

For illustrative purposes only. This sample contains terms representative of a basic license agreement with exclusive patent rights, but any such agreement may be subject to change.

## LICENSE AGREEMENT

This License Agreement (this “Agreement”) is entered into as of this \_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between \_\_\_\_\_, a \_\_\_\_\_ existing under the laws of \_\_\_\_\_, having a place of business at \_\_\_\_\_ (“Licensee”), and **President and Fellows of Harvard College**, an educational and charitable corporation existing under the laws and the constitution of the Commonwealth of Massachusetts, having a place of business at Richard A. and Susan F. Smith Campus Center, Suite 727, 1350 Massachusetts Avenue, Cambridge, Massachusetts 02138 (“Harvard”).

**WHEREAS**, the technology claimed in the Patent Rights (as defined below) was developed in research conducted by Harvard researcher Dr. \_\_\_\_\_;

**WHEREAS**, Licensee wishes to obtain a license under the Patent Rights; and

**WHEREAS**, Harvard desires to have products and services based on the inventions described in the Patent Rights developed and commercialized to benefit the public;

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, hereby agree as follows:

### 1. Definitions.

As used in this Agreement, the terms with initial letters capitalized, whether used in the singular or plural form, shall have the meanings set forth in this Article 1 or, if not listed below, the meaning designated in places throughout this Agreement.

**1.1. “Affiliate”** means, with respect to a person, organization or entity, any person, organization or entity controlling, controlled by or under common control with, such person, organization or entity. For purposes of this definition only, “control” of another person, organization or entity will mean the possession, directly or indirectly, of the power to direct or cause the direction of the activities, management or policies of such person, organization or entity, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, control will be presumed to exist when a person, organization or entity (a) owns or directly controls fifty percent (50%) or more of the outstanding voting stock or other ownership interest of the other organization or entity or (b) possesses, directly or indirectly, the power to elect or appoint fifty percent (50%) or more of the members of the governing body of the other organization or entity. The parties acknowledge that in the case of certain entities organized under the laws of certain countries outside of the United States, the maximum percentage ownership permitted by law for a foreign investor may be less than fifty percent

(50%), and that in such cases such lower percentage will be substituted in the preceding sentence.

**1.2. “Calendar Quarter”** means each of the periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31 during the Term.

**1.3. [“Change of Control”** means (a) a merger, share exchange or other reorganization concerning the direct or indirect ownership of Licensee, (b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group of the capital stock of Licensee representing a majority of the aggregate ordinary voting power, or aggregate equity value represented by the issued and outstanding capital stock, of Licensee, (c) a sale of all or substantially all of the assets of Licensee or that portion of Licensee’s business to which the license granted under this Agreement relates in one transaction or a series of related transactions, in which for each of (a), (b) and (c) the persons or entities that own capital stock of Licensee representing a majority of the voting power of Licensee prior to such transaction do not own a majority of the voting power of the acquiring, surviving or successor entity, as the case may be; provided however, that a transaction in which working capital is raised through the non-public issuance of equity in Licensee to investors shall not constitute a Change of Control. – **may be negotiated – see Section 4.7]**

**1.4. “Development Milestones”** means the development and commercialization milestones set forth in Exhibit 1.4 hereto.

**1.5. “Development Plan”** means the plan for the development and commercialization of Licensed Products attached hereto as Exhibit 1.5, as such plan may be adjusted from time to time pursuant to Section 3.2.

**1.6. [“Field”** means \_\_\_\_\_.]

**1.7. [“Harvard Technology Transfer Materials”** means the protocols, materials, data and other information listed in Exhibit 1.8, and any progeny, derivatives and modifications of such material made by or on behalf of Company or its Affiliates.

**1.8. [“Licensed Method”** means any method or process, the practice of which falls within the scope of a Valid Claim.]

**1.9. “Licensed Product”** means on a country-by-country basis, any product or service, the making, using, selling, offering for sale, importing, exporting or performing in the country in question would (without the license granted hereunder) infringe directly, indirectly by inducement of infringement, or indirectly by contributory infringement, at least one pending Valid Claim (were it to have issued) or issued Valid Claim in that country.

**1.10. “Net Sales”** means the gross amount billed or invoiced by or on behalf of Licensee, its Affiliates, Sublicensees and any of their Affiliates (in each case, the “Invoicing Entity”) on sales, leases or other transfers of Licensed Products, less the following to the extent applicable with respect to such sales, leases or other transfers and not previously deducted from the gross invoice price: (a) customary trade, quantity or cash discounts to the extent actually allowed and taken; (b) amounts actually repaid or credited by reason of rejection or return of any previously sold, leased or otherwise transferred Licensed Products; (c) customer freight charges that are paid by or on behalf of the Invoicing Entity; and (d) to the extent separately stated on purchase orders, invoices or other documents of sale, any sales, value added or similar taxes, custom duties or other similar governmental charges levied directly on the production, sale, transportation, delivery or use of a Licensed Product that are paid by or on behalf of the Invoicing Entity, but not including any tax levied with respect to income; provided that:

**1.10.1.** in any transfers of Licensed Products between an Invoicing Entity and an Affiliate of such Invoicing Entity not for the purpose of resale by such Affiliate, Net Sales will be equal to the fair market value of the Licensed Products so transferred, assuming an arm’s length transaction made in the ordinary course of business, and

**1.10.2.** in the event that an Invoicing Entity receives non-cash consideration for any Licensed Products or in the case of transactions not at arm’s length with a non-Affiliate of an Invoicing Entity, Net Sales will be calculated based on the fair market value of such Licensed Product, assuming an arm’s length transaction made in the ordinary course of business.

Sales of Licensed Products by an Invoicing Entity to its Affiliate or a Sublicensee for resale by such Affiliate or Sublicensee will not be deemed Net Sales. Instead, Net Sales will be determined based on the gross amount billed or invoiced by such Affiliate or Sublicensee upon resale of such Licensed Products to a third party purchaser.

**1.11. “Non-Royalty Sublicense Income”** means any payments or other consideration that Licensee or any of its Affiliates receives in connection with a Sublicense, including without limitation, any upfront milestone or lump sum payments, received by Licensee or its Affiliates from Sublicensees or their Affiliates as full or partial consideration for the grant of any sublicense by Licensee in accordance with Section 2.3.1 of this Agreement, other than royalties based on Net Sales. If Licensee or any of its Affiliates receive non-cash consideration in connection with a Sublicense or in the case of transactions not at arm’s length, Non-Royalty Sublicense Income will be calculated based on the fair market value of such consideration or transaction, at the time of the transaction, assuming an arm’s length transaction made in the ordinary course of business.

**1.12. “Patent Rights”** means, in each case to the extent owned and controlled by Harvard: (a) the patents and patent applications listed in Exhibit 1.13 *in the case of provisional applications, the following may be included:* (including the PCT and/or U.S. utility application

claiming priority to such application(s) that are filed on or before the one year conversion date of such application(s)); (b) any patent or patent application that claims priority to and is a divisional, continuation, reissue, renewal, reexamination, substitution or extension of any patent application identified in (a); (c) any patents issuing on any patent application identified in (a) or (b), including any reissues, renewals, reexaminations, substitutions or extensions thereof; (d) any claim of a continuation-in-part application or patent (including any reissues, renewals, reexaminations, substitutions or extensions thereof) that is entitled to the priority date of, and is directed specifically to subject matter specifically described in, at least one of the patents or patent applications identified in (a), (b) or (c); (e) any foreign counterpart (including PCTs) of any patent or patent application identified in (a), (b) or (c) or of the claims identified in (d); and (f) any supplementary protection certificates, pediatric exclusivity periods, any other patent term extensions and exclusivity periods and the like of any patents and patent applications identified in (a) through (e).

