitions

When used as capitalized terms in the License Agreement to which this Schedule 1 is attached, the following terms will have the respective meanings set forth below:

**ADR** has the meaning set forth in Section 10.05(A).

**Affiliate** means with respect to any person or Entity, any other person or Entity that controls, is controlled by or is under common control with the specified person or Entity. As used in this definition, the term '**control**' means: (a) direct or indirect control of at least 50% of the voting stock of an Entity; or (b) in the absence of ownership of at least fifty percent (50%) of the voting stock of the Entity, or in the case of a non-corporate entity or person, possession of, directly or indirectly, the power to direct or cause the direction of the management and policies of such person or Entity.

**Agreement** means the license agreement to which this Schedule 1 is attached, together with all Schedules and Exhibits annexed thereto, as the same shall be modified and in effect from time to time.

**Assignment Fee** has the meaning set forth in Section 11.04(C).

**Board Observation Rights Letter Agreement** means the letter agreement between the Licensee and the University pursuant to which the University receives board observer rights in the Licensee, and which letter agreement shall be in, or substantially in, the form attached hereto as Exhibit D.

**Breaching Sublicensee** has the meaning set forth in Section 9.02(A).

**Business Plan** means a detailed document covering Licensee's plans as to projected product development, markets and sales forecasts, manufacturing and operations, and financial forecasts.

**Calendar Quarter** means each three month period of the Calendar Year beginning on January 1, April 1, July 1 and October 1.

**Calendar Year** means the period of January 1 through December 31.

**Claim** means any issued, unexpired, valid claim or pending claim contained in the Patent Rights. For purposes of this definition, **valid claim** means any claim that has not been: i) formally disclaimed by University; ii) dedicated to the public by University; or iii) held to be invalid or unenforceable by a final judgment of a court or administrative agency of competent jurisdiction from which no appeal can be, or is, taken.

**Clinical Trial** has the meaning set forth in Section 2.03(K).

**Combination Product** means any product comprised of a combination of: (i) a Licensed Product; and (ii) any active ingredient(s), device(s), delivery system(s) or other technology(ies) for which rights are not included in the license granted under this Agreement but, with respect to said item(s) in (ii), which may each or collectively form the basis for a separately saleable product (an "**Independent Subproduct**").

**Commercial Activity Reference Date** has the meaning set forth in the Principal Terms & Milestones List.

**Commercialization Plan** means a detailed report describing Licensee's progress toward and plans for commercialization of the Licensed Products, including work completed, key scientific discoveries, summary of work-in-progress, current schedule of anticipated events or milestones, market plans for introduction of Licensed Product, Licensed Process and/or Software [DELETE IF NO COPYRIGHT] and significant corporate transactions involving Licensed Product.

**Confidential Information** means all confidential and proprietary information and data of one party that is provided by that party (the "**disclosing party**") to the other party (the "**receiving party**") hereunder in written or other tangible medium and marked as confidential at the time of disclosure, or if disclosed orally, is indicated as such at the time of disclosure and confirmed in writing by the disclosing party to the receiving party within thirty (30) days after disclosure, except any portion thereof which:

- (a) was known to the receiving party, before receipt thereof under this Agreement, as evidenced by the receiving party's written record;
- (b) is or becomes generally known through no fault of the receiving party;
- (c) was provided to the receiving party by a third party, provided that such information was lawfully disclosed by such third party free of restrictions upon disclosure and, to the receiving party's knowledge, without breach of any obligation to the disclosing party;
- (d) is independently developed by persons at the receiving party not having knowledge of, or access to, the Confidential Information; or
- (e) is disclosed pursuant to valid court order or other governmental directive, so long as receiving party has provided to the disclosing party immediate notice of such order or directive so as to enable the disclosing party to interpose appropriate objections thereto.

**Copyright** means the University's copyrights in the Software as ascribed in Sections 101 et seq. of the Copyright Law of the United States, as amended from time to time, and International Treaty provisions, in effect from time to time, relating to the protection of copyrights worldwide, but excluding any third party rights therein [DELETE IF NO COPYRIGHT].

**Current Market Value** means, as to any issuance of equity by Licensee in connection with a Sublicense: (i) if there is no public market for Licensee's securities as of the date of the issuance, 125% of the then most recent per-share price that was paid in a substantial transaction by a bona fide non-employee third party in respect of Licensee equity; and (ii) if the issuance is Licensee's Initial Public Offering, the offering price of such securities to the public; and (iii) otherwise, the ten (10) (business) day average of: (A) the closing prices for such securities on any exchange for which such securities are listed (or if listed on multiple exchanges then the highest closing price on any exchange on the day a price is to be determined); or (B) the average of the bid and ask prices of the securities in the over the counter summary, in either case as

published in the Wall Street Journal for the ten (10) business days prior to the earlier of: (1) the date the investment is made; and (2) the day before the first public disclosure of the investment on any major news or financial wire service.

