**[Medical Device Version: Nov 6, 2026]**

# EXPRESS PATH START-UP LICENSE AGREEMENT(MEDICAL DEVICE)

## Part I. Express Path License – Deal Terms and Signatures

**Item A: Licensee Legal Name (and d/b/a if any):**

| |
|---|
| NAME: [, D/B/A: ] ("**Licensee**")<br><br>STATE OF INCORPORATION:<br><br>_____ |

**Item B. Licensee Contact Person** (including email):

| |
|---|
| Legal Notices:<br><br>IP (if different from above):<br><br>Accounts Payable/Billing (if different from above):<br><br>Outside IP Counsel for Licensee: |

**Item C. Harvard Notice Address and Payment Instructions**:

| |
|---|
| Notices:<br><br>Office of Technology Development<br>Harvard University<br>Richard A. and Susan F. Smith Campus Center, Suite 727<br>1350 Massachusetts Avenue<br>Cambridge, Massachusetts 02138<br>Email: otd@harvard.edu<br>Attn.: Chief Technology Development Officer |
| Payment Instructions: |

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| |
|---|
| Harvard's OTD will provide payment instructions to the Accounts Payable/Billing contact in Item C above promptly following execution of this Agreement. |

**Item D. Harvard Agreement Number**: A_____

**Item E. Field of Use**:

| |
|---|
| **"Field"** means: [OTD TO INSERT] |

**Item F. Development and Financing Milestones**:

| **DEVELOPMENT MILESTONES** | **COMPLETION DATE** |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| **FINANCING MILESTONE** | **COMPLETION DATE** |
| 1. Licensee shall have raised at least $750,000 in cash, in exchange for convertible debt securities or equity securities issued by Licensee. | Six-month anniversary of Effective Date. |

**Item G. Effective Date**:

| |
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| |

**Item H. Equity/Liquidation Fee** (Select only ***one*** box):

| | |
|---|---|
| ☐ Equity: **Four percent (4%)** of the capital stock of Licensee on a Fully Diluted Basis through the Anti-Dilution Threshold (as defined) | ☐ Liquidation Fee: **One percent (1%)** of the Aggregate Consideration/Pre-Money Valuation (each as defined), as applicable |

**Item I. Royalty:** (Select only ***one*** box):

| | |
|---|---|
| ☐ **Two percent (2%)** without Anti-Stacking | ☐ **Three percent (3%)** with Anti-Stacking |

**Item J. Annual Fee**: (payable annually on January 1 for each Calendar Year, and creditable against royalty payments owed under Section 4.5 that accrue on Net Sales made in the same Calendar Year):

| **CALENDAR YEAR** (following Effective Date**)** | **PAYMENT** |
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| | |

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| | |
|---|---|
| Year 1-3 | $0 |
| Year 4-5 | $25,000 |
| Every Year Thereafter | $50,000 |

**Item K. Back Patent Expense Reimbursement**:

Back Patent Expenses Total as of Effective Date: $_____, of which:

$[half of total] shall be paid on or before the first year anniversary of the Effective Date; and

$[half of total] shall be paid on or before the second year anniversary of the Effective Date.

All payments due hereunder shall accelerate and be payable in full within ten (10) days after closing of equity or convertible debt issuances by Licensee, in one or a series of transactions, in an aggregate amount of at least $2,500,000. All payments due under this Item K shall accelerate and become due and payable immediately upon early termination of this Agreement by Licensee.

*Note: the above payment plan is limited to licensed patent portfolios with Back Patent Expenses that do not exceed $50,000. For licensed portfolios with Back Patent Expenses in excess of $50,000, alternative payment terms may be required.*

**Item L. Patent Rights**:

| Harvard Case# | Title | Country | Serial Number | Filing Date | Type | Filing Status | Patent Number |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
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**Item M. Software** (may be described further in an appendix; includes the following applications and/or registrations, if any, and any unregistered Copyrights in the Software):

| HARVARD CASE # | TITLE | COUNTRY | COPYRIGHT APP #/ REG # | STATUS |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

**Item N. Technology Transfer Materials** (if applicable, and may be described further in an appendix):

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|---|
| 1. |
| 2. |

**Item O. Third Party Software**

| |
|---|
| 1. |
| 2. |

**Item P. Lead Inventor:** _____

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

| **President and Fellows of Harvard College** | **[Licensee]** |
|---|---|
| By:_____ | By:_____ |
| Name:_____ | Name:_____ |
| Title: _____ | Title:_____ |

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## Part II. Express Path License - Terms and Conditions

This License Agreement (this "**Agreement**") is entered into as of the **Effective Date**, by and between **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**"). Harvard and Licensee are referred to herein each as a "**Party**", and together as the "**Parties**".

**WHEREAS,** Licensee wishes to obtain a license under Harvard's interests in the Patent Rights, the Copyrights (if any), and the Technology Transfer Materials (if any), and Harvard desires to have products and/or services based on the inventions described in the Patent Rights, and incorporating or developed through the use of the Software (if any), and the Technology Transfer Materials (if any), developed and commercialized to benefit the public;

**WHEREAS**, Licensee has represented to Harvard, in order to induce Harvard to enter into this Agreement, that Licensee shall commit itself to commercially reasonable efforts to develop and commercialize such products and/or services.

**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 the Glossary - Part III hereto, or, if not listed therein, the meaning designated in places throughout this Agreement.

**2. License.**

**2.1. License Grant.** Subject to the terms and conditions set forth in this Agreement, Harvard hereby grants to Licensee an exclusive, worldwide, royalty-bearing license under Harvard's interest in the Patent Rights and Copyrights and a non-exclusive, worldwide, royalty-bearing license to use the Technology Transfer Materials, in each case, solely to develop, make, have made offer for sale, sell, have sold, import and export Licensed Products solely for use within the Field, including to reproduce, distribute, display and prepare Derivative Works of the Software, 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 and government agencies, to practice the Patent Rights and Copyrights within the scope of the license granted above, solely for research, sponsored research, educational and scholarly purposes;

**2.1.2.** Harvard licenses the Software hereunder on an "as-is" basis, and Harvard has no obligation to maintain, update, debug or support the Software; and

**2.1.3.** if the United States government has provided funding for the intellectual property in the Patent Rights and the Copyrights under any grant or similar contract with a Federal agency, then the United States government retains certain rights in such intellectual property. In such event, this Agreement is expressly subject to all applicable United States government rights, including, but not limited to, pursuant to 35 U.S.C. §§ 200-212 and 37 C.F.R. § 401 et seq., and any applicable requirement that products that



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result from such intellectual property and are sold in the United States must be substantially manufactured in the United States. In particular, and without limiting the generality of the foregoing, during the period of exclusivity of the license granted in this Section 2.1 in the United States, Licensee shall comply with the terms for licensees stated in 37 C.F.R. § 401.14 (i) (Preference for United States Industry) or any successor rule or regulation. Notwithstanding anything in this Agreement to the contrary, the licenses, rights, and exclusivity granted to Licensee are subject to any rights of the United States Government arising under applicable law, regulation or any federal contract, grant, cooperative agreement, subcontract, subaward, CRADA, other transaction agreement or other funding agreement pursuant to which any Licensed Technology was conceived, developed, created, reduced to practice, acquired, modified or delivered, including but not limited to applicable rights under the Bayh-Dole Act, FAR, DFARS and 2 C.F.R. Part 200. Nothing in this Agreement grants or is intended to grant the United States Government any rights greater than those to which it is otherwise entitled under applicable law or the applicable funding agreement. The exercise of any such Government rights shall not constitute a breach of Harvard's obligations of exclusivity under this Agreement.

**2.2. Affiliates.** The licenses granted to Licensee under Section 2.1 include the limited right to permit Licensee's Controlled Affiliates to exercise or perform Licensee's rights or obligations under this Agreement, solely on Licensee's behalf, and only so long as such Affiliate remains a Controlled Affiliate of Licensee; provided, however, that (i) the acts and omissions of any such Controlled Affiliate will be treated hereunder as those of Licensee, (ii) no Controlled Affiliate may sublicense any right hereunder, (iii) such Controlled Affiliates' exercise or performance of any rights hereunder will be subject to the terms of this Agreement, including Section 2.3 hereof and (iv) Licensee will be responsible for all such Controlled Affiliates' acts and omissions hereunder.