**1.13. “Regulatory Authority”** means any applicable government regulatory authority involved in granting approvals for the manufacturing and marketing of a Licensed Product.

**1.14. “Sublicense”** means: (a) any right granted, license given or agreement entered into by Licensee to or with any other person or entity, under or with respect to or permitting any use or exploitation of any of the Patent Rights or otherwise permitting the development, manufacture, marketing, distribution, use and/or sale of Licensed Products; (b) any option or other right granted by Licensee to any other person or entity to negotiate for or receive any of the rights described under clause (a); or (c) any standstill or similar obligation undertaken by Licensee toward any other person or entity not to grant any of the rights described in clause (a) or (b) to any Third Party; in each case regardless of whether such grant of rights, license given or agreement entered into is referred to or is described as a sublicense.

**1.15. “Sublicensee”** means any person or entity granted a Sublicense.

**1.16. “Term”** means the term of this Agreement as set forth in Section 10.1.

**1.17. “Territory”** means \_\_\_\_\_.

**1.18. “Third Party”** means any entity or person other than Licensee or its Affiliates.

**1.19. “Third Party Proposed Product”** means an actual or potential Licensed Product that is for an application or market segment for which Harvard reasonably believes a Licensed Product is not being actively developed and commercialized by Licensee, its Affiliates or any Sublicensee hereunder.

**1.20. “Valid Claim”** means: (a) a claim of an issued and unexpired patent within the Patent Rights that has not been (i) held permanently revoked, unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, unappealable or

unappealed within the time allowed for appeal, (ii) rendered unenforceable through disclaimer or otherwise, (iii) abandoned or (iv) permanently lost through an interference or opposition proceeding without any right of appeal or review; or (b) a pending claim of a pending patent application within the Patent Rights that (i) has been asserted and continues to be prosecuted in good faith and (ii) has not been abandoned or finally rejected without the possibility of appeal or refiling.

## **2. License.**

**2.1. License Grant.** Subject to the terms and conditions set forth in this Agreement, Harvard hereby grants to Licensee (i) an exclusive, [worldwide,] royalty-bearing license under Harvard's interest in the Patent Rights and (ii) a non-exclusive license to use the Harvard Technology Transfer Materials, solely to develop, make, have made, offer for sale, sell, have sold, import, export, distribute, rent or lease Licensed Products [in the Territory], solely for use within the Field; provided, however, that:

**2.1.1.** Harvard retains the right, for itself and for other not-for-profit research organizations, to practice the Patent Rights and to use the Harvard Technology Transfer Materials within the scope of the license granted above, solely for research, educational and scholarly purposes; and

**2.1.2.** the United States federal government retains rights in the Patent Rights pursuant to 35 U.S.C. §§ 200-212 and 37 C.F.R. § 401 et seq., and any right granted in this Agreement greater than that permitted under 35 U.S.C. §§ 200-212 or 37 C.F.R. § 401 et seq. will be subject to modification as may be required to conform to the provisions of those statutes and regulations.

**2.2. Affiliates.** The license granted to Licensee under Section 2.1 includes the right to have some or all of Licensee's rights or obligations under this Agreement exercised or performed by one or more of Licensee's Affiliates, solely on Licensee's behalf; provided, however, that:

**2.2.1.** no such Affiliate shall be entitled to grant, directly or indirectly, to any Third Party any right of whatever nature under, or with respect to, or permitting any use or exploitation of, any of the Patent Rights or the Harvard Technology Transfer Materials, including any right to develop, manufacture, market or sell Licensed Products or to practice Licensed Methods; and

**2.2.2.** any act or omission taken or made by an Affiliate of Licensee under this Agreement will be deemed an act or omission by Licensee under this Agreement.

## **2.3. Sublicenses.**

**2.3.1. Sublicense Grant.** Licensee will be entitled to grant Sublicenses to Third Parties under the license granted pursuant to Section 2.1 subject to the terms of this Section 2.3. Any such Sublicense shall be on terms and conditions in compliance with and not inconsistent with the terms of this Agreement.

**2.3.2. Sublicense Agreements.** Licensee shall grant sublicenses pursuant to written agreements, which will be subject and subordinate to the terms and conditions of this Agreement. Such Sublicense agreements will contain, among other things, the following:

**2.3.2.1.** all provisions necessary to ensure Licensee's ability to perform its obligations under this Agreement;

**2.3.2.2.** a section substantially the same as Article 9 of this Agreement, which also will state that the Indemnitees (as defined in Section 9.1) are intended third party beneficiaries of such Sublicense agreement for the purpose of enforcing such indemnification;

**2.3.2.3.** a provision clarifying that, in the event of termination of the license set forth in Section 2.1 (in whole or in part (e.g., termination in a particular country)), any existing Sublicense agreement shall terminate to the extent of such terminated license;

**2.3.2.4.** a provision prohibiting the Sublicensee from sublicensing its rights under such Sublicense agreement;

**2.3.2.5.** a provision prohibiting the Sublicensee from assigning the Sublicense agreement without the prior written consent of Harvard, except that Sublicensee may assign the Sublicense agreement to a successor in connection with the merger, consolidation or sale of all or substantially all of its assets or that portion of its business to which the Sublicense agreement relates; provided, however, that any permitted assignee agrees in writing to be bound by the terms of such Sublicense agreement; and

**2.3.2.6.** the sublicense agreement shall provide that, in the event of any inconsistency between the sublicense agreement and this Agreement, this Agreement controls.

**2.3.3. Delivery of Sublicense Agreement.** Licensee shall furnish Harvard with a fully executed copy of any Sublicense agreement, promptly after its execution, and copies of royalty reports provided to Licensee by any Sublicensees. Harvard shall keep all such copies in its confidential files and shall use them solely for the purpose of monitoring Licensee's and Sublicensees' compliance with their obligations hereunder and enforcing Harvard's rights under this Agreement.

**2.3.4. Breach by Sublicensee.** Licensee shall be responsible for any breach of a Sublicense agreement by any Sublicensee that results in a material breach of this Agreement. Licensee shall either (a) cure such breach in accordance with Section 10.2.2 of this Agreement or (b) enforce its rights by terminating such Sublicense agreement in accordance with the terms thereof.

**2.4. No Other Grant of Rights.** Except as expressly provided herein, nothing in this Agreement will be construed to confer any ownership interest, license or other rights upon Licensee by implication, estoppel or otherwise as to any technology, intellectual property rights, products or biological materials of Harvard, or any other entity, regardless of whether such technology, intellectual property rights, products or biological materials are dominant, subordinate or otherwise related to any Patent Rights.