***Deferred Patent Costs*** has the meaning set forth in Section 6.05(A).

***Deferred Patent Costs Invoice*** has the meaning set forth in Section 6.05(A).

***Deferred Patent Cost Period*** has the meaning set forth in Section 6.05(A).

***End-User*** means any person or Entity whose use of a product or Licensed Product results in utilization, consumption, destruction, loss of activity or loss of value of said product or Licensed Product.

***Effective Date*** has the meaning set forth in the preamble to this Agreement.

***Entity*** means any corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, limited liability partnership or other legal entity or organization.

***Estimated National Phase Entry Payment*** has the meaning set forth in Section 6.05(C)(i).

***Equity Agreement*** means the agreement between the Licensee and the University pursuant to which the University receives an equity interest in the Licensee, and which agreement shall be in, or substantially in, the form attached hereto as Exhibit C.

***Exclusive Period*** means the Term of the licenses granted pursuant to Section 2.01(a) unless such period of exclusivity is earlier terminated by the University pursuant to Sections 3.05 or 9.02(A).

***Field of Use*** has the meaning specified in the Principal Terms & Milestones List.

***First Commercial Sale*** means the sale of a Licensed Product by Licensee (or Permitted Sublicensee) to any third party in an arms length transaction anywhere in the world.

***Funding Event*** means receipt of venture capital, angel funding or any other form of funding in exchange for equity in Licensee in a cumulative amount equal to or in excess of \_\_\_\_\_ million dollars.

***Government Rights*** means the rights of the United States of America or other government entity in subject matter licensed under this Agreement, including without limitation those set forth in 35 U.S.C. §200 et seq. or any successor thereto, as well as federal regulations promulgated thereunder, all as modified and in effect from time to time. [Check funding sources for any information regarding government rights, FARS & DEFARS]

***Indemnitees*** has the meaning specified in Section 7.02.

***Independent Subproduct*** has the meaning specified in the definition of Combination Product.

***Information*** means research results, toxicology data, assays, preclinical data, prototypes, mask works, manufacturing processes including cell lines and unused, unexpired amounts of Licensed Products, clinical results, regulatory submissions, approvals, customer lists, papers,

photographs, computer programs and databases, manuals, prototypes, models, plans, drawings, designs, formulations, specifications, methods, techniques, formulas, supplier lists, engineering information, price lists, costing information, accounting and financial data, profit margin, marketing and sales data, and/or strategic plans related to the Patent Rights and/or Software.

**Initial Public Offering** means the first underwritten public offering of Common Stock of the Licensee for the account of the Licensee registered under the Securities Act of 1933, as amended.

**Institutions** has the meaning specified in Section 2.04.

**Label License** means a non-exclusive sublicense right to practice a Licensed Process that is granted directly and solely to an End-User by the Licensee or a Permitted Sublicensee and which is fully compliant with the terms, conditions and obligations set forth in Section 2.03(J), and wherein said sublicense right is memorialized: i) on a product label; ii) on product packaging; iii) on an insert that accompanies a product sold to the End-User so that said End-User may use said product said End-User purchased (and only in the amounts purchased) for its intended purpose; and/or iv) with respect to Software in either “shrink-wrapped” form or an electronic equivalent that permits the End-User to view and indicate agreement with the license terms. [DELETE (IV) IF NO SOFTWARE]

**Licensed Process** means any Patent-Based Process and any Software-Based Process[DELETE IF NO COPYRIGHT – In which case there is no difference between Licensed Process and Patent-Based Process and the “Patent-Based Process” definition can be incorporated here and then deleted].

**Licensed Product** means any Patent-Based Product and any Software-Based Product[DELETE IF NO COPYRIGHT – In which case there is no difference between Licensed Process and Patent-Based Product and the “Patent-Based Product” definition can be incorporated here and then deleted].

**Licensee** means the person(s), Entity or Entities so identified in the preamble to the Agreement, and its Affiliates.

**Licensee Derivative Work** means any development or modification created by or on behalf of Licensee that includes, or is based in whole or in part, on the Software, including, but not limited to, all works developed by or on behalf of Licensee which would be characterized as derivative works of the Software under the United States Copyright Act of 1976, as amended from time to time, but not limited to, translations, recastings, transformations, or adaptations of the Software to other hardware platforms or computer interfaces, or works consisting of revisions, or other modifications of the Software[DELETE IF NO COPYRIGHT].