**2.3. Sublicenses; Delivery of Agreements.**

**2.3.1. Sublicense Grant.** Licensee will be entitled to grant Sublicenses to Third Parties, 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. The Technology Transfer Materials may not be Sublicensed without at least one or more of the Patent Rights.

**2.3.2. Sublicense Agreements.** Licensee, and Sublicensees, shall grant Sublicenses pursuant to written agreements negotiated at arms' length at FMV, which will be subject and subordinate to the terms and conditions of this Agreement. Such Sublicense agreements will contain all provisions necessary to ensure Licensee's ability to perform its obligations under this Agreement, and will otherwise comply with all the terms of this Agreement. Each Sublicense shall contain 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. 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.

**2.3.3.** Licensee shall not structure Sublicenses, in connection with other assets (e.g., technology, know-how and/or intellectual property rights) owned or controlled by Licensee in a single transaction or series of related transactions, in order to minimize or avoid payments to Harvard for Sublicense revenue under Section 4.6 of this Agreement. Non-monetary consideration, other than equity,

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shall not be accepted by Licensee or any Affiliate in connection with any Sublicense agreement, without the prior written consent of Harvard, such consent not to be unreasonably withheld or delayed.

**2.3.4. Delivery of Sublicense Agreements.** Licensee shall furnish Harvard with a fully executed copy, written in the English language, of any Sublicense agreement within ten (10) business days after its execution. 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.

**2.3.5. Breach by Sublicensee.** Any act or omission by a Sublicensee that would have constituted a breach of this Agreement had it been an act or omission by Licensee shall constitute a breach of this Agreement.

**2.4. Improvements.**

**2.4.1.** Subject to the provisions of this Section 2.4 and any Third Party rights in such Improvement, and subject to the confirmation and consent of the Lead Inventor on a case-by-case basis, Harvard hereby grants to Licensee an option to add, by amendment hereof, Harvard's interests in any Improvement Patent Rights to the Patent Rights licensed hereunder. For clarity, in the event that Third Party rights terminate as to any Improvement and Improvement Patent Rights, Licensee shall have a secondary right to add Harvard's interest in any Improvement Patent Rights in accordance with this Section 2.4.

**2.4.2.** Harvard shall promptly provide Licensee with written notice of each Improvement reported to its Office of Technology Development. If Licensee is interested in including Harvard's interest in such Improvement Patent Rights to the Patent Rights licensed hereunder, then within thirty (30) days following Licensee's receipt of Harvard's notice of such Improvement, Licensee shall provide to Harvard written notice of its intent to exercise such option.

**2.4.3.** Within thirty (30) days following Harvard's receipt of Licensee's notice of its intent to exercise such option (the "**Amendment Period**"), the Parties shall amend this Agreement to include an exclusive grant of rights under Harvard's interests in the Improvement Patent Rights in the Field for the non-refundable, upfront fee of Twenty Thousand U.S. Dollars ($20,000) per Improvement. In addition, any such amendment shall include the obligation to reimburse Harvard for all documented out-of-pocket expenses incurred by Harvard prior to and during the Amendment Period in the preparation, filing, prosecution, protection, defense and maintenance of the applicable Improvement Patent Rights ("**Improvement Patent Rights Expenses**"), within thirty (30) days after the date of execution of the amendment. All existing financial terms of this Agreement (e.g., without limitation, maintenance fees, royalty payments, milestone payments, ongoing reimbursement of Patent Rights expenses and payments on account of Sublicense revenue) will apply to such Improvement Patent Rights. If Licensee does not provide Harvard with notice of its desire to exercise its option to the applicable Improvement Patent Rights or fails to pay the upfront fee or patent expenses in accordance with the terms of this Section 2.4, then Licensee shall have no further rights hereunder with respect to the Improvement Patent Rights and Harvard will be entitled to grant licenses to Third Parties to such Improvement Patent Rights without any further obligation to Licensee.

**2.5. Third Party Software.** Although the Software may be used or useful in connection with

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Third Party Software, this Agreement does not grant Licensee any license or sublicense to any Third Party Software or the copyrights therein, and Licensee remains solely responsible for obtaining any license rights necessary for Licensee and its Controlled Affiliates, Sublicensees or End Users to use any Third Party Software.

**2.6. No Other Grant of Rights.** Except as expressly provided herein, nothing in this Agreement will be construed to confer any ownership interest, license, waiver of enforcement, immunity or other rights, privileges or defenses 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.** 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 Controlled Affiliates or Sublicensees, shall cause each of the Development Milestones in Item F of Part I of this Agreement to be achieved for Licensed Products within the time periods specified therein. In addition, Licensee shall achieve the Financing Milestone as set forth in Item F of Part I of this Agreement within the time periods specified therein.

**3.2. Reporting.** Within sixty (60) days after the end of each calendar year, Licensee shall deliver to Harvard an Annual Report for the prior calendar year in the form of the "Annual Diligence Report and Certification" found here, with each section completed in full, and in sufficient detail to facilitate Harvard's compliance with its obligations under law including but not limited to under the Bayh-Dole Act and all regulations promulgated thereunder. Each such 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 calendar year. In addition, if at any other time during the Term, or any time thereafter with respect to any applicable reporting period during which this Agreement was in effect, Harvard requires additional information for its compliance obligations under law (including but not limited to under the Bayh-Dole Act, any regulations promulgated thereunder or any reporting requirements of any applicable funding agencies), it shall make a written request of Licensee and Licensee shall provide the requested information within ten (10) days of receipt of such written request. Within thirty (30) days after the achievement of a Development Milestone, Licensee shall provide Harvard with written notice of such achievement.

**3.3. Failure to Meet Development Milestone.** If Licensee fails to achieve any Development Milestone, or the Financing Milestone, as set forth in Item F of Part I of this Agreement, then Harvard shall have the immediate right and option, upon written notice to Licensee, to either terminate this Agreement or convert the license to the Patent Rights and Copyrights granted hereunder from exclusive to nonexclusive. This conversion right, if exercised by Harvard, supersedes the exclusivity rights granted in Article 2.

## 4. Financial Terms.

**4.1. Liquidation Fee.** If "Liquidation Fee" is selected in Item H of Part I of this Agreement,



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then as partial consideration for the license granted hereunder to the Licensed Technology licensed as of the Effective Date, Licensee shall pay Harvard a Liquidation Fee in accordance with Section 4.1.1.

**4.1.1. Liquidation Fee Payment.** The Liquidation Fee shall be payable only once, after the first to occur of either a Liquidation Event or an IPO. The Liquidation Fee shall be payable upon closing of the Liquidation Event or IPO, except for Trailing Consideration, which shall be payable within thirty (30) days after the actual receipt of such Trailing Consideration by the Licensee or its security holders. For a Liquidation Event, the Liquidation Fee shall be payable in the form of the proceeds payable to either Licensee or its security holders, whether in cash, securities or other property, and in the same proportion such form of consideration is payable to Licensee or its security holders; provided that, in the event that the form of consideration includes securities for which there is not an active public market, Licensee will make a cash payment to Harvard equal to the fair market value of such securities, where fair market value is determined in accordance with the definition of "Aggregate Consideration" in Part III- Glossary. For an IPO, the Liquidation Fee shall be payable in the form of cash. In addition, in the event of any distributions or dividends (other than tax distributions) issued by Licensee in respect of any equity securities prior to a Liquidation Event or IPO, Licensee shall pay Harvard an amount equal to the total amount of such distributions or dividends multiplied by one percent (1%).

**4.2. Equity.**

**4.2.1. Issuance.** If Equity is selected in Item H of Part I of this Agreement, then as partial consideration for the license granted hereunder to the Licensed Technology licensed as of the Effective Date, and pursuant to a stock issuance agreement entered into by the Parties on or about the Effective Date, substantially in the form of the "Subscription Agreement for Common Stock" found here, Licensee shall issue to Harvard a number of shares of Licensee's common stock representing four percent (4%) of Licensee's capital stock on a Fully Diluted Basis 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. Upon (i) the date of issuance of the Shares and, if applicable, any Anti-Dilution Shares, (ii) any Liquidation Event, (iii) closing of any round or tranche of dilutive funding (including equity or convertible securities) or other dilutive event, or (iv) at the request of Harvard (which request may be made only once per Calendar Quarter), Licensee shall provide to Harvard a capitalization table (a "**Cap Table**") which shall include the number of shares of capital stock of Licensee issued and outstanding, and the related ownership percentage, on a Fully Diluted Basis, of each of the owners of record of capital stock of Licensee, and the amount of investment made by each owner of record in exchange for such stock.