### **3. Development and Commercialization.**

#### **3.1. Diligence.**

**3.1.1. General.** Licensee shall use commercially reasonable efforts and shall cause its Sublicensees to use commercially reasonable efforts: (a) to develop Licensed Products in accordance with the Development Plan; (b) to introduce Licensed Products into the commercial market; and (c) to market Licensed Products following such introduction into the market. In addition, Licensee, by itself or through its Affiliates or Sublicensees, shall achieve each of the Development Milestones within the time periods specified in Exhibit 1.4.

**3.2. Adjustments of Development Plan.** Licensee will be entitled, from time to time, to make such adjustments to the then applicable Development Plan as Licensee believes, in its good faith judgment, are needed in order to improve Licensee's ability to meet the Development Milestones.

**3.3. Reporting.** Within sixty (60) days after the end of each calendar year, Licensee shall furnish Harvard with a written report summarizing its, its Affiliates' and its Sublicensees' efforts during the prior year to develop and commercialize Licensed Products, including: (a) research and development activities completed; (b) commercialization and/or other distribution efforts, including significant corporate transactions involving Licensed Products; and (c) marketing efforts. Each report must contain a sufficient level of detail for Harvard to assess whether Licensee is in compliance with its obligations under Section 3.1 and a discussion of intended efforts for the then current year. Together with each report, Licensee shall provide Harvard with a copy of the then current Development Plan, including an updated schedule of anticipated events or milestones.

**3.4. Failure to Meet Development Milestone; Opportunity to Cure.** If Licensee believes that it will not achieve a Development Milestone, it may notify Harvard in writing in advance of the relevant deadline. Licensee shall include with such notice (a) a reasonable

explanation of the reasons for such failure (and lack of finances will not constitute reasonable basis for such failure) (“Explanation”) and (b) a reasonable, detailed, written plan for promptly achieving a reasonable extended and/or amended milestone (“Plan”). If Licensee so notifies Harvard, but fails to provide Harvard with both an Explanation and Plan, then Licensee will have an additional thirty (30) days or until the original deadline of the relevant Development Milestone, whichever is later, to meet such milestone. Licensee’s failure to do so shall constitute a material breach of this Agreement and Harvard shall have the right to terminate this Agreement forthwith. If Licensee so notifies Harvard and provides Harvard with an Explanation and Plan, both of which are acceptable to Harvard in its reasonable discretion, then Exhibit 1.4 will be amended automatically to incorporate the extended and/or amended milestone set forth in the Plan. If Licensee so notifies Harvard and provides Harvard with an Explanation and Plan, but the Explanation is not acceptable to Harvard in its reasonable discretion (e.g., Licensee asserts lack of finances or development preference for a non-Licensed Product), then Licensee will have an additional thirty (30) days or until the original deadline of the relevant Development Milestone, whichever is later, to meet such milestone. Licensee’s failure to do so shall constitute a material breach of this Agreement and Harvard shall have the right to terminate this Agreement forthwith. If Licensee so notifies Harvard and provides Harvard with an Explanation and Plan, but the Plan is not acceptable to Harvard in its reasonable discretion, then Harvard will explain to Licensee why the Plan is not acceptable and provide Licensee with suggestions for an acceptable Plan. Licensee will have one opportunity to provide Harvard with an acceptable Plan within ninety (90) days, during which time Harvard agrees to work with Licensee in its effort to develop an acceptable Plan. If, within such ninety (90) days, Licensee provides Harvard with an acceptable Plan, then Exhibit 1.4 will be amended automatically to incorporate the extended and/or amended milestone set forth in the Plan. If, within such ninety (90) days, Licensee fails to provide an acceptable Plan, then Licensee will have an additional thirty (30) days or until the original deadline of the relevant Development Milestone, whichever is later, to meet such milestone. Licensee’s failure to do so shall constitute a material breach of this Agreement and Harvard shall have the right to terminate this Agreement forthwith. For clarity, if Licensee fails to achieve a Development Milestone and does not avail itself of the procedure set forth in this Section 3.4, such failure shall be a material breach that entitles Harvard to proceed under Section 10.2.2.1.

#### **4. Consideration for Grant of License.**

**4.1. License Issuance Fee.** Licensee shall pay Harvard a non-refundable non-creditable and non-recoverable license fee of \_\_\_\_\_ U.S. Dollars (\$ \_\_\_\_\_), due and payable within \_\_\_\_\_ ( ) days after the Effective Date.

#### **4.2. [Equity.**

**4.2.1. Issuance.** As partial consideration for the license granted hereunder and pursuant to a mutually-agreeable stock purchase or subscription agreement, within thirty (30)

days after the Effective Date, Licensee shall issue to Harvard a number of shares of Licensee's common stock representing \_\_\_ percent (\_\_%) of Licensee's capital stock on a Fully Diluted Basis (as defined below) after giving effect to such issuance (the "Shares"). The Shares shall have the rights and obligations set forth in the then-effective Certificate of Incorporation and Bylaws of Licensee, which such documents shall be in the same form, without modification, amendment or supplement, as those provided to Harvard and as certified by Licensee prior to the Effective Date. Licensee agrees that it shall grant Harvard, as an owner of common stock of Licensee, the right to review and enter into any stockholders agreement (e.g., investors rights agreement, voting agreement, right of first refusal and co-sale agreement, etc.) to the same extent that any other owner of common stock of Licensee (whether or not such other common stockholder's shareholdings are greater than Harvard's) has such rights regarding any such agreement.

**4.2.2. Representations and Warranties.** Licensee represents and warrants to Harvard that, upon issuance of the Shares, and upon issuance of any Anti-Dilution Shares:

**4.2.2.1.** the capitalization table as provided by Licensee upon issuance of the Shares or the Anti-Dilution Shares, as the case may be (the "Cap Table"), sets forth all of the capital stock of Licensee on a Fully-Diluted Basis as of the date of issuance of the Shares or the Anti-Dilution Shares;

**4.2.2.2.** other than as set forth in the Cap Table, as of the date of issuance of the Shares or Anti-Dilution Shares, as applicable, there are no outstanding shares of capital stock, convertible securities, outstanding warrants, options or other rights to subscribe for, purchase or acquire from Licensee any capital stock of Licensee and there are no contracts or binding commitments providing for the issuance of, or the granting of rights to acquire, any capital stock of Licensee or under which Licensee is, or may become, obligated to issue any of its securities; and

**4.2.2.3.** the Shares or the Anti-Dilution Shares, as the case may be, when issued pursuant to the terms hereof, shall, upon such issuance, be duly authorized, validly issued, fully paid and nonassessable.

**4.2.3. Anti-Dilution.** If, at any time until immediately after the achievement of the Funding Threshold (as defined below), Licensee issues Additional Securities that would cause Harvard's shareholdings in Licensee to drop below \_\_\_ percent (\_\_%) on a Fully-Diluted Basis, concurrently with the issuance of such Additional Securities, Licensee shall issue to Harvard for no additional consideration such additional number of shares of common stock of Licensee (the "Anti-Dilution Shares") such that Harvard's shareholdings in Licensee shall equal \_\_\_ percent (\_\_%) of the capital stock of Licensee on a Fully Diluted Basis, as calculated after giving effect to the anti-dilutive issuance and the issuance of such Additional Securities through the Funding Threshold, but not any issuances in consideration for investment amounts in excess of the Funding Threshold. Such issuances shall continue only up to, and until such time as Licensee has achieved, the Funding Threshold. Thereafter, no additional shares shall be due to

Harvard pursuant to this Section 4.2.3. For avoidance of doubt, in the event that Licensee issues Additional Securities in exchange for a new investment which, together with other previous investments in Licensee, exceeds the Funding Threshold, then the Anti-Dilution Shares in connection with such issuance will be calculated only with respect to the Additional Securities that would have been issued if the new investment, together with other previous investments in Licensee, equaled the Funding Threshold exactly (with the number of Anti-Dilution Shares being rounded up to the nearest whole unit).