**Licensee Fiscal Year** has the meaning set forth in the Principal Terms & Milestones List.

**Licensee Notice Address** means the address so identified in the Principal Terms & Milestones List.

**Licensee Notice E-mail** means the e-mail so identified in the Principal Terms & Milestones List.

**Licensee Notice Facsimile** means the facsimile number so identified in the Principal Terms & Milestones List.

**Lump Sum Amount** has the meaning set forth in Section 4.01(E).

[If for a healthcare technology **Market Countries** means:

- (a) All current and future Organization for Economic Cooperation and Development (OECD) countries, presently consisting of Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Republic of Korea, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, the UK, and the United States; and
- (b) All current and future members of the European Union not otherwise members of the OECD; and
- (c) People's Republic of China, India, Malaysia, Russian Federation, Singapore, South Korea and Taiwan].

**Milestone** means each of the events so identified in the Principal Terms & Milestones List.

**Milestone Date** means for any Milestone, the date appearing opposite such Milestone in the Principal Terms & Milestones List.

**Milestone Payment** means for any Milestone, the dollar amount appearing opposite such Milestone in the Principal Terms & Milestones List.

**Minimum Royalty Amount** means for: (a) any year identified in the Principal Terms & Milestones List under the phrase "Minimum Royalty Amount", the dollar amount appearing opposite the designation of such year; and (b) any year thereafter during the Exclusive Period, an amount equal to the highest Minimum Royalty Amount for any previous year; and (c) any year after the termination of the Exclusive Period, zero.

**MRA Year** means the period identified in the Principal Terms & Milestones List and defined in Section 4.01(C).

**National Phase** has the meaning given by the World Intellectual Property Organization with respect to patent prosecution activity under the Patent Cooperation Treaty.

**National Phase Entry** means, entry into the National Phase under the Patent Cooperation Treaty as defined by the World Intellectual Property Organization (WIPO).

**Net Sales** means all gross amounts billed to any person or Entity at the earliest of the date of invoice, shipment or payment in respect of the making, having made, use, lease, sale, offer for sale and/or importation of Licensed Products and/or practice of Licensed Processes and/or use, reproduction, performance, display, and/or distribution of Software [**Remove if no COPYRIGHT**], without regard to whether the intended use is testing, including, without limitation, all amounts for a Combination Product, less the sum of the following amounts:

- (a) sales and use taxes, tariffs, duties and the like imposed directly and with reference to particular sales or leases; plus

- (b) outbound shipping, packaging and/or cost of insurance prepaid or actually allowed; plus
- (c) amounts allowed on credits or returns; plus
- (d) discounts allowed in amounts customary in the trade; plus
- (e) [*if for a healthcare technology*: sales to Public Sector entities in Non-Suit Countries for end use in Non-Suit Countries;]

*provided* that: (i) no deductions will be made in respect of: (A) commissions paid to salespersons or sales agencies (without regard to whether employed by Licensee or a Permitted Sublicensee, or engaged as an independent contractor); or (B) the cost of collections. In the case of transfer of License Products among Licensee and any Affiliate and/or Permitted Sublicensee for which there is to be a subsequent sale to a third party End User, Net Sales will be calculated based on the invoice amount when subsequently sold to a third party. For the avoidance of any doubt, if Licensee or a Permitted Sublicensee consumes a Licensed Product or practices a Licensed Process in activity associated with performing a service for a third party (including any testing), Net Sales will be calculated on all gross amounts billed to said third party at the earliest of the date of invoice, shipment or payment for all activity associated with the performance of said service.

For the avoidance of any doubt, if a Licensed Product is sold as part of a Combination Product, Net Sales will be calculated in accordance with the terms of Section 4.01(F) (and Section 10.05 if applicable).

***Neutral*** has the meaning specified in Section 10.05.

[*If for a healthcare technology Non-Suit Countries* means all countries other than Market Countries.]

[*If for a healthcare technology Orange Book Patent Rights* means any US patent assigned to or co-assigned to Licensee or any Permitted Sublicensee that is listed or co-listed with any patent included in Patent Rights in the FDA’s listing “Approved Drug Products with Therapeutic Equivalence Evaluations,” commonly known as the Orange Book.]

***Patent-Based Process*** means any process that is covered in whole or in part by a Claim.

***Patent-Based Products*** means any product or product part that: (a) is covered by a Claim; or (b) is made by using a Patent-Based Process; or (c) is employed to practice a Patent-Based Process.

***Patent-Based Royalty Percentage*** has the meaning set forth in the Principal Terms & Milestones List.

***Patent Cost Invoice*** has the meaning set forth in Section 6.05(A).

***Patent Costs*** means all fees and/or expenses, including without limitation: (i) all attorneys’ fees, patent filing fees and travel costs of University employees to patent examiner interviews or interference proceedings; (ii) all costs and fees associated with any reexamination proceedings, derivation proceedings, post-grant review proceedings and/or reissuance

proceedings; and (iii) any maintenance fees; in each case incurred in respect of the Patent Rights and paid by University or invoiced to University.