**4.2.2. Anti-Dilution.** If, at any time until immediately after the achievement of the Anti-Dilution Threshold (as defined below), Licensee issues Additional Securities that would cause the Shares and Anti-Dilution Shares already issued to represent less than four percent (4%) of Licensee's capital stock 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 the cumulative amount of Shares and Anti-Dilution Shares held by Harvard shall equal four percent (4%) of the capital stock of Licensee on a Fully Diluted Basis, as calculated after giving effect to the issuance of such Anti-Dilution Shares and the issuance of such Additional Securities through the Anti-Dilution Threshold, but not any issuances in consideration for investment amounts in excess of the Anti-Dilution Threshold. Such issuances shall continue only up to, and until the

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Anti-Dilution Threshold has been reached. Thereafter, no additional shares shall be due to Harvard pursuant to this Section 4.2.2. 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 Anti-Dilution 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 Anti-Dilution Threshold exactly (with the number of Anti-Dilution Shares being rounded up to the nearest whole share). Solely for purposes of this Section 4.2, convertible debt instruments issued by Licensee in consideration for cash shall be deemed Additional Securities immediately upon conversion of such convertible debt instruments into equity securities. For the avoidance of doubt, any securities purchased through the Purchase Right set forth in Section 4.7 shall not be included in the Anti-Dilution calculation set forth herein. Upon request, but no more frequently than once per Calendar Quarter, Licensee will deliver to Harvard a statement of the capital stock of Licensee on a Fully Diluted Basis in sufficient detail as to permit Harvard to calculate its percentage equity ownership in Licensee on a Fully Diluted Basis.

**4.3. Annual License Maintenance Fees.** As partial consideration for the license granted hereunder to the Licensed Technology, Licensee shall pay Harvard annual license maintenance fees as set forth in Item J of Part I of this Agreement. Each such fee shall be due and payable on January 1st of the calendar year to which such fee applies.

Each annual license maintenance fee shall be creditable against any royalty amounts payable under Section 4.5 below with respect to Licensed Products sold in the same calendar year that such annual license maintenance fee was due.

**4.4. Milestone Payments.**

**4.4.1.** As partial consideration for the license granted hereunder to the Licensed Technology, Licensee shall pay Harvard US$400,000 for each Licensed Product that receives Regulatory Approval.

**4.4.2.** Licensee shall notify Harvard in writing within thirty (30) days following the Regulatory Approval for each Licensed Product, including a list of Harvard Case numbers for all Patent Rights that have Valid Claims covering the Licensed Product or Harvard Technology Transfer Materials that were used in the development of such Licensed Product, to which such milestone relates, and shall make the appropriate milestone payment within thirty (30) days after the achievement of such milestone.

**4.5. Royalty on Net Sales.**

**4.5.1. Rates.** For the applicable Royalty Term, on a country-by-country and Licensed Product-by-Licensed Product basis, Licensee shall pay Harvard an amount equal to the applicable Royalty Rate multiplied by Net Sales of such Licensed Product, without any discount, allocation or offset of any kind except as set forth in the definition of Net Sales, or, to the extent applicable, as set forth in Section 4.5.3 hereof.

**4.5.2. Patent Challenge.** If Licensee, any Sublicensee, or 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**"), Harvard may immediately terminate this Agreement upon written notice to Licensee. If Harvard chooses



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not to terminate this Agreement, then the applicable Royalty Rate will be doubled with respect to Net Sales of all 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 applicable Royalty Rate with respect to Net Sales of all Licensed Products 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. 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.

**4.5.3. Third Party Royalty Set-Off.** If the Royalty of **3% with Anti-Stacking** has been selected in Item I of Part I of this Agreement, and (a) Licensee obtains a license from a Third Party to an Infringed Patent after arm's length negotiations, and (b) the aggregate royalty rate owed by Licensee to all parties (including Harvard) to develop and manufacture the Licensed Product would exceed ***150%*** of the Royalty Rate (i.e., ***4.5%***), then the Royalty Rate applicable to Harvard under this Agreement for such Licensed Product will be reduced pro rata if, and only if, all third party royalty rates are also reduced (during the time period when such third party royalties are due) pro rata, based on the respective applicable royalty rates for each such license, such that the aggregate royalty rate owed by Licensee to all such licensing parties (including Harvard) does not exceed **4.5%**, subject in all cases to the royalty floor specified in the definition of Royalty Rate in Part III hereof.

**4.6. Sublicense Revenue.** Licensee shall pay to Harvard twelve percent (12%) of any consideration, monetary or otherwise (other than running royalties on Net Sales paid by Sublicensees), received by Licensee or its Affiliates from a Sublicensee of Licensee (not being an Affiliate) under the terms of, or as consideration for the grant of, a Sublicense. If such consideration is in the form of equity, Harvard's 12% share of such equity will be issued directly to Harvard by such Sublicensee.

**4.7. Participation Rights.** If Licensee proposes to sell any equity securities or securities that are convertible into equity securities of Licensee after the Effective Date of this Agreement, then Harvard shall have the right, but not the obligation, to purchase for cash, up to the PR Share of the securities issued in any Qualifying Offering (the "**Purchase Right**"). The Purchase Right is assignable, in whole or in part, by Harvard to Osage University Partners or any of its affiliated investment funds (each, an "**Osage Party**" and collectively, the "**Osage Parties**") and/or to any entity controlled by Harvard (such Harvard-controlled entity and each such Osage Party, a "**Permitted PR Assignee**"). Except to the extent that Harvard assigns its Purchase Right to one or more Permitted PR Assignees, no investment by a Permitted PR Assignee in Licensee shall reduce or otherwise affect Harvard's rights to participate in any Qualifying Offering under this Agreement. Licensee shall provide Harvard with prior written notice at least twenty (20) Harvard business days (i.e., days other than Saturdays, Sundays and holidays or other days on which Harvard is officially closed) in advance of each such Qualifying Offering ("**PR Notice Period**") and details regarding such Qualifying Offering, including, without limitation, as set forth in Section 4.7.3(B)(1) below. Notifications to be sent pursuant to this Section 4.7 shall be sent to otd@harvard.edu.

**4.7.1. Excluded Issuances.** The Purchase Right shall not apply to the issuance of securities: (i) to employees, individuals who are members of Licensee's Board of Directors as of the time of issuance and service providers to Licensee pursuant to a plan, agreement or arrangement approved by Licensee's Board of Directors; (ii) as additional consideration in lending or leasing transactions; (iii) to an entity pursuant to an arrangement that Licensee's Board of Directors determines in good faith is a strategic partnership or similar arrangement of Licensee (i.e., an arrangement in which the entity's purchase of

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securities is not primarily for the purpose of raising working capital for Licensee); or (iv) to owners of another entity in connection with the acquisition of that entity by Licensee.

**4.7.2. Coordination with Section 4.2 (Equity).** For the avoidance of doubt: (i) any securities Harvard may acquire or have the right to acquire under Section 4.2 above shall not reduce the number of securities Harvard and the Permitted PR Assignees may collectively purchase under this Section 4.7 or under any rights agreement or similar agreement regarding Licensee entered into by Harvard (each, a "**Rights Agreement**"); and (ii) Harvard shall not be obligated to purchase under this Section 4.7 any Licensee securities it has the right to receive under Section 4.2 above. For additional clarity, any securities purchased through the Purchase Right set forth in this Section 4.7 shall not be included in any calculation of Anti-Dilution Shares to be issued to Harvard in accordance with Section 4.2, and shall be tracked separately on Licensee's capitalization table from the Shares and any Anti-Dilution Shares

**4.7.3. Rights Agreements; Information Rights; Notice; Elections.**

(A) Licensee shall ensure that each Rights Agreement to which Harvard or any Permitted PR Assignee is a party will at all times grant Harvard and any such Permitted PR Assignee the same rights as all other investors that are parties to that Rights Agreement, including, without limitation: the same right to purchase additional securities in future offerings; the same information rights; the same registration rights as are granted to other parties thereto; and all such rights granted to any investor designated as a "**Major Investor**" or other similar designation, even if Harvard is not so designated. Notwithstanding the foregoing, this Section 4.7.3 shall not be construed to limit any rights to which Harvard would otherwise be entitled under this Agreement.