**4.2.4 Capitalization Table.** Upon the issuance of the Shares under Section 4.2.1 or any Anti-Dilution Shares under Section 4.2.3, Licensee shall provide Harvard with a Cap Table listing all of the capital stock (and owners of record thereof) of Licensee on a Fully-Diluted Basis as of the date of issuance of the Shares or Anti-Dilution Shares, as the case may be.

**4.2.5. Definitions.** The following terms shall have the following meanings:

**4.2.5.1. “Additional Securities”** shall mean shares of capital stock, convertible securities, warrants, options or other rights to subscribe for, purchase or acquire from Licensee any capital stock of Licensee.

**4.2.5.2. “Fully Diluted Basis”** shall mean, as of a specified date, the number of shares of common stock of Licensee then-outstanding (assuming conversion of all outstanding stock other than common stock into common stock), plus the number of shares of common stock of Licensee issuable upon exercise or conversion of then-outstanding convertible securities, options, rights or warrants of Licensee (which shall be determined without regard to whether such securities are then vested, exercisable or convertible), plus the number of shares of common stock of Licensee that would be outstanding or acquirable, directly or indirectly, upon the issuance (and exercise, conversion or exchange, if applicable) of all securities reserved or otherwise intended for future issuance under any stock purchase, stock option or other compensatory benefit plan or arrangement of Licensee.

**4.2.5.3. “Funding Threshold”** shall mean an aggregate total investment of \_\_\_\_\_ U.S. Dollars (\$ \_\_\_\_\_) in cash, in one or a series of related or unrelated transactions, in each case, in exchange for Licensee’s capital stock.

**4.2.6. Participation.** *{In certain agreements, Harvard may negotiate participation rights which would allow Harvard (or its assignee) to participate in subsequent equity rounds.}*

**4.3. Annual License Maintenance Fees.** Licensee shall pay Harvard a non-refundable, non-recoverable and non-creditable annual license maintenance fee as follows:

**4.3.1.** \_\_\_\_\_ U.S. Dollars (\$ \_\_\_\_\_) for each of calendar years \_\_\_ and \_\_\_;

**4.3.2.** \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) for each of calendar years \_\_\_ and \_\_\_; and

**4.3.3.** \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) for calendar year 2015 and each subsequent calendar year during the Term.

Each such fee shall be due and payable on January 1<sup>st</sup> of the calendar year to which such fee applies.

**4.4. Milestone Payments.**

**4.4.1.** Licensee shall pay Harvard the following non-refundable, non-recoverable and non-creditable milestone payments with respect to each Licensed Product to reach each milestone, regardless of whether such milestone is achieved by Licensee or any Sublicensee, or any of their Affiliates:

**4.4.1.1.** \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) upon \_\_\_\_\_;

**4.4.1.2.** \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) upon \_\_\_\_\_; and

**4.4.1.3.** \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_) upon \_\_\_\_\_.

**4.4.2.** Licensee shall notify Harvard in writing within thirty (30) days following the achievement of each milestone described in Section 4.3.1, and shall make the appropriate milestone payment within thirty (30) days after the achievement of such milestone.

**4.4.3.** The milestones set forth in Section 4.3.1 are intended to be successive. If a Licensed Product is not required to undergo the event associated with a particular milestone for a Licensed Product (“Skipped Milestone”), such Skipped Milestone will be deemed to have been achieved upon the achievement by such Licensed Product of the next successive milestone (“Achieved Milestone”). Payment for any Skipped Milestone that is owed in accordance with the provisions of this Section 4.3 shall be due within thirty (30) days after the achievement of the Achieved Milestone.

**4.5. Royalty on Net Sales.**

**4.5.1. Rate.** Licensee shall pay Harvard an amount equal to \_\_\_\_\_ percent (\_\_\_%) of Net Sales.

**4.5.2. Patent Challenge.** If Licensee, a Sublicensee, any of their Affiliates, or any entity or person acting on behalf of any of them (“Challenging Party”) commences an action in which it challenges the validity, enforceability or scope of any of the Patent Rights (a “Challenge Proceeding”), the royalty rate specified in Section 4.4.1 will be doubled with respect to Net Sales of Licensed Products that are sold during the pendency of such Challenge Proceeding. If the outcome of such Challenge Proceeding is a determination against the Challenging Party, (a) the royalty rate specified in Section 4.4.1 with respect to Net Sales of Licensed Products that are covered by the Patent Rights that are the subject of such Challenge Proceeding shall remain at such doubled rate and (b) Licensee shall reimburse Harvard for all expenses incurred by Harvard (including reasonable attorneys’ fees) in connection with such Challenge Proceeding. Harvard may invoice Licensee on a quarterly basis with respect to such costs and expenses and Licensee shall make payment within thirty (30) days after receipt of such invoice. If the outcome of such Challenge Proceeding is a determination in favor of the Challenging Party, Licensee will have no right to recoup any royalties paid before or during the pendency of such Challenge Proceeding.

**4.6. Non-Royalty Sublicense Income.** [Licensee will pay Harvard nonrefundable, non-recoverable and non-creditable amounts equal to \_\_\_\_\_ percent (\_\_\_%) of all Non-Royalty Sublicense Income.]

[*Tiered Alternative:*][Licensee will pay Harvard a percentage of Non-Royalty Sublicense Income received by Licensee or its Affiliate in connection with a Sublicense as follows:

**4.6.1.** \_\_\_\_\_ percent (\_\_\_%) if such Sublicense is granted within \_\_\_\_ (\_\_\_) years following the Effective Date;

**4.6.2.** \_\_\_\_\_ percent (\_\_\_%) if such Sublicense is granted more than \_\_\_\_ (\_\_\_) years and less than \_\_\_\_ (\_\_\_) years following the Effective Date; and

**4.6.3.** \_\_\_\_\_ percent (\_\_\_%) if such Sublicense is granted at any time during the Term after the \_\_\_\_ (\_\_\_) anniversary of the Effective Date, as long as there is a Valid Claim within the Patent Rights. ]

**4.7. {Change of Control Fee.** *In certain agreements, Harvard may negotiate a Change of Control fee.*}

## **5. Reports; Payments; Records.**

### **5.1. Reports and Payments.**

**5.1.1. Reports.** Within thirty (30) days after the conclusion of each Calendar Quarter commencing with the first Calendar Quarter in which Net Sales are generated or Non-Royalty Sublicense Income is received, Licensee shall deliver to Harvard a report containing the

following information (in each instance, with a Licensed Product-by-Licensed Product and country-by-country breakdown):