**Patent List** means Exhibit A and Exhibit B annexed hereto as they may be amended and in effect from time to time.

**Patent Rights** means all of the following University intellectual property:

(a) the patents and/or patent applications identified in the Patent List (including the PCT application(s) and/or the U.S. utility application(s) filed on or before the one-year conversion date of any such provisional applications); (b) any patent application(s) that claim(s) priority to and is/are a continuation, continuations-in-part, divisional, reissue, renewal, reexamination, substitution or extension of any patent application identified in (a); (c) any patents issuing on any of the patent applications identified in (a) or (b), including any reissues, renewals, reexaminations, substitutions or extensions thereof; and (d) if the Territory includes countries other than the United States, any foreign counterpart(s) (including PCTs) of the foregoing and any patents which issue thereon, provided that Claim(s) in any said continuations-in-part not identified in the Patent List as of the Effective Date will only be included in Patent Rights to the extent any said Claim(s) of said continuations-in-part is/are directed to subject matter specifically described in a patent or patent application identified in the original Patent List (i.e. the Patent List as of the Effective Date). For the avoidance of doubt, no other inventions or patent rights are included in the meaning of Patent Rights except as expressly set forth in this definition.

**Permitted Sublicensee** means any sublicensee under a Permitted Sublicense.

**Permitted Use** has the meaning set forth in Section 11.01.

[If for a healthcare technology **Private Sector** will mean entities other than Public Sector entities.]

[If for a healthcare technology **Public Sector** will include:

- (a) the sovereign government of a country;
- (b) agencies of the United Nations and the World Health Organization;
- (c) organizations which are members of the International Committee of the Red Cross and Red Crescent;
- (d) international charitable agencies (also known as Non-Governmental Agencies) including but not limited to Oxfam, Medecins Sans Frontieres, and so forth;
- (e) organizations substantially supported by philanthropic organizations including but not limited to the Bill and Melinda Gates Foundation, the Rockefeller Foundation and so forth, specifically including global product development and distribution public-private partnerships.]

**Progress Report** means a written report summarizing Licensee's material technical and other efforts made towards First Commercial Sale for all Licensed Products under development. Such reports will include, without limitation, reasonably detailed summaries of: (i) development and commercialization of Licensed Products; (ii) collaborations with third parties and sublicensing efforts; (iii) progress toward completing milestones described in the Principal



Terms & Milestones List; (iv) key management changes and total number of employees; (v) Licensee's finances; (vi) scientific and business goals for the next year; (vii) summary of any payments due under ARTICLE IV; and (viii) any other company information which may materially adversely impact Licensee's ability to develop Licensed Product.

**Quarterly Report** has the meaning set forth in Section 5.02.

**Reserved Rights** has the meaning set forth in Section 2.04.

**Running Royalty Percentage** has the meaning set forth in the Principal Terms & Milestones List.

**Running Royalties** has the meaning set forth in Section 4.01(D).

**Running Royalty Amount** means, for activity of Licensee in respect of any Calendar Quarter during the Term, the sum of:

- (a) The product of Net Sales of Patent-Based Products and/or Patent-Based Processes by Licensee for such quarter, only in each country of the Territory in which the applicable making, having made, use, lease, sale, offer for sale, importation or other transfer would infringe a Claim but for the license granted in Section 2.01, multiplied by the Patent-Based Royalty Percentage (expressed as a decimal); plus
- (b) [DELETE IF NO COPYRIGHT] The product of Net Sales of Software-Based Products and/or Software-Based Processes by Licensee for such quarter, only in each country of the Territory in which the applicable possession, reproduction, use, modification, display, distribution or other license or transfer would infringe a valid and enforceable copyright in the absence of the license granted in Section 2.01, multiplied by the Software-Based Royalty Percentage (expressed as a decimal);

*provided*, that: (i) no portion of any Net Sales will be included in the calculations under both clauses (a) and (b) hereof; and (ii) if any portion of any Net Sales could be so double-counted, such portion will be included only in the calculation under clause (a) hereof.

**Scheduled Fees** has the meaning set forth in Section 4.01(G) and Schedule 2.

**Software** means the computer software, source code, object code, and/or related documentation created by or on behalf of University and disclosed in BU Case No. XXXX-XXXX known as: "XXXXXXXXXXXXXXXXXXXXXXX," by YYYY and ZZZZ, as it exists on the Effective Date and listed in Schedule 3; but excluding any third party proprietary technology, content, know-how or code. [DELETE IF NO COPYRIGHT]

**Software-Based Process** means any process covered by, developed using and/or that executes the Software. [DELETE IF NO COPYRIGHT]

**Software-Based Product** means: 1) any product or product part that includes an executable copy of the Software incorporated therein; and/or 2) fee-based access to a device (e.g. computer or computer network) that executes the Software. [DELETE IF NO COPYRIGHT]

**Software-Based Royalty Percentage** has the meaning set forth in the Principal Terms & Milestones List. For the avoidance of any doubt, subject to the proviso in the last sentence of the

definition of “Running Royalty Amount”, the ‘Software-Based Royalty Percentage’ applies if the Software is in any way used in connection with Licensed Products and/or Licensed Processes.  
[DELETE IF NO COPYRIGHT]

**Sublicense** means any agreement between Licensee and a third party that contains a grant to rights taken by Licensee under Section 2.01 of this Agreement regardless of the name given to said agreement by the parties.