(B) Notwithstanding any terms to the contrary contained in any applicable Rights Agreement:

(1) In connection with all Qualifying Offerings, Licensee shall give Harvard written notice ("**PR Notice**") of the terms of the offering, including: (i) the names of the investors, the allocation of equity and equity-linked securities among them and the total amounts to be invested by each of them in such offering; (ii) pre- and post- (projected) financing capitalization table; (iii) investor presentation(s); (iv) an introduction to the lead investor in such offering for the purpose of discussing the lead investor's due diligence process and evaluation of the investment opportunity; and (v) such other documents and information as Harvard may reasonably request for the purpose of making an investment decision or verifying the number of units of the equity or equity-linked security it is entitled to purchase in such offering; and

(2) Harvard will have a period of twenty (20) Harvard business days after receiving a PR Notice of a Qualifying Offering to elect to (i) exercise its Purchase Right in whole or in part, (ii) decline to exercise its Purchase Right, or (iii) take no action (in which case Harvard will be deemed to have declined to exercise its Purchase Right). Licensee shall provide Harvard updated information promptly after information in the PR Notice becomes inaccurate, regardless of whether Harvard has previously elected or declined to exercise its Purchase Right. If the updated information constitutes a material change from the information included in the original PR Notice (as it may have been previously updated), a new PR Notice Period for the Qualifying Offering will commence and Harvard may within twenty (20) Harvard business days from and including the date it received the updated information either (x) modify or revoke a previous election, (y) make a new election if it had previously declined to exercise its

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Purchase Right, or (z) take no action (in which case Harvard's election in the immediately previous PR Notice Period will continue to apply).

(C) If Harvard has no information rights under a Rights Agreement and to the extent that such information has been prepared by Licensee for other purposes, so long as Harvard holds Licensee securities, Licensee shall furnish to Harvard, upon request and as promptly as reasonably practicable, Licensee's annual consolidated financial statements and annual operating plan, including a report of the holders of Licensee's securities, and such other information as Harvard may reasonably request from time to time for the purpose of valuing its interest in Licensee.

(D) Notwithstanding any notice provision in this Agreement to the contrary, any notice given under this Agreement that refers or relates to any of Section 4.7 above or this Section 4.7.3 shall be copied concurrently to otd@harvard.edu; provided, however, that delivery of the copy will not by itself constitute notice for any purpose under this Agreement.

**4.7.4. Termination of Right.** The Purchase Right shall terminate upon the earliest to occur of the following (each a "**Termination Event**"):

(1) Immediately prior to the closing of a firm commitment underwritten public offering of Licensee's common stock;

(2) Immediately prior to the closing of the sale of all or substantially all of Licensee's assets or voting stock to a company that has a class of securities publicly traded on one of the major recognized exchanges for cash, marketable securities of such company or both; or

(3) Immediately prior to the closing of a bona fide acquisition of all or substantially all of Licensee's assets or voting stock for cash, marketable securities or both by either:

(a) a private operating company (as opposed to a shell company or other business entity organized primarily for the purpose of acquiring such assets or voting stock); or

(b) an investment firm or other financial buyer in furtherance of a "roll-up" or similar strategy in Licensee's current or prospective market(s);

provided that, in each case: (i) such acquisition is duly approved by (x) Licensee's Board of Directors in accordance with applicable fiduciary duties and (y) Licensee's stockholders in accordance with the law of Licensee's jurisdiction of organization; and (ii) no person or entity that held Licensee securities immediately prior to the closing of such acquisition shall have any right, arrangement or understanding to purchase any direct or indirect interest in the acquiring entity unless Harvard is advised in writing of the terms thereof and is given a written offer to receive such right, arrangement or understanding.

**4.8. Non-Circumvention and Observer's Rights.** Before an IPO, or bona fide sale of substantially all of Licensee's assets, Licensee will: (a) not enter into any contractual relationship or license with any of its Affiliates or any Sublicensee that materially devalues the grant of equity interests under Section 4.2, or circumvents the intent of the liquidation fee or equity grant provided for in Section 4.1 or 4.2, as the case may be, and (b) permit one representative of Harvard (the "**Observer**") to attend all meetings of its Board of Directors (whether in person or by electronic conferencing) in a non-voting observer capacity. Pursuant to the confidentiality terms of Section 12, Licensee will provide the Observer

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with copies of all board packets, notices, minutes, written consents and other materials that it provides to members of its Board of Directors, (including private placement memoranda and other documents regarding proposed capitalization and equity raises) at the time it provides them to the members.

**4.9. Complex Consideration.** Licensee acknowledges and agrees that the Parties have chosen to set the Royalty Rates and other payments in relation to the rights granted under this Agreement for Licensee's convenience in calculating and paying such royalties and other payments. In doing so, Licensee acknowledges and agrees that certain Royalty Rates incorporate discounts reflecting that certain products and processes may not infringe the Valid Claims of the Patent Rights but may be based upon, derived from or use the Patent Rights or other Licensed Technology, so that Licensee, unless explicitly provided otherwise in this Agreement, shall not be entitled to a reduction in payments owed hereunder (even if it does not at all times need or use a license to specific Patent Rights) until the end of the Royalty Term for such Licensed Product.

## 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 revenue under Sublicenses is received, Licensee shall deliver to Harvard fully completed reports (in each instance, with a Licensed Product-by-Licensed Product, and country-by-country breakdown) in the forms found here, including a list of Harvard Case numbers of any Patent Rights that have Valid Claims that would be infringed by the making or selling of each applicable Licensed Product; and a list of Harvard Case numbers of the applicable Technology Transfer Materials or Software for each applicable Licensed Product that was developed through the use of, or incorporate or use, such Technology Transfer Materials, Software or Derivative Works thereof.

Each such quarterly report shall be certified on behalf of Licensee by its chief financial officer 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. In addition to the above-described quarterly reports, within sixty (60) days after the end of each calendar year, Licensee shall provide Harvard with an annual report containing the above-described information for such calendar year. Each such annual report shall be prepared on behalf of Licensee by an independent, certified public accountant and certified by such accountant as true, correct and complete in all material respects.

**5.1.2. Payment.** Within thirty (30) days after the end of each Calendar Quarter, Licensee shall pay Harvard all amounts due under Sections 4.5 and 4.6 with respect to Net Sales and Sublicense revenue 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 working 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 and any other Invoicing Entities to maintain, complete and accurate records of Licensed Products that are made,

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used, sold, leased or transferred under this Agreement, any amounts payable to Harvard in relation to such Licensed Products, and all Sublicense revenue 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 or other compliance issues 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, taxes (including VAT) or other government imposed fees, except as permitted in the definition of Net Sales. If Licensee is required to withhold any amounts payable hereunder to Harvard due to the applicable laws of any country, such amount will be deducted from the payment to be made by Licensee and remitted to the appropriate taxing authority for the benefit of Harvard. Licensee will withhold only such amounts as are required to be withheld by applicable law in the country from which payment is being made. Licensee shall submit to Harvard originals of the remittance voucher and the official receipt evidencing the payment of the corresponding taxes with the applicable royalty report. Licensee will cooperate with Harvard to provide such information and records as Harvard may require in connection with any application by Harvard to the tax authorities in any country, including attempt to obtain an exemption or a credit for any withholding tax paid in any country.

## 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

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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.

**6.2. Expenses.** Subject to Section 6.3 below, and any modifications to the payment terms relating to Back Patent Expenses, as set forth in Item K of Part I of this Agreement, Licensee shall reimburse Harvard for all documented, out-of-pocket expenses incurred by Harvard pursuant to this Article 6 following the Effective Date ("**Ongoing Patent Expenses**") within thirty (30) days after the date of each invoice from Harvard for such Ongoing Patent Expenses. 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 ("**Back Patent Expenses**") as set forth in Item K of Part I of this Agreement. For clarity, legal counsel fees with respect to the preparation, filing, prosecution, protection and maintenance of Patent Rights that have accrued but remain unbilled to Harvard as of the Effective Date shall be deemed Ongoing Patent Expenses and not Back Patent Expenses.