**5.1.1.1.** the number of units of Licensed Products sold, leased or otherwise transferred by Invoicing Entities for the applicable Calendar Quarter [(with a breakdown by type of Licensed Products - i.e., Type I Licensed Products and Type II Licensed Products)];

**5.1.1.2.** the gross amount billed or invoiced for Licensed Products sold, leased or otherwise transferred by Invoicing Entities during the applicable Calendar Quarter;

**5.1.1.3.** with respect to each Licensed Product sold or otherwise distributed in any Developing Country on a tiered-pricing schedule, the sale prices of such Licensed Product during the applicable Calendar Quarter and number of units of Licensed Product sold at each price;]

**5.1.1.4.** a calculation of Net Sales for the applicable Calendar Quarter, including an itemized listing of allowable deductions and the actual selling price;

**5.1.1.5.** a detailed accounting of all Non-Royalty Sublicense Income received during the applicable Calendar Quarter;

**5.1.1.6.** the total amount payable to Harvard in U.S. Dollars on Net Sales and Non-Royalty Sublicense Income for the applicable Calendar Quarter, together with the exchange rates used for conversion; and

**5.1.1.7.** a list of Harvard Case numbers for all Patent Rights that have Valid Claims covering the Licensed Products, and for all Harvard Technology Transfer Materials used in the discovery, development, manufacture or sale of Licensed Products.

Each such report shall be certified on behalf of Licensee as true, correct and complete in all material respects. If no amounts are due to Harvard for a particular Calendar Quarter, the report shall so state.

**5.1.2. Payment.** Within thirty (30) days after the end of each Calendar Quarter, Licensee shall pay Harvard all amounts due with respect to Net Sales and Non-Royalty Sublicense Income for the applicable Calendar Quarter.

**5.2. Payment Currency.** All payments due under this Agreement will be paid in U.S. Dollars. Conversion of foreign currency to U.S. Dollars will be made at the conversion rate existing in the United States (as reported in the *Wall Street Journal*) on the last business day of the applicable Calendar Quarter. Such payments will be without deduction of exchange, collection or other charges.

**5.3. Records.** Licensee shall maintain, and shall cause its Affiliates and Sublicensees to maintain, complete and accurate records of Licensed Products that are made, used, sold, leased or transferred under this Agreement, any amounts payable to Harvard in relation to such Licensed Products, and all Non-Royalty Sublicense Income received by Licensee and its Affiliates, which records shall contain sufficient information to permit Harvard to confirm the accuracy of any reports or notifications delivered to Harvard under Section 5.1. Licensee, its Affiliates and/or its Sublicensees, as applicable, shall retain such records relating to a given Calendar Quarter for at least five (5) years after the conclusion of that Calendar Quarter, during which time Harvard will have the right, at its expense, to cause an independent, certified public accountant (or, in the event of a non-financial audit, other appropriate auditor) to inspect such records during normal business hours for the purposes of verifying the accuracy of any reports and payments delivered under this Agreement and Licensee's compliance with the terms hereof. Such accountant or other auditor, as applicable, shall not disclose to Harvard any information other than information relating to the accuracy of reports and payments delivered under this Agreement. The parties shall reconcile any underpayment or overpayment within thirty (30) days after the accountant delivers the results of the audit. If any audit performed under this Section 5.3 reveals an underpayment in excess of five percent (5%) in any calendar year, Licensee shall reimburse Harvard for all amounts incurred in connection with such audit. Harvard may exercise its rights under this Section 5.3 only once every year per audited entity and only with reasonable prior notice to the audited entity.

**5.4. Late Payments.** 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 day following the due date for payment and will be compounded quarterly. Payment of such interest by Licensee shall not limit, in any way, Harvard's right to exercise any other remedies Harvard may have as a consequence of the lateness of any payment.

**5.5. Payment Method.** Each payment due to Harvard under this Agreement shall be paid by check or wire transfer of funds to Harvard's account in accordance with written instructions provided by Harvard. If made by wire transfer, such payments shall be marked so as to refer to this Agreement.

**5.6. Withholding and Similar Taxes.** All amounts to be paid to Harvard pursuant to this Agreement shall be without deduction of exchange, collection, or other charges, and, specifically, without deduction of withholding or similar taxes or other government imposed fees or taxes, except as permitted in the definition of Net Sales.

## **6. Patent Filing, Prosecution and Maintenance.**

**6.1. Control.** Harvard will be responsible for the preparation, filing, prosecution, protection, defense and maintenance of all Patent Rights, using independent patent counsel reasonably acceptable to Licensee. Harvard will: (a) instruct such patent counsel to furnish the Licensee with copies of all correspondence relating to the Patent Rights from the United States Patent and Trademark Office (USPTO) and any other patent office, as well as copies of all proposed responses to such correspondence in time for Licensee to review and comment on such response; (b) give Licensee an opportunity to review the text of each patent application before filing; (c) consult with Licensee with respect thereto; (d) supply Licensee with a copy of the application as filed, together with notice of its filing date and serial number; and (e) keep Licensee advised of the status of actual and prospective patent filings. Harvard shall give Licensee the opportunity to provide comments on and make requests of Harvard concerning the preparation, filing, prosecution, protection, defense and maintenance of the Patent Rights, and shall seriously consider such comments and requests; however, final decision-making authority shall vest in Harvard. In particular, and without intending to limit any of Harvard's rights pursuant to this Agreement, Harvard expressly reserves the right to decline Licensee's request to file, prosecute, maintain or defend any of the Patent Rights in any Developing Country(ies) unless (i) Licensee demonstrates to Harvard's reasonable satisfaction that the filing, prosecution, maintenance or defense of such Patent Rights in such Developing Country(ies) would materially increase the locally-affordable availability of Licensed Products or equivalents thereof (e.g., generic products) in those and/or other Developing Country(ies) and (ii) the provisions of Section 7 notwithstanding, Licensee agrees that Harvard shall hold final decision-making authority, on a case-by-case basis, as to whether Licensee will be permitted to enforce such Patent Rights in such Developing Country(ies).

**6.2. Expenses.** Subject to Section 6.3 below, Licensee shall reimburse Harvard for all documented, out-of-pocket expenses incurred by Harvard pursuant to this Article 6 within thirty (30) days after the date of each invoice from Harvard for such expenses. In addition, within thirty (30) days after the Effective Date, Licensee shall reimburse Harvard for all documented, out-of-pocket expenses incurred by Harvard prior to the Effective Date with respect to the preparation, filing, prosecution, protection and maintenance of Patent Rights.

**6.3. Abandonment.** If Licensee decides that it does not wish to pay for the prosecution or maintenance of any Patent Rights in a particular country, Licensee shall provide Harvard with prompt written notice of such election. Upon receipt of such notice by Harvard, Licensee shall be released from its obligation to reimburse Harvard for such expenses incurred thereafter as to such Patent Rights; provided, however, that expenses authorized prior to the

receipt by Harvard of such notice shall be deemed incurred prior to the notice. In the event of Licensee's election hereunder to no longer pay for prosecution or maintenance of any Patent Rights, any license granted by Harvard to Licensee hereunder with respect to such Patent Rights will terminate, and Licensee will have no rights whatsoever to exploit such Patent Rights. Harvard will then be free, without further notice or obligation to Licensee, to grant rights in and to such Patent Rights to Third Parties.