**Sublicense Lump Sum Percentage** has the meaning set forth in the Principal Terms & Milestones List.

**Sublicensee Royalty Revenue Percentage** has the meaning set forth in the Principal Terms & Milestones List.

**Sublicensee Running Royalty Amount** means, in respect of any Calendar Quarter during the Term, the amount of cash payments received by Licensee from a Permitted Sublicensee for any running royalties paid pursuant to a Sublicense for:

- (a) The Net Sales of Patent-Based Products and/or Patent-Based Processes by said Permitted Sublicensee in each country of the Territory in which the applicable making, having made, use, lease, sale, offer for sale, importation or other transfer would infringe a Claim in the absence of the license in Section 2.01; and
- (b) [DELETE IF NO COPYRIGHT] Net Sales of Software-Based Products and/or Software-Based Processes said Permitted Sublicensee in each country of the Territory in which the applicable possession, reproduction, use, modification, display, distribution or other license or transfer would infringe a valid and enforceable copyright in the absence of the license granted in Section 2.01.

**Sublicensing Revenue** means any consideration actually received by Licensee or a Permitted Sublicensee from a third party as consideration for the sublicense of any of the rights granted under Section 2.01, including without limitation any royalties (other than running royalties), any technology access fees, upfront fees, license issue fees, license maintenance fees, purchases of equity between parties to a Sublicense to the extent the amount received in respect of any such equity purchase exceeds the then Current Market Value of such equity, assumed debt obligations in lieu of payments, and milestone payments, payment(s) of royalties for past infringement, or other such payments or fees, including the fair market value of any non-cash consideration (only as permitted by University in writing after consultation – See also Section 2.03(C)) but net of any tax or similar withholding obligations imposed by any tax or other government authority(ies) that are not reasonably recoverable by Licensee. For the avoidance of doubt, Sublicensing Revenue will not include: (i) Sublicensee Running Royalty Amount; or (ii) fair market value payments made in connection with research and development agreements, joint ventures, partnerships or collaboration agreements where Licensee, or an Affiliate, is obligated to perform research and development of any Licensed Product(s), Licensed Processes or Software[DELETE IF NO COPYRIGHT].

**Sublicensing Royalty Revenue** means all payments associated with Running Royalties under Section 4.01(D)(b).

***Substantial Patent Prosecution Event*** means an opposition, interference, reexamination, reissue or other patent prosecution event where it is anticipated that costs in excess of \$20,000 are likely to be incurred by University.

***Term*** means with respect to any license granted by the University under this Agreement, the period beginning on the Effective Date and terminating in accordance with ARTICLE IX.

***Territory*** has the meaning specified in the Principal Terms & Milestones List.

[*If for a healthcare technology Trade Dress* will mean the physical appearance of Product as sold in any Market Country by Licensee, including but not limited to such characteristics as shape, color, tradename, trademark, service mark, etc.]

***Third Party Royalties*** means any royalties Licensee owes to one or more third parties pursuant to one or more licenses to intellectual property rights entered into by Licensee to avoid infringement of such rights by the practice of the Patent Rights in the manufacture, use, or sale of any Licensed Product, or to avoid infringement-related litigation with respect to the practice of the Patent Rights, as determined by Licensee in its reasonable discretion.

***World Intellectual Property Organization*** means the specialized agency of the United Nations charged with developing a balance and accessible international intellectual property system (see: <http://www.wipo.int/portal/index.html.en>).

***Unfunded Countries*** has the meaning set forth in Section 6.04.

**Schedule 2  
Scheduled Fees**

**None**

### **Schedule 3**

**Delete this Schedule and all references thereto in the License if no Software**

EXHIBIT A

US PATENT RIGHTS

<u>BU Docket No.</u>	<u>USSN/ Patent No.</u>	<u>Title</u>	<u>Inventors</u>	<u>Filed/ Issued</u>
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FOREIGN PATENT RIGHTS

<u>BU Docket</u>	<u>PCT / Patent</u>	<u>Title</u>	<u>Inventors</u>	<u>Filed/ Issued</u>
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**UNIVERSITY  
[NEWCO]  
EQUITY AGREEMENT**

This Equity Agreement (the “**Agreement**”) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between [NewCo], a [Insert State] corporation with a principal address at [Insert Address] (the “**Company**”), and **Trustees of Boston University**, a Massachusetts non-profit corporation with a principal address at One Silber Way, Boston, MA 02215 (referred to herein as the “**University**”).