**6.3. Abandonment.** If Licensee decides that it does not wish to pay for the preparation, filing, prosecution, protection or maintenance of any Patent Rights in a particular country ("**Abandoned Patent Rights**"), Licensee shall provide Harvard with fifteen (15) days' prior written notice of such election. Upon the effectiveness of such election, Licensee shall be released from its obligation to reimburse Harvard for the expenses incurred thereafter as to such Abandoned Patent Rights; provided, however, that expenses authorized prior to the effectiveness of such election shall be deemed incurred prior to the notice. In the event of Licensee's abandonment of any Patent Rights, any license granted by Harvard to Licensee hereunder with respect to such Abandoned Patent Rights will terminate, and Licensee will have no rights whatsoever to exploit such Abandoned Patent Rights. Harvard will then be free, without further notice or obligation to Licensee, to grant rights in and to such Abandoned Patent Rights to third parties.

**6.4. Small Entity Designation.** Licensee hereby certifies that it is an entity entitled to pay lesser fees as provided by the USPTO (i.e., a "small entity"), and based on such certification Harvard shall pay the fees prescribed for such small entities to the USPTO with respect to the Patent Rights. If Licensee, any of its Affiliates or any Sublicensee 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.

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**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 in one or more countries (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. If Licensee does not take action in the prosecution, prevention or termination of any Infringement pursuant to this Section 7.2, and has not commenced negotiations with the infringer for the discontinuance of said Infringement, within ninety (90) days after delivery of notice to Licensee by Harvard, or notice to Harvard by Licensee, of the existence of an Infringement, Harvard may elect to do so. No later than thirty (30) days before Licensee commences an action with respect to any Infringement, Licensee shall provide Harvard with evidence of a meritorious nature (i.e., evidence that shows a reasonable likelihood of success on the merits) that it is using as a basis for bringing the claim of Infringement and shall consider in good faith the views of Harvard and potential effects on the public interest in making its decision whether to sue. An enforcement action brought by Licensee for Infringement by a Third Party under this Section 7.2 must be in connection with a Licensed Product that Licensee or a Sublicensee is developing, marketing or selling at the time of such Infringement, and Licensee shall not pursue a claim other than for monetary damages and shall not seek any form of injunctive relief in any enforcement action without the prior written consent of Harvard. 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 if Licensee's license to a Valid Claim in the suit terminates, Harvard may elect to take control of the action. Notwithstanding anything to the contrary contained herein with respect to any Infringement, if Licensee owns one or more patent rights that cover the allegedly infringing product ("**Other IP**"), Licensee shall not initiate action under the Patent Rights unless it (i) also asserts all or a portion of such Other IP or (ii) obtains written consent from Harvard. In all cases, Licensee shall hold Harvard free, clear and harmless from and against any and all expenses, including reasonable attorneys' fees, incurred by Harvard with respect to the prosecution, adjudication and/or settlement of such Infringement suit, including any related appeals ("**Litigation Expenses**"). Licensee shall reimburse any and all such Litigation Expenses incurred by Harvard within thirty (30) days after receiving an invoice from Harvard for the same. Licensee shall not compromise or settle such litigation without the prior written consent of Harvard, which consent shall not be unreasonably withheld or delayed. For clarity, Harvard's consent shall not be deemed to have been unreasonably withheld or conditioned if there is a substantial adverse effect to the public interest in removing a product from the market as a result of such compromise or settlement. Financial recoveries from any Infringement suit initiated by Licensee shall first be applied to reimburse Licensee 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, such funds will be retained by Licensee but treated as Sublicense revenue subject to the fees due to Harvard under Section 4.6. In the event Harvard exercises its right to sue, 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 pay Licensee 12% of such funds and retain the remaining amounts.

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**7.3. 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; provided that Licensee shall reimburse Harvard for all out-of-pocket costs, including attorneys' fees, incurred by Harvard in retaining one separate counsel for Harvard if representation of both Licensee and Harvard by counsel retained by Licensee in such enforcement action would be inappropriate because of actual or potential differences in the interests of Harvard and any other party represented by such counsel, including Licensee.

**7.4. 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 Licensee's expense in accordance with Section 6.2 (Expenses).

## 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 it shall comply with all United States trade control laws and regulations (including, but not limited to, the Export Administration Regulations (15 CFR 730-774, "EAR"), the International Traffic in Arms Regulations (22 CFR 120-130) and the various executive orders and economic sanctions regulations administered by the U.S. Department of the Treasury (31 CFR 500-600)) (collectively, "**Trade Control Laws**"). 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 to comply with (and will contractually obligate its Sublicensees to comply with), all United States Trade Control Laws, that it bears sole responsibility for any violation of such Trade Control Laws by itself or its Affiliates or Sublicensees, and that it will indemnify, defend and hold 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 CONSTRUED (A) AS A REPRESENTATION OR 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 COMMERCIALLY WORTHWHILE PROTECTION, (B) AS A REPRESENTATION OR WARRANTY BY HARVARD AS TO THE VALIDITY, ENFORCEABILITY OR SCOPE OF ANY PATENT RIGHTS, (C) AS AN OBLIGATION TO BRING OR PROSECUTE ACTIONS OR SUITS AGAINST THIRD PARTIES FOR PATENT INFRINGEMENT EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 7, OR (D) AS THE CONFERRAL OF ANY LICENSE OR RIGHTS UNDER ANY PATENTS OF HARVARD OTHER THAN THE PATENT RIGHTS.

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**8.2.2.** HARVARD MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE COMMERCIAL OR SCIENTIFIC VALUE OF THE PATENT RIGHTS, SOFTWARE OR TECHNOLOGY TRANSFER MATERIALS. HARVARD MAKES NO REPRESENTATION OR WARRANTY THAT THE USE OR PRACTICE OF THE PATENT RIGHTS, SOFTWARE OR TECHNOLOGY TRANSFER MATERIALS OR THE DEVELOPMENT, MANUFACTURE, USE, OFFER FOR SALE, SALE, IMPORTATION OR EXPORTATION OF ANY LICENSED PRODUCT OR ANY ELEMENT THEREOF, DOES NOT OR WILL NOT INFRINGE ANY PATENT OR PROPRIETARY RIGHTS, INCLUDING WITHOUT LIMITATION ANY PATENTS OR PROPRIETARY RIGHTS OWNED OR CONTROLLED BY HARVARD AND NOT SPECIFICALLY LICENSED UNDER THIS AGREEMENT.

### 8.3. Limitation of Liability.

**8.3.1.** Except with respect to matters for which Licensee is obligated to indemnify the Indemnitees under Article 9, neither Party will be responsible for or liable to the other with respect to any subject matter of this Agreement or resulting from the exercise of the license or rights granted under this Agreement under any contract, negligence, strict liability or other legal or equitable theory for (a) any indirect, incidental, consequential, special or punitive damages or lost profits, lost business or other economic loss or (b) cost of procurement of substitute goods, technology or services. The above limitations on liability apply even if the other Party may have been advised of the possibility of such damage.

**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 actually paid to Harvard under this Agreement.

## 9. Indemnification and Insurance.

### 9.1. Indemnity.

**9.1.1.** At Licensee's sole expense, 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, fellows, students and agents and their respective successors, heirs and assigns (collectively, the "**Indemnitees**"), against any and all Third Party claims, suits, actions, investigations, demands or judgments (including, but not limited to, actions in the form of contract, tort, warranty or strict liability, collectively, "**Claims**") and any associated liability, damage (including direct, indirect, consequential and special damages), cost, expense, deficiency, loss or obligation of any kind or nature (including reasonable attorney's fees and expenses of litigation) (a "**Loss**"), incurred by or imposed upon the Indemnitees or any one of them in whole or part based upon, arising out of or otherwise relating to this Agreement or any Sublicense, including (i) any product liability or other Claim of any kind related to use by a third party of a Licensed Product and (ii) any Claim by a third party that the practice of any of the Patent Rights or Copyrights, use of the Software or Technology Transfer Materials or the design, composition, manufacture, use, sale or other disposition of any Licensed Product infringes or violates any patent, copyright, trade secret, trademark or other intellectual property right of such third party; (b) any material breach or alleged material breach of this Agreement or any Sublicense by Licensee or its Affiliates or Sublicensees; and (c) the enforcement of Article 9 by any Indemnified Party. The previous sentence will not apply to the extent any Claim is determined with finality by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of an Indemnitee. Licensee shall not (a) admit

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fault or liability on any Indemnitee's part, (b) enter into a monetary settlement that imposes any financial obligations on an Indemnitee that is not indemnified by Licensee, (c) fail to obtain a full and unconditional release of all claims and liability against the Indemnitees, and/or (d) enter into a non-monetary settlement that requires an obligation from, or imposes a restriction on, any Indemnitees without such Indemnitees' advance written permission.