**6.4. [Small Entity Designation.** If Licensee, its Affiliates, any Sublicensee and/or any holder of an option to obtain a Sublicense does not qualify, or at any point during the Term ceases to qualify, as an entity entitled to pay lesser fees as provided by the USPTO (i.e., a "small entity") or the patent office of any other country, Licensee shall so notify Harvard immediately, in order to enable Harvard to comply with regulations regarding payment of fees with respect to Patent Rights.]

**6.5. Marking.** Licensee shall, and shall cause its Affiliates and Sublicensees to, mark all Licensed Products sold or otherwise disposed of in such a manner as to conform with the patent laws and practice of the country to which such products are shipped or in which such products are sold for purposes of ensuring maximum enforceability of Patent Rights in such country.

## **7. Enforcement of Patent Rights.**

**7.1. Notice.** In the event either party becomes aware of any possible or actual infringement of any Patent Rights with respect to Licensed Products in the Field [and in the Territory] (an "Infringement"), that party shall promptly notify the other party and provide it with details regarding such Infringement.

**7.2. Suit by Licensee.** Licensee shall have the first right, but not the obligation, to take action in the prosecution, prevention, or termination of any Infringement. Before Licensee commences an action with respect to any Infringement, Licensee shall consider in good faith the views of Harvard and potential effects on the public interest in making its decision whether to sue. Should Licensee elect to bring suit against an infringer, Licensee shall keep Harvard reasonably informed of the progress of the action and shall give Harvard a reasonable opportunity in advance to consult with Licensee and offer its views about major decisions affecting the litigation. Licensee shall give careful consideration to those views, but shall have the right to control the action; provided, however, that if Licensee fails to defend in good faith the validity and/or enforceability of the Patent Rights in the action or, or if Licensee's license to a Valid Claim in the suit terminates, Harvard may elect to take control of the action pursuant to Section 7.3. Any and all expenses, including reasonable attorneys' fees, incurred by Harvard with respect to the prosecution, adjudication and/or settlement of such suit, including any related appeals, shall be paid for entirely by Licensee and Licensee shall hold Harvard free, clear and harmless from and against any and all such expenses. The expenses of such suit or suits that Licensee elects to bring, including any expenses of Harvard incurred in conjunction with the

prosecution of such suits or the settlement thereof, shall be paid for entirely by Licensee and Licensee shall hold Harvard free, clear and harmless from and against any and all costs of such litigation, including reasonable attorneys' fees. Licensee shall not compromise or settle such litigation without the prior written consent of Harvard, which consent shall not be unreasonably withheld or delayed. In the event Licensee exercises its right to sue pursuant to this Section 7.2, it shall first reimburse itself out of any sums recovered in such suit or in settlement thereof for all costs and expenses of every kind and character, including reasonable attorneys' fees, necessarily incurred in the prosecution of any such suit. If, after such reimbursement, any funds shall remain from said recovery, then Harvard shall receive an amount equal to \_\_\_\_\_ percent (\_\_\_%) of such funds and the remaining \_\_\_\_\_ percent (\_\_\_%) of such funds shall be retained by Licensee.

**7.3. Suit by Harvard.** If Licensee does not take action in the prosecution, prevention, or termination of any Infringement pursuant to Section 7.2 above, and has not commenced negotiations with the infringer for the discontinuance of said Infringement, within ninety (90) days after receipt of notice to Licensee by Harvard of the existence of an Infringement, Harvard may elect to do so. Should Harvard elect to bring suit against an infringer and Licensee is joined as party plaintiff in any such suit, Licensee shall have the right to approve the counsel selected by Harvard to represent Harvard and Licensee, such approval not to be unreasonably withheld. Any and all expenses, including reasonable attorneys' fees, incurred by Licensee with respect to the prosecution, adjudication and/or settlement of such suit, including any related appeals, shall be paid for entirely by Harvard and Harvard shall hold Licensee free, clear and harmless from and against any and all such expenses. Harvard shall not compromise or settle such litigation without the prior written consent of Licensee, which consent shall not be unreasonably withheld or delayed. In the event Harvard exercises its right to sue pursuant to this Section 7.3, it shall first reimburse itself out of any sums recovered in such suit or in settlement thereof for all costs and expenses of every kind and character, including reasonable attorneys' fees, necessarily incurred in the prosecution of any such suit. If, after such reimbursement, any funds shall remain from said recovery, then Licensee shall receive an amount equal to \_\_\_\_\_ percent (\_\_\_%) of such funds and the remaining \_\_\_\_\_ percent (\_\_\_%) of such funds shall be retained by Harvard.

**7.4. Own Counsel.** Each party shall always have the right to be represented by counsel of its own selection and at its own expense in any suit instituted under this Article 7 by the other party for Infringement.

**7.5. Cooperation.** Each party agrees to cooperate fully in any action under this Article 7 that is controlled by the other party, provided that the controlling party reimburses the cooperating party promptly for any costs and expenses incurred by the cooperating party, including reasonable attorneys' fees, in connection with providing such assistance.

**7.6. Declaratory Judgment.** If a declaratory judgment action is brought naming Licensee and/or any of its Affiliates or Sublicensees as a defendant and alleging invalidity or

unenforceability of any claims within the Patent Rights, Licensee shall promptly notify Harvard in writing and Harvard may elect, upon written notice to Licensee within thirty (30) days after Harvard receives notice of the commencement of such action, to take over the sole defense of the invalidity and/or unenforceability aspect of the action at its own expense.

## **8. Warranties; Limitation of Liability.**

**8.1. Compliance with Law.** Licensee represents and warrants that it will comply, and will ensure that its Affiliates and Sublicensees comply, with all local, state, federal and international laws and regulations relating to the development, manufacture, use, sale and importation of Licensed Products. Without limiting the foregoing, Licensee represents and warrants, on behalf of itself and its Affiliates and Sublicensees, that they shall comply with all United States laws and regulations controlling the export of certain commodities and technical data, including without limitation all Export Administration Regulations of the United States Department of Commerce. Among other things, these laws and regulations prohibit or require a license for the export of certain types of commodities and technical data to specified countries. Licensee hereby gives written assurance that it will comply with, and will cause its Affiliates and Sublicensees to comply with, all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its Affiliates or Sublicensees, and that it will indemnify, defend, and hold the Indemnitees harmless (in accordance with Section 9.1) for the consequences of any such violation.

### **8.2. No Warranty.**

**8.2.1.** NOTHING CONTAINED HEREIN SHALL BE DEEMED TO BE A WARRANTY BY HARVARD THAT IT CAN OR WILL BE ABLE TO OBTAIN PATENTS ON PATENT APPLICATIONS INCLUDED IN THE PATENT RIGHTS, OR THAT ANY OF THE PATENT RIGHTS WILL AFFORD ADEQUATE OR COMMERCIALY WORTHWHILE PROTECTION.