WHEREAS, the Company desires and the University has agreed pursuant to the terms of a License Agreement dated as of the Effective Date (the “**License Agreement**”) to license certain technology for which the University shall be entitled to certain royalty payments as set forth therein and, additionally, shares of the Company’s Capital Stock on the terms set forth herein; and

WHEREAS, the parties hereto are willing to execute this Agreement to effect the purchase and sale of such Capital Stock and to be bound by the provisions hereof.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the University and the Company hereby agree as follows:

1. **Definitions**

(a) “**Capital Stock**” shall mean, individually, the Common Stock or Preferred Stock, and, collectively, the Common Stock and the Preferred Stock.

(b) “**Common Stock**” shall mean shares of the Company’s common stock, par value \$[\_\_\_\_\_] per share.

(c) “**Eligible Financing**” shall mean the first capital raising transaction occurring after the closing of the Effective Date in which the Company issues Capital Stock that results in the aggregate gross proceeds raised by the Company equal to or exceeding \$[\_\_\_\_\_] million (inclusive of all amounts raised in such transaction including debt obligations that convert into such stock and in any capital raising transaction occurring before such transaction).

(d) “**Fully Diluted Capitalization**” shall mean, at a specified time, the sum of, without double counting (a) the total number of shares of Common Stock outstanding at such time, (b) the total number of shares of Common Stock issuable upon the conversion, exercise or exchange of all securities or rights, including options and warrants, outstanding at such time, and (c) the total number of shares of Capital Stock reserved for issuance pursuant to any outstanding options or other securities exercisable for or convertible into Capital Stock under the Company’s equity incentive plans.



(e) “**IPO**” shall mean the Company’s first underwritten public offering of its Common Stock under the Securities Act (as defined below).

(f) “**New Securities**” shall mean shares of new securities of the Company constituting, or units of any new securities of the Company including, shares of Capital Stock or any warrants, options or rights to purchase shares of Capital Stock or any securities convertible into or exchangeable for shares of Common Stock (or any warrants, options or rights with respect to such convertible or exchangeable securities), excluding any securities (i) issued or issuable by reason of a dividend, stock split, split-up or other distribution on outstanding shares of Capital Stock, (ii) issued in a public offering, or (iii) issued in connection with an acquisition, joint venture, commercial arrangement, or similar corporate partnering transaction.

(g) “**Preferred Stock**” shall mean shares of the Company’s preferred stock, par value \$[\_\_\_\_\_] per share.

## 2. **Sale and Issuance of Shares.**

(a) Subject to the terms and conditions of this Agreement, and in partial consideration for the technology license granted to the Company pursuant to the License Agreement, the Company shall hereby issue and deliver to the University, at the closing, [\_\_\_\_\_] shares of [ ] Stock which shall equal \_\_\_ percent (\_\_\_%) of the Company’s Fully Diluted Capitalization (such shares of [ ] Stock issued to the University are referred to herein as the “**Shares**”).

(b) The obligations of the Company hereunder are subject to the fulfillment of each of the following conditions:

(i) The University shall have executed and delivered the License Agreement;  
and

(ii) All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that may be required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall have been duly obtained and shall be effective at the closing, other than filings which are required to be made after the closing and which will be duly made on a timely basis.

## 3. **General Restrictions.**

### (a) **Investment Representations.**

(i) **Representations and Warranties of the University.** The University represents, warrants and acknowledges that the University: (a) has had an opportunity to ask questions of and receive answers from a Company representative concerning the terms and conditions of this investment; (b) is acquiring the Shares for the University’s own account for the purpose of investment, and not with a view to any resale or other distribution thereof in violation of the Securities Act of 1933, as amended (the “**Securities Act**”); (c) is a sophisticated investor with such knowledge and experience in financial and business matters as to be able to evaluate

the merits and risks of an investment in the Shares; (d) is able to and must bear the economic risk of the investment in the Shares for an indefinite period of time because the Shares have not been registered under the Securities Act, and therefore, cannot be offered or sold unless the Shares are subsequently registered under the Securities Act or an exemption from such registration is available; and (e) that the University is an “accredited investor” as that term is defined in Regulation D under the Securities Act. The University acknowledges and understands that the Common Stock has not been registered under the Securities Act, nor registered pursuant to the provisions of the securities laws or other laws of any other applicable jurisdictions, in reliance on exemptions for private offerings contained in Section 4(2) of the Securities Act and in the laws of such jurisdictions. The University further understands that the Company has no intention and is under no obligation to register the Shares under the Securities Act or to comply with the requirements for any exemption that might otherwise be available, or to supply the University with any information necessary to enable the University to make routine sales of the Shares under Rule 144 or any other rule of the Securities and Exchange Commission.