**9.1.2.** Licensee shall, at its own expense, provide attorneys reasonably acceptable to Harvard to defend against any Claims brought or filed against any Indemnitee hereunder with respect to the subject of indemnity contained herein, whether or not such Claims are rightfully brought; provided, however, that Licensee shall pay the costs and expenses for one separate counsel to represent such Indemnitee if representation of such Indemnitee by counsel retained by Licensee would be inappropriate because of actual or potential differences in the interests of such Indemnitee and any other party represented by such counsel.

**9.2. Insurance.**

**9.2.1.** Licensee shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than (i) $2,000,000 per incident and $2,000,000 annual aggregate for any period of time during which any Licensed Product is being commercially distributed or sold, (other than for the purpose of obtaining regulatory approvals) by or on behalf of Licensee or any other Invoicing Entity, and (ii) $1,000,000 per incident and $2,000,000 annual aggregate for any period of time prior to any Licensed Product being sold by or on behalf of any Invoicing Entity, in either case 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.** 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 that would result in non-compliance with Section 9.2.1 or 9.2.2 and shall obtain replacement insurance providing comparable coverage within such fifteen (15) day period. 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.

**9.2.3.** 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 or on behalf of Licensee or any other Invoicing Entity; and (b) a reasonable period after the period referred to in (a) above which in no event shall be less than seven (7) years.

**10. Term and Termination.**

**10.1. Term.** This Agreement will be effective during the Term and, unless earlier terminated in accordance with section 10.2 below, shall expire at the end of the Term.

**10.2. Termination.**

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**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; provided, that, solely in respect of a breach of the notice requirements contained in Section 9.2.3, so long as Licensee obtained comparable replacement coverage prior to the termination or change in Licensee's prior insurance policy and at no point was in breach of its obligations to maintain adequate insurance coverage, as required under Section 9.2, Licensee may cure such breach of the notice requirements under Section 9.2.3 by providing evidence of such comparable replacement coverage, without any gap in adequate coverage having existed at any time, to Harvard within ten (10) days of notice from Harvard regarding such breach of such notice requirements.

**10.2.2.3.** Harvard shall be entitled to terminate this Agreement in accordance with the provisions of Section 3.3 and 4.5.2.

**10.2.3. Insolvency.** 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 early 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, Copyrights and Technology Transfer Materials will revert to Harvard and neither Licensee nor its Affiliates or Sublicensees may make any further use or exploitation of the Patent Rights, Copyrights and Technology Transfer Materials or sell any Licensed Products; and (b) any existing agreements that contain a Sublicense to practice the Patent Rights or to use the Software or Technology Transfer Materials 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.

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**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. The Parties agree that the obligations in Section 4.1 (Liquidation 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.

**10.4. Survival.** The Parties' respective rights, obligations and duties under Articles 5, 8, 9, 11 and 12 and Sections 3.3, 4.1, 4.2, 4.7, 4.8, 4.9, 10.3 and 10.4, 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 any payments made under any such Sublicenses shall survive expiration or termination of this Agreement. Further, after the effective date of any termination of this Agreement for the remaining duration of any Royalty Term of any Licensed Product, Licensee shall pay the applicable milestone payments under Section 4.4 and royalties under Section 4.5.

## 11. Miscellaneous.

**11.1. 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 11.1 shall be null and void and of no legal effect.

**11.2. Use of Harvard Names.** Licensee shall not use or register Harvard's name (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify Harvard, including any school, unit, division or affiliate of Harvard ("**Harvard Names**"), for any marketing, publicity or promotional purpose except with the prior written approval of, and in accordance with any restrictions required by, Harvard's Trademark Program. Any such requests for use of any Harvard Names shall be submitted to trademark_useofname@harvard.edu. 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.

**11.3. Entire Agreement.** This Agreement, comprised of Parts I, II and III, together with the Equity Documents, contain the entire agreement with respect to the subject matter hereof and except as expressly set forth herein, supersedes all other agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.

**11.4. 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 email (if the sender retains evidence of successful transmission), expedited delivery or certified mail, return receipt requested, to the applicable address set forth in Items B and C of Part I of this Agreement, unless the Parties are subsequently notified of any change of address in accordance with this Section 11.4. Any notice shall be deemed to have been received as follows: (a) by personal delivery or expedited delivery, upon receipt; (b) by email, on the date sent; (c) by certified mail, as evidenced by the return receipt.

**11.5. Governing Law and Jurisdiction.** This Agreement will be governed by, and construed



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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.

**11.6. Waiver of Jury Trial.** EACH PARTY HEREBY UNCONDITIONALLY, EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION, AT LAW OR IN EQUITY, BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO OR ARISE OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**11.7. No Other Promises and Agreements; Representation by Counsel.** Licensee expressly acknowledges and agrees that (a) Harvard has not made and is not making any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as expressly provided in this Agreement; (b) Licensee is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except as expressly provided in this Agreement; and (c) except as expressly provided in this Agreement, no employee, agent, advisor or other representative of Harvard has made or is making any representations or warranties whatsoever regarding the subject matter of this Agreement. This Agreement has been diligently reviewed and negotiated by Harvard and Licensee, and in such negotiations each Party has been represented by competent counsel and the final agreement represents the joint efforts of the Parties and their counsel. Licensee hereby warrants and represents that Licensee understands and agrees to all terms and conditions set forth in this Agreement.

**11.8. 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. Furthermore, Licensee's obligations under this Agreement shall be assumed by any successor-in-interest of Licensee in any sale of all or substantially all of the assets of Licensee, or all of the assets of Licensee to which this Agreement relates, and shall be enforceable against such successor by Harvard.

**11.9. Headings.** Section and subsection headings are inserted for convenience of reference only

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and do not form a part of this Agreement.

**11.10. 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. This Agreement may be executed electronically/digitally in compliance with the Massachusetts Uniform Electronic Transactions Act (MUETA) Mass. Gen. Laws ch. 110G and/or The Electronic Signatures In Global And National Commerce Act (ESIGN) 15 USC ch. 96. Persons signing this Agreement agree that, if used, electronic/digital signatures are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.

**11.11. 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.

**11.12. 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.

**11.13. Assignment and Successors.** Licensee may not assign this Agreement or any part of it, either directly or by merger or operation of law, without the prior written consent of Harvard, which will not be unreasonably withheld or delayed. Any prohibited assignment or security interest will be null and void. Notwithstanding any terms and provisions of this Section 11.13 to the contrary, upon a Liquidation Event, Licensee may assign this Agreement to the purchasing entity, without the prior written consent of Harvard, provided that: (i) the assignee has sufficient resources to diligently honor all the terms and provisions of this Agreement; (ii) the assignee is considered to be a business that seeks to generally make technology available to the public in commerce on a commercially reasonable basis and is not primarily engaged in "patent troll" activities; and (iii) the Liquidation Event does not violate any laws and regulations of the United States, including but not limited to the requirement that the purchasing entity does not reside in or is controlled by any country with which the US government prohibits trading for any US citizens or commercial entity.

**11.14. Force Majeure.** Except for payment 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, pandemic, government action 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.

**11.15. 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

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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.