**8.2.2.** HARVARD MAKES NO WARRANTIES WHATSOEVER AS TO THE COMMERCIAL OR SCIENTIFIC VALUE OF THE PATENT RIGHTS OR HARVARD TECHNOLOGY TRANSFER MATERIALS. HARVARD MAKES NO REPRESENTATION THAT THE PRACTICE OF THE PATENT RIGHTS OR USE OF THE HARVARD TECHNOLOGY TRANSFER MATERIALS OR THE DEVELOPMENT, MANUFACTURE, USE, SALE OR IMPORTATION OF ANY LICENSED PRODUCT OR THE PRACTICE OF ANY LICENSED METHOD, OR ANY ELEMENT THEREOF, WILL NOT INFRINGE ANY PATENT OR PROPRIETARY RIGHTS.

**8.2.3.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY WITH RESPECT TO ANY TECHNOLOGY, PATENTS, GOODS, SERVICES, RIGHTS OR OTHER SUBJECT MATTER OF THIS AGREEMENT AND EACH PARTY HEREBY DISCLAIMS

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL OF THE FOREGOING.

**8.3. Limitation of Liability.**

**8.3.1.** Harvard will not be liable to Licensee, its Affiliates, any Sublicensee, or any of their Affiliates with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other legal or equitable theory for (a) any indirect, incidental, consequential or punitive damages or lost profits or (b) cost of procurement of substitute goods, technology or services.

**8.3.2.** Harvard's aggregate liability for all damages of any kind arising out of or relating to this Agreement or its subject matter under any contract, negligence, strict liability or other legal or equitable theory shall not exceed the amounts paid to Harvard under this Agreement.

**9. Indemnification and Insurance.**

**9.1. Indemnity.**

**9.1.1.** Licensee shall indemnify, defend and hold harmless Harvard and its current and former directors, governing board members, trustees, officers, faculty, medical and professional staff, employees, students, and agents and their respective successors, heirs and assigns (collectively, the "Indemnitees") from and against any claim, liability, cost, expense, damage, deficiency, loss or obligation of any kind or nature (including reasonable attorneys' fees and other costs and expenses of litigation), based upon, arising out of, or otherwise relating to this Agreement or any Sublicense, including any cause of action relating to product liability concerning any product, process, or service made, used, sold or performed pursuant to any right or license granted under this Agreement (collectively, "Claims"). Neither Licensee nor Harvard shall settle any Claim without the prior written consent of the other, which consent shall not be unreasonably withheld.

**9.1.2.** Licensee shall, at its own expense, provide attorneys reasonably acceptable to Harvard to defend against any actions brought or filed against any Indemnitee hereunder with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought.

**9.2. Insurance.**

**9.2.1.** Beginning at the time any Licensed Product is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by Licensee, or by an Affiliate, Sublicensee or agent of Licensee, Licensee shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than \$5,000,000

per incident and \$5,000,000 annual aggregate and naming the Indemnitees as additional insureds. During clinical trials of any such Licensed Product, Licensee shall, at its sole cost and expense, procure and maintain commercial general liability insurance in such equal or lesser amount as Harvard shall require, naming the Indemnitees as additional insureds. Such commercial general liability insurance shall provide: (a) product liability coverage and (b) broad form contractual liability coverage for Licensee's indemnification obligations under this Agreement.

**9.2.2.** If Licensee elects to self-insure all or part of the limits described above in Section 9.2.1 (including deductibles or retentions that are in excess of \$250,000 annual aggregate) such self-insurance program must be acceptable to Harvard and CRICO/RMF (Harvard's insurer) in their sole discretion. The minimum amounts of insurance coverage required shall not be construed to create a limit of Licensee's liability with respect to its indemnification obligations under this Agreement.

**9.2.3.** Licensee shall provide Harvard with written evidence of such insurance upon request of Harvard. Licensee shall provide Harvard with written notice at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance. If Licensee does not obtain replacement insurance providing comparable coverage within such fifteen (15) day period, Harvard shall have the right to terminate this Agreement effective at the end of such fifteen (15) day period without notice or any additional waiting periods.

**9.2.4.** Licensee shall maintain such commercial general liability insurance beyond the expiration or termination of this Agreement during: (a) the period that any Licensed Product is being commercially distributed or sold by Licensee, or an Affiliate, Sublicensee or agent of Licensee; and (b) a reasonable period after the period referred to in (a) above which in no event shall be less than fifteen (15) years.

## **10. Term and Termination.**

**10.1. Term.** The term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Article 10, shall continue in full force and effect until the expiration of the last to expire Valid Claim (the "Term").

### **10.2. Termination.**

**10.2.1. Termination Without Cause.** Licensee may terminate this Agreement upon sixty (60) days prior written notice to Harvard.

#### **10.2.2. Termination for Default.**

**10.2.2.1.** In the event that either party commits a material breach of its obligations under this Agreement and fails to cure that breach within thirty (30) days after

receiving written notice thereof, the other party may terminate this Agreement immediately upon written notice to the party in breach.

**10.2.2.2.** If Licensee defaults in its obligations under Section 9.2 to procure and maintain insurance or, if Licensee has in any event failed to comply with the notice requirements contained therein, then Harvard may terminate this Agreement immediately without notice or additional waiting period.

**10.2.2.3.** Harvard shall be entitled to terminate this Agreement in accordance with the provisions of Section 3.4.

**10.2.3. Bankruptcy.** Harvard may terminate this Agreement upon notice to Licensee if Licensee becomes insolvent, is adjudged bankrupt, applies for judicial or extra-judicial settlement with its creditors, makes an assignment for the benefit of its creditors, voluntarily files for bankruptcy or has a receiver or trustee (or the like) in bankruptcy appointed by reason of its insolvency, or in the event an involuntary bankruptcy action is filed against Licensee and not dismissed within ninety (90) days, or if Licensee becomes the subject of liquidation or dissolution proceedings or otherwise discontinues business.

### **10.3. Effect of Termination.**

**10.3.1. Termination of Rights.** Upon expiration or termination of this Agreement by either party pursuant to any of the provisions of Section 10.2: (a) the rights and licenses granted to Licensee under Article 2 shall terminate, all rights in and to and under the Patent Rights will revert to Harvard and neither Licensee nor its Affiliates may make any further use or exploitation of the Patent Rights; and (b) any existing agreements that contain a Sublicense shall terminate to the extent of such Sublicense; provided, however, that, for each Sublicensee, upon termination of the Sublicense agreement with such Sublicensee, if the Sublicensee is not then in breach of its Sublicense agreement with Licensee such that Licensee would have the right to terminate such Sublicense, such Sublicensee shall have the right to seek a license from Harvard. Harvard agrees to negotiate such licenses in good faith under reasonable terms and conditions, which shall not impose any representations, warranties, obligations or liabilities on Harvard that are not included in this Agreement.

**10.3.2. Accruing Obligations.** Termination or expiration of this Agreement shall not relieve the parties of obligations accruing prior to such termination or expiration, including obligations to pay amounts accruing hereunder up to the date of termination or expiration. After the date of termination or expiration (except in the case of termination by Harvard pursuant to Section 10.2), Licensee, its Affiliates and Sublicensees (a) may sell Licensed Products then in stock and (b) may complete the production of Licensed Products then in the process of production and sell the same; provided that, in the case of both (a) and (b), Licensee shall pay the applicable royalties and payments to Harvard in accordance with Article 4, provide reports and audit rights to Harvard pursuant to Article 5 and maintain insurance in accordance with the

requirements of Section 9.2. The parties agree that the obligations in Section 4.1 (License Issuance Fee), Section 4.2 (Equity) and Section 6.2 (Patent Expenses) will accrue immediately upon execution of this Agreement by both parties, regardless of the events, invoice and payment timing details set forth therein.