(ii) Representations and Warranties of the Company. The Company represents and warrants to the University that:

a. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority to own or lease its properties and to conduct its business in the manner and in the places where such properties are owned or leased or such business is conducted by it.

b. The authorized Capital Stock of the Company immediately prior to consummation of the transactions contemplated by this Equity Agreement consists solely of [\_\_\_\_\_] shares of Common Stock, of which [\_\_\_\_\_] shares are issued and outstanding. The Company has authorized XXX shares of Preferred Stock. [XXX shares of Preferred Stock are issued and outstanding].

c. All currently issued and outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid, non-assessable and free of all preemptive rights. The Shares, when issued to the University under this Equity Agreement, will be duly authorized, validly issued, fully paid, non-assessable and free of all preemptive rights.

d. The Company has the full power and authority to execute and deliver this Equity Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Equity Agreement and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action. This Equity Agreement has been duly and validly executed and delivered by the Company and constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(b) No Conflict or Violation. Neither the execution, delivery or performance of this Equity Agreement nor the performance of the transactions contemplated hereby, will: (i) constitute a breach or violation of the Company’s Certificate of Incorporation or Bylaws; (ii) constitute (with or without the passage of time or the giving of notice) a breach of, or default under any material agreement, instrument or obligation to which the Company is a party or by

which its assets are bound; or (iii) violate any court order, judgment, administrative order, writ, decree, stipulation, arbitration award or injunction or statute, law, ordinance, rule and regulation applicable to the Company.

(c) Legends. The University acknowledges that all certificates evidencing the Shares shall bear a legend in substantially the following form, in addition to all other legends required by law or any other agreements to which the University is a party:

“THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.”

4. Dilution Protection. Dilution Protection. The Company agrees to issue and deliver to the University, for no additional fee or consideration, from time to time, such number of additional shares of Capital Stock so as to cause the University to continue to hold shares of [ ] Capital Stock representing \_\_\_\_ percent (\_\_\_\_%) of the Fully Diluted Capitalization until (i) the close of an Eligible Financing, (ii) immediately before the consummation of the IPO, or (iii) immediately prior to any sale of all or substantially all of the Company’s assets, merger or other acquisition, whichever event occurs first.

5. Other Investor Rights. The Company shall grant the University no less favorable registration and co-sale rights as and when the Company shall grant any such rights to third party investors before and in connection with the Eligible Financing.

6. Pre-Emptive Rights. If at any time after the issuance and delivery of the Shares to the University pursuant to this Agreement, the Company shall issue or sell any New Securities of the Company (other than shares of Common Stock or options to purchase shares of Common Stock issued or issuable pursuant to any equity incentive plans of the Company), the Company shall offer to sell such additional New Securities to the University at a purchase price equal to and on the same terms offered by the Company to other investors in order to maintain the University's proportional ownership on a Fully Diluted Capitalization calculated in accordance with this Section 6. Within thirty (30) days following the sale of New Securities by the Company, the Company shall deliver a notice to the University (the “Offer Notice”) stating the terms of the New Securities and the opportunity for the University to purchase up to such number of New Securities. By written notification received by the Company, within thirty (30) days after mailing of the Offer Notice, the University may elect to purchase, at the price and on the terms specified in the Offer Notice, such number of shares of New Securities up to (i) the number of New Securities that the University would be required to purchase in order to maintain the University’s ownership, after giving effect to the issuance of all New Securities (including New Securities purchased by the University under this Section 6) and the issuance (if applicable) of Additional Shares pursuant to Section 4, at the University's percentage of the Fully-Diluted Capitalization immediately before giving effect to such issuance. The exercise or non-exercise by the University of its rights pursuant to this Section 6 shall be without prejudice to its rights

under this Section 6 with respect to any future sales of New Securities. The covenants set forth in this Section 6 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, or (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act of 1934, whichever event occurs first.

7. **Miscellaneous Provisions.**

(a) **Notice.** Any notice required by the terms of this Agreement shall be given in writing and shall be deemed effective upon (i) personal delivery; (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day; (iii) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt; or (iv) five (5) days after deposit with the United States Postal Service, by registered or certified mail, return receipt requested, with postage and fees prepaid. Notice shall be addressed to the Company at its principal executive office and to the University at the address that he or she most recently provided to the Company in writing.

(b) **Entire Agreement.** This Agreement, together with the License Agreement, each entered into as of the date hereof (in either case, as the same may be amended or restated from time to time), constitutes the entire understanding between the parties hereto with regard to the subject matter hereof, and supersedes any other agreements, representations or understandings (whether oral or written and whether express or implied) which relate to the subject matter hereof.

(c) **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

(d) **Adjustment for Stock Splits, Stock Dividends, etc.**

(i) If from time to time during the term of this Agreement there is any stock split-up, stock dividend, stock distribution or other reclassification of the Common Stock of the Company, any and all new, substituted or additional securities to which the University is entitled by reason of its ownership of Shares shall be automatically subject to the restrictions on transfer and the other provisions of this Agreement in the same manner and to the same extent as the shares of Shares.