**11.16. 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.

## 12. Confidentiality.

**12.1. Confidential Information**. "**Confidential Information**" of a Party means any information of a Party that is marked as confidential (or, if disclosed orally or in intangible form, that is summarized in a writing that is marked as confidential and delivered to the recipient within thirty (30) days after disclosure) and disclosed by or on behalf of such party ("**Disclosing Party**") to the other party ("**Receiving Party**") pursuant to this Agreement. Without regard to the foregoing marking requirement, the Database shall be considered the Confidential Information of Harvard and treated as such by Licensee and its Affiliates in accordance with this Article 12. As to Harvard, only disclosures by Licensee made solely to Harvard's Office of Technology Development under this Agreement, and not to any other person or office affiliated with Harvard, shall be subject to this Article 12. The Parties agree that they may disclose Confidential Information to each other under this Agreement. Each Party will hold in confidence, from the date of disclosure of the Confidential Information under this Agreement, and for a period ending five (5) years after the end of the Term, the other Party's Confidential Information, and during such period will not disclose the Disclosing Party's Confidential Information to anyone except to its Affiliates, employees, agents or professional advisors who need to know it and who are bound by written obligations of confidentiality at least as restrictive as those set forth herein. Notwithstanding the foregoing, Licensee shall keep the Software (if any) and the Technology Transfer Materials (if any) confidential, and contractually require any third party with whom it shares the Software and Technology Transfer Materials to keep such Software and Technology Transfer Materials confidential, until published by Harvard or otherwise made publicly available (other than as a result of Licensee's breach of its confidentiality obligations hereunder). The Receiving Party will use the Disclosing Party's Confidential Information only to exercise its rights and fulfill its obligations under this Agreement. Neither Party will use, or seek to use, any Confidential Information disclosed by the other Party in support of any patent or copyright filings, without the prior written consent of the other Party. Confidential Information of the Disclosing Party shall not include information that the Receiving Party can demonstrate by competent evidence: (a) was known to the Receiving Party prior to receipt from the Disclosing Party, as documented in written records or publications that lawfully are in the possession of the Receiving Party or known to the Receiving Party prior to such receipt; (b) was lawfully available to the public prior to receipt from the Disclosing Party; (c) becomes lawfully available to the public or otherwise part of the public domain after disclosure or development thereof, as the case may be, and other than through any act or omission of the Receiving Party in breach of the Receiving Party's obligations under this Agreement; (d) corresponds in substance to any information received in good faith and free of any confidentiality obligations by the Receiving Party from any third party without an obligation of confidentiality; or (e) was independently discovered or developed by or on behalf of the Receiving Party without the use of or reference to the Confidential Information belonging to the other Party, to the extent evidenced by the Receiving Party's contemporaneously-maintained written records. For the avoidance of doubt, without regard to the marking requirement above, information provided by Harvard to Licensee in connection with patent prosecution under this Agreement by Harvard is deemed to be the Confidential Information of Harvard. Notwithstanding anything to the contrary in the

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foregoing, Receiving Party may disclose Confidential Information, without violating its obligations of confidentiality under this Agreement, to the extent the disclosure is required by a valid order of a court or other governmental body of competent jurisdiction or is otherwise required by law or regulation; provided that the Receiving Party shall give reasonable prior written notice to the Disclosing Party of such required disclosure and, at the Disclosing Party's request and expense, shall cooperate with the Disclosing Party's efforts to contest such requirement, to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued or the law or regulation required, and/or to obtain other confidential treatment of such Confidential Information. In any event, the Receiving Party shall only disclose that portion of the Confidential Information that is legally required to be disclosed. The exceptions in this Section 12.1 do not apply to voluntary registration of securities by Licensee with the U.S. Securities and Exchange Commission or any other administrative body or governmental entity, which remain subject to prior written approval of Harvard, not to be unreasonably withheld.

**12.2. Terms of This Agreement.** The terms of this Agreement shall be the Confidential Information of both Parties. Each Party agrees not to, and to cause its Affiliates not to, disclose to any Third Party the terms of this Agreement without the prior written consent of the other Party hereto, except that, notwithstanding anything to the contrary in this Agreement, each Party and its Affiliates may disclose the terms of this Agreement without such consent to advisors (including financial advisors, attorneys, and accountants), actual or potential acquisition partners or private investors, lenders, actual or potential licensees and Sublicensees, and others on a reasonable need-to-know basis, in each case under appropriate confidentiality provisions substantially equivalent to those in this Agreement. Notwithstanding any other provisions of this Agreement, (a) the Parties may provide information about this Agreement and amounts paid as part of routinely prepared summary documents that do not disclose any terms that were not disclosed in a press release approved by the other Party and (b) the Parties may make factual statements regarding the existence, nature, and type of this Agreement, *provided* that such statements do not disclose specific terms hereof.

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## Part III. Glossary

1. "**Additional Securities**" means shares of capital stock, convertible securities, warrants, options or other rights to subscribe for, purchase or acquire from Licensee any capital stock of Licensee**.**

2. **"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. "**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.

3. **"Aggregate Consideration"** means the amount equal to:

   (i) in the case of an Asset Sale, the sum of (a) all cash and the fair market value of all securities or other property transferred to Licensee at the time of the transaction, and (b) all cash and the fair market value of all securities and other property for Trailing Consideration payable to Licensee, when and if actually paid; or

   (ii) in the case of a Merger or Stock Sale, the sum of (a) all cash and the fair market value of all securities and other property transferred to the direct or indirect security holders of Licensee (and any option holders or warrant holders) in return for their equity interests (or options or warrants) in Licensee (held directly or indirectly) at the time of the transaction, and (b) all cash and the fair market value of all securities and other property transferred to the direct or indirect security holders of Licensee (and any option holders or warrant holders) for Trailing Consideration payable to the direct or indirect security holders of Licensee, when and if actually paid.

   The valuation of any securities or other property shall be determined by reference to the operative transaction agreement for a respective Merger, Stock Sale or Asset Sale; provided that, if no such valuation is readily determinable from such operative transaction agreement, then for securities for which there is an active public market:

   (a) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the 30-day period ending three days prior to the closing of such transaction; or

   (b) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing of such

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transaction.

The method of valuation of securities subject to investment letters or other similar restrictions on free marketability shall take into account an appropriate discount from the market value as determined pursuant to clause (a) or (b) immediately above so as to reflect the approximate fair market value thereof.

For securities for which there is no active public market, the value shall be the FMV.

4. **"Anti-Dilution Threshold"** means an aggregate total investment of Two Million Five Hundred Thousand U.S. Dollars ($2,500,000) in cash, in one or a series of related or unrelated transactions, in each case, in exchange for Licensee's capital stock.

5. **"Board of Directors"** means (i) if Licensee is organized as a corporation, its board of directors, and (ii) if Licensee is organized as a limited liability company, Licensee manager(s) or member(s) or both that have the power to direct the principal management and activities of Licensee, whether through ownership of voting securities, by agreement, or otherwise.

6. **"Calendar Quarter"** means each of the periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31.

7. **"Copyrights"** means, to the extent owned and controlled by Harvard, all United States and foreign copyrights in the Software, and all renewals, extensions, continuations, restorations, reversions and renewals of the same, including but not limited to software, animation, characters, algorithms, screen design, text, storyboard, scenario, video and mask works.

8. **"Derivative Works"** has the meaning given to such term under United States Copyright Law and any rules, regulations or interpretations promulgated thereunder, including, without limitation, any translations of, modifications of or works based on a copyrightable work provided hereunder.

9. **"Development Milestone"** means any development and commercialization milestone set forth in Item F of Part I of this Agreement.

10. **"Development Plan"** means Licensee's written plan for the development and commercialization of Licensed Products delivered to Harvard by Licensee on or before the Effective Date, as such plan may be adjusted from time to time, upon written notice to Harvard.

11. **"Distributor"** means a Third Party whom Licensee, its Affiliate or a Sublicensee engages to offer for sale, sell and/or import Licensed Products purchased from Licensee, such Affiliate or such Sublicensee, as applicable, for resale by such Third Party under the label of Licensee, such Affiliate or such Sublicensee, as applicable; provided that the term "Distributor" shall not include any person or entity who pays Licensee, its Affiliate or a Sublicensee any consideration (in any form) with respect to such engagement other than the consideration paid for the purchase of such Licensed Products.

12. **"Effective Date"** means the date set forth in Item G of Part I of this Agreement.



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13. **"End User"** means a third party that receives a limited sublicense of the License from Licensee or a Sublicensee of the right to reproduce and display (for internal use only), but not to distribute, prepare Derivative Works or otherwise make commercially available (including, without limitation, via software-as-a-service or a similar platform) one or more Licensed Products pursuant to a sale of such Licensed Product to such third party.

14. **"End-User License"** means an agreement with an End User that provides a limited sublicense of the License.

15. **"Equity Documents"** mean an Express Path Stock Issuance Agreement between Licensee and Harvard, in the form available here, and, if applicable, a Stockholders Agreement among Licensee and some or all of its stockholders, in a form acceptable to Harvard.

16. **"Field"** has the meaning set forth in Item E of Part I of this Agreement.

17. **"Financing Milestone"** means the financing milestone, as set forth in Item F of Part I of this Agreement.

18. **"First Commercial Sale"** means, on a country-by-country and Licensed Product-by-Licensed Product basis, the date of the first sale by or on behalf of Licensee, its Controlled Affiliate or a Sublicensee of a Licensed Product to a Third Party for end use or consumption of such Licensed Product following receipt of Regulatory Approval in the country in which such Licensed Product is sold, excluding, however, any sale or other distribution for use in a clinical study.