**10.3.3. Regulatory Filings.** Licensee shall have the exclusive right to prepare and present all regulatory filings necessary or appropriate in any country and to obtain and maintain any regulatory approval required to market Licensed Products in any such country. Licensee shall solely own all right, title and interest in and to all such regulatory approvals and filings; provided, however, that in the event Licensee terminates this Agreement pursuant to Section 10.2.1 or Harvard terminates this Agreement pursuant to any of the provisions of Section 10.2, Licensee shall promptly provide Harvard with the right to reference, cross-reference, review, have access to, incorporate and use all documents and other materials filed by or on behalf of Licensee and its Affiliates with any Regulatory Authority in furtherance of applications for regulatory approval in the relevant country with respect to Licensed Products. Harvard shall be entitled to freely use and to grant others the right to use all such materials and documents delivered pursuant to this Section 10.3.3.

**10.4. Survival.** The parties' respective rights, obligations and duties under Articles 5, 9, 10 and 11 and Sections 4.2, 4.7, 8.2 and 8.3, as well as any rights, obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, shall survive any expiration or termination of this Agreement. In addition, Licensee's obligations under Section 4.6 with respect to Sublicenses granted prior to expiration or termination of the Agreement shall survive such expiration or termination.

## **11. Miscellaneous.**

**11.1. Preference for United States Industry.** During the period of exclusivity of this license in the United States, Licensee shall comply with 37 C.F.R. § 401.14 (i) or any successor rule or regulation.

**11.2. No Security Interest.** Licensee shall not enter into any agreement under which Licensee grants to or otherwise creates in any third party a security interest in this Agreement or any of the rights granted to Licensee herein. Any grant or creation of a security interest purported or attempted to be made in violation of the terms of this Section 11.2 shall be null and void and of no legal effect.

**11.3. Use of Name.** Except as provided below, Licensee shall not, and shall ensure that its Affiliates and Sublicensees shall not, use or register the name "Harvard" (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify Harvard or any Harvard school, unit, division or affiliate ("Harvard Names") for any purpose except with the prior written approval of, and in accordance with restrictions required by, Harvard. Without limiting the foregoing, Licensee shall, and shall ensure that its Affiliates

and Sublicensees shall, cease all use of Harvard Names on the termination or expiration of this Agreement except as otherwise approved by Harvard. This restriction shall not apply to any information required by law to be disclosed to any governmental entity.

**11.4. Entire Agreement.** This Agreement is the sole agreement with respect to the subject matter hereof and except as expressly set forth herein, supersedes all other agreements and understandings between the parties with respect to the same.

**11.5. Notices.** Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by facsimile, expedited delivery or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.5:

If to Licensee (other than invoices):	[ _____ ] Facsimile: [ _____ ] Attn.: [ _____ ]
If to Licensee (invoices only):	[ _____ ] Telephone: [ _____ ] Facsimile: [ _____ ] Email: [ _____ ] Attn.: [ _____ ] <Please include title of contact person.>
If to Harvard:	Office of Technology Development Harvard University Richard A. and Susan F. Smith Campus Center, Suite 727 1350 Massachusetts Avenue Cambridge, Massachusetts 02138 Facsimile: (617) 495-9568 Attn.: Chief Technology Development Officer

Any notice shall be deemed to have been received as follows: (a) by personal delivery or expedited delivery, upon receipt; (b) by facsimile, one business day after transmission or dispatch; (c) by certified mail, as evidenced by the return receipt. If notice is sent by facsimile, a confirming copy of the same shall be sent by mail to the same address.

**11.6. Governing Law and Jurisdiction.** This Agreement will be governed by, and construed in accordance with, the substantive laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which

the patent shall have been granted. Any action, suit or other proceeding arising under or relating to this Agreement (a “Suit”) shall be brought in a court of competent jurisdiction in the Commonwealth of Massachusetts, and the parties hereby consent to the sole jurisdiction of the state and federal courts sitting in the Commonwealth of Massachusetts. Each party agrees not to raise any objection at any time to the laying or maintaining of the venue of any Suit in any of the specified courts, irrevocably waives any claim that Suit has been brought in any inconvenient forum and further irrevocably waives the right to object, with respect to any Suit, that such court does not have any jurisdiction over such party.

**11.7. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.

**11.8. Headings.** Section and subsection headings are inserted for convenience of reference only and do not form a part of this Agreement.

**11.9. Counterparts.** The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. If by electronic mail, the executed Agreement must be delivered in a .pdf format.

**11.10. Amendment; Waiver.** This Agreement may be amended, modified, superseded or canceled, and any of the terms may be waived, only by a written instrument executed by each party or, in the case of waiver, by the party waiving compliance. The delay or failure of either party at any time or times to require performance of any provisions hereof shall in no manner affect the rights at a later time to enforce the same. No waiver by either party of any condition or of the breach of any term contained in this Agreement, whether by conduct, or otherwise, in any one or more instances, shall be deemed to be, or considered as, a further or continuing waiver of any such condition or of the breach of such term or any other term of this Agreement.

**11.11. No Agency or Partnership.** Nothing contained in this Agreement shall give either party the right to bind the other, or be deemed to constitute either party as agent for or partner of the other or any third party.

**11.12. Assignment and Successors.** This Agreement may not be assigned by either party without the consent of the other, which consent shall not be unreasonably withheld, except that each party may, without such consent, assign this Agreement and the rights, obligations and interests of such party to any purchaser of all or substantially all of its assets or all of its equity, or to any successor corporation resulting from any merger or consolidation of such party with or into such corporation; provided, in each case, that the assignee agrees in writing to be bound by the terms of this Agreement. Any assignment purported or attempted to be made in violation of the terms of this Section 11.12 shall be null and void and of no legal effect.

**11.13. Force Majeure.** Except for monetary obligations hereunder, neither party will be responsible for delays resulting from causes beyond the reasonable control of such party, including fire, explosion, flood, war, strike, or riot, provided that the nonperforming party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

**11.14. Interpretation.** Each party hereto acknowledges and agrees that: (a) it and/or its counsel reviewed and negotiated the terms and provisions of this Agreement and has contributed to its revision; (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; (c) the terms and provisions of this Agreement shall be construed fairly as to both parties hereto and not in favor of or against either party, regardless of which party was generally responsible for the preparation of this Agreement; and (d) the use of “include,” “includes,” or “including” herein shall not be limiting and “or” shall not be exclusive.

**11.15. Severability.** If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**President and Fellows of Harvard College**

**[Licensee]**

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

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

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

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

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

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

SAMPLE

**Exhibit 1.4**  
**Development Milestones**

SAMPLE

**Exhibit 1.5  
Development Plan**

SAMPLE

**Exhibit 1.8**

**Harvard Technology Transfer Materials**

SAMPLE

**Exhibit 1.13  
Patent Rights**

Harvard Case No.	Application or Patent No.	Filing or Issue Date	Title

SAMPLE