(ii) If the Shares are converted into or exchanged for, or stockholders of the Company receive by reason of any distribution in total or partial liquidation, securities of another corporation or other property (including cash), or pursuant to any merger or consolidation of the Company or acquisition of its assets, then the rights of the Company under this Agreement shall apply to the securities or other property received upon such conversion, exchange, distribution, merger or consolidation in the same manner and to the same extent as the Shares.

(e) **Choice of Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the General Corporation Law of the State of Delaware as to matters within the scope thereof, and as to all other matters shall be governed by, and construed and

enforced in accordance with, the internal laws of the Commonwealth of Massachusetts without giving effect to the conflicts of laws principles thereof.

(f) Severability. The University hereby agrees that each provision herein shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. In case any provisions (or portions thereof) contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, University agrees that such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If, moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject so as to be unenforceable at law, University agrees that such provision or provisions shall be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

(g) Amendments; Waivers. This Agreement may only be amended or modified in writing signed by the University and the Company. No party shall be deemed to waive any rights hereunder unless such waiver is in writing and signed by such party. A waiver in writing on or more occasions shall not be deemed to be a waiver for any future occasions.

(h) Counterparts. This Agreement may be executed in counterparts, including counterparts by telecopier, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

(i) Captions. Captions are for convenience only and are not deemed to be part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Equity Agreement under seal as of the Effective Date.

TRUSTEES OF BOSTON UNIVERSITY

[NEWCO]

\_\_\_\_\_  
Name: Martin J. Howard  
Title: Treasurer

\_\_\_\_\_  
Name:  
Title:

[NEWCO] CORPORATION

\_\_\_\_\_  
Street  
\_\_\_\_\_, MA \_\_\_\_\_

Re: Board Observer Rights for the Trustees of Boston University

Trustees of Boston University:

This letter will confirm our agreement made in connection with the issuance to Trustees of Boston University (“BU”) of [*a Convertible Promissory Note (the “Note”) OR shares of [common/preferred] stock, \$[ ] par value per share (“Shares”) of/by] [NEWCO] (the “Company”)*], pursuant to the terms of the [*Equity OR Note Purchase OR Stock Purchase*] Agreement, dated as of even date herewith (the “[*Equity OR Note Purchase OR Stock Purchase*] Agreement”), between BU and the Company. BU shall be entitled to the following board observer rights, in addition to any rights to non-public financial information, inspection rights, and other rights specifically provided to BU herein:

1. The Company shall invite an individual designated by BU and acceptable to the Company (the “BU Observer”), to attend all meetings of the Company’s Board of Directors (the “Board”) in a nonvoting observer capacity and, in this respect, the Company shall give the BU Observer copies of all notices, minutes, consents, and other materials that it provides to the Company’s directors at the same time and in the same manner as provided to such directors; provided, however, that the BU Observer shall agree to hold in trust and confidence all information so provided; and provided, further, that the Company reserves the right to withhold any information and to exclude the BU Observer from any meeting or portion thereof if access to such information or attendance at such meeting or portion thereof could either (a) adversely affect the attorney-client privilege between the Company and its counsel, or (b) likely result in a conflict of interest between the Company and BU. Upon reasonable notice and at a scheduled meeting of the Board or such other time, if any, as the Board may determine in its sole discretion, the BU Observer may address the Board with respect to BU’s concerns regarding significant business issues facing the Company.
2. BU shall be entitled to discuss with management of the Company on significant business issues, including management’s proposed annual operating plans, and management will meet with representatives from BU regularly during each year at the Company’s facilities, outside of the Board meetings, at mutually agreeable times for such discussion and advice and to review progress in achieving said plans.
3. BU may examine the books and records of the Company and inspect its facilities and may request information at reasonable times and intervals concerning the general status of the Company’s financial condition and operations, provided that access to highly confidential proprietary information and facilities need not be provided.

The rights granted herein shall terminate and be of no further force or effect upon the earliest of (i) termination of the license agreement between Company and University effective as of [Insert Effective Date]; (ii) the consummation of the sale of the Company's securities pursuant to a registration statement filed by the Company under the Securities Act of 1933, as amended, in connection with the firm commitment underwritten offering of its securities to the general public, and (iii) the date [*BU ceases to hold any securities or debt in the Company OR the closing of the Company's Series A Preferred Stock financing OR an Eligible Financing (as that term is defined in the Equity Agreement)*]. The confidentiality provisions hereof will survive any such termination.

Very truly yours,

[NEWCO CORPORATION]

By: \_\_\_\_\_  
Name:  
Title:

Agreed to and Acknowledged by:

TRUSTEES OF BOSTON UNIVERSITY

By: \_\_\_\_\_  
Martin J. Howard  
Its duly authorized Treasurer