19. "**FMV**" means (a) the fair market value (as determined by the Licensee using an industry standard valuation methodology) assuming an arm's length transaction made in the ordinary course of business, as reasonably approved by Harvard in writing after presentation of such valuation and methodology to Harvard by Licensee, or (b), if Harvard rejects such valuation, the fair market value as determined by a third party chosen by mutual agreement of Licensee and Harvard, which such valuation shall then be binding on the parties.

20. "**Fully Diluted Basis**" means, 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.

21. **"Improvement"** means an invention or discovery in the Field: (a) that is conceived and reduced to practice solely by Harvard researchers in the Harvard laboratory of the Lead Inventor; (b) that is disclosed to Harvard's Office of Technology Development ("**OTD**") within six (6) months after the Effective Date; (c) the practice of which would infringe a Valid Claim of the Patent Rights as of the date of disclosure of such invention or discovery to OTD; and (d) of which the Lead Inventor is an inventor, as determined under U.S. patent law.

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22. "**Improvement Patent Rights**" means, in each case to the extent owned and controlled by Harvard: (a) any patent application to the extent that it claims an Improvement (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 or based on any patents and patent applications identified in any of (a) through (e).

23. **"IPO"** means the first sale of Licensee's common stock in a firm commitment underwritten public offering registered under the Securities Act of 1933, as amended.

24. **"Lead Inventor"** means the Harvard faculty member identified in Item P of Part I of this Agreement, to the extent that such individual maintains their faculty appointment and a working lab at Harvard.

25. **"Licensed Method"** means any method that (i) uses Technology Transfer Materials, or the Software or Derivative Works thereof, or (ii) is claimed in the Patent Rights, the practice of which would constitute, but for the licenses granted herein, an infringement, an inducement to infringe or contributory infringement of the Patent Rights.

26. **"Licensed Product"** means any product, process, method or service, that: (a) is claimed in the Patent Rights; (b) is produced or enabled by a Licensed Method; (c) uses, is enabled by or is otherwise derived from use of the Software or Technology Transfer Materials; or (d) the manufacture, use, sale, offer for sale, importation, reproduction, distribution, display or preparation of Derivative Works of which would constitute, but for the licenses granted herein, an infringement, an inducement to infringe or contributory infringement of the Patent Rights or the Copyrights.

27. **"Licensed Technology"** means the Patent Rights (including Improvement Patent Rights, if any), the Software and the Copyrights therein, and the Technology Transfer Materials.

28. **"Liquidation Event"** means (a) a merger, share exchange or other reorganization with a Third Party in which Licensee is a constituent party, including any reverse merger transaction with a publicly-traded Third Party ("**Merger**"), (b) the acquisition, in a single transaction or series of related transactions, by a Third Part(ies) of a majority of the voting power of Licensee from persons holding (either directly or indirectly) securities of Licensee ("**Stock Sale**"), or (c) the sale, lease, transfer, or other disposition, in a single transaction or series of related transactions to a Third Party of all or substantially all of the assets of Licensee (or that portion of its assets related to the subject matter of this Agreement) ("**Asset Sale**"), as a result of which, for each of (a), (b) and (c), the direct or indirect security holders of Licensee that control a majority of the voting power of Licensee prior to such transaction do not control, directly or indirectly, a majority of the voting power of the acquiring, surviving or successor entity, as the case

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may be.

29. **"Liquidation Fee"** means an amount equal to the product of (x) 1% multiplied by (y) (a) the Aggregate Consideration for such Liquidation Event, or (b) the Pre-Money Valuation for such IPO, as applicable.

30. **"Net Sales"** means the gross amount billed or invoiced by or on behalf of Licensee, its Controlled Affiliates and Sublicensees (in each case, the "**Invoicing Entity**") on sales, leases or other transfers of Licensed Products to Distributors and third party end users, 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:

    (a) 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 FMV of such consideration or transaction; and

    (b) 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.

31. **"Patent Rights"** means, in each case to the extent owned and controlled by Harvard: (a) the patents and patent applications listed in Item L of Part I of this Agreement and any Improvement Patent Rights added to this Agreement following the Effective Date (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 or based on any patents and patent applications identified in any of (a) through (e).

32. **"Pre-Money Valuation"** means the amount equal to the product of (a) the price per share of common stock sold in the IPO and (b) the total number of outstanding shares of common stock of Licensee immediately prior to the closing of the IPO, determined on a Fully Diluted Basis, giving effect to any stock split, stock dividend, stock combination, recapitalization or similar action impacting Licensee's

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capitalization that occurs, or is deemed to occur, upon consummation of the IPO.

33. **"Regulatory Approval"** means receipt of all approvals from any applicable government regulatory authority involved in granting approvals for the manufacturing and marketing of a Licensed Product, (including, in the United States, the United States Food and Drug Administration) necessary to market and sell a Licensed Product in a country.

34. **"PR Share"** means:

    a) five percent (5%) with respect to the first Qualifying Offering;

    b) if the first Qualifying Offering is not a Threshold Qualifying Offering, five percent (5%) with respect to any subsequent Qualifying Offering up to and including the first Threshold Qualifying Offering, if any; and

    c) after the first Threshold Qualifying Offering, if any, the percentage necessary for Harvard and any Permitted PR Assignees to maintain their collective ownership percentages in Licensee on a Fully-Diluted Basis (for clarity, with respect to Harvard's ownership percentage in Licensee on a Fully-Diluted Basis, calculated based on the number of common shares issued to Harvard pursuant to Section 4.2 plus any securities purchased by Harvard in accordance with Section 4.7).

35. **"Qualifying Offering"** means a private offering of Licensee's equity securities (or securities convertible into or exercisable for Licensee's equity securities) for cash (or in satisfaction of debt issued for cash) having its final closing on or after the Effective Date.

36. **"Royalty Rate"** means the percentage selected in Item I of Part I of this Agreement; provided, however, that: (a) with respect to Net Sales of any Licensed Product that uses Technology Transfer Materials, or Software or Derivative Works thereof, the Royalty Rate may be reduced in half, on a country by country basis, if in the country of manufacture or sale of such Licensed Product no Valid Claim would be infringed by the making, using or selling of such Licensed Product; and (b) if Anti-Stacking has been selected in Item I of Part I of this Agreement, then the Royalty Rate may be reduced, on a Licensed Product-by-Licensed Product basis, to the extent permitted under Section 4.5.3 hereof. In no event, however, will the Royalty Rate applicable to any Licensed Product in any country be reduced to less than 50% of the Royalty Rate selected by Licensee in Item I of Part I of this Agreement. A reduction of the Royalty Rate for one Licensed Product will not affect the Royalty Rate for another Licensed Product.

37. **"Royalty Term"** means, for each Licensed Product, the period commencing on the Effective Date and ending *on the later of:* (a) the expiration or abandonment of the last Valid Claim within the Patent Rights or (b) the twelfth (12th) anniversary of the date of the First Commercial Sale of the first Licensed Product, if any rights in any Software (and Copyright therein) or Technology Transfer Materials are granted in this Agreement.

38. **"Software"** means software, documentation, databases, content, designs and other copyrightable works that: (i) are owned by Harvard on the Effective Date; and (ii) are listed in Item M of Part I of this Agreement.

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39. **"Sublicense"** means an agreement or arrangement into which Licensee enters with a third party (other than an End User) for the purpose of: (a) granting to the third party certain rights under this Agreement; (b) granting to the third party an option to obtain certain rights under this Agreement; or (c) forbearing the exercise by Licensee of any rights under this Agreement for the benefit of the third party (e.g., through a standstill agreement or covenant not to sue). Agreements expressly considered Sublicenses include (i) licenses, option agreements, collaboration or co-development agreements, strategic partnership agreements, "lock up" agreements, right of first refusal agreements, non-assertion agreements, covenants not to sue, distribution agreements that grant or otherwise transfer any rights licensed to Licensee hereunder, or similar agreements, and (ii) agreements that grant or otherwise transfer rights licensed to Licensee under this Agreement along with rights owned by Licensee, or granted to Licensee or a Sublicensee by a Third Party. For the avoidance of doubt, if a Sublicense is exercised pursuant to an option or similar agreement that is also a Sublicense, then the date of execution of the Sublicense shall be the execution date of the option or similar agreement, not the date of the exercise of the option or similar agreement.

40. **"Sublicensee"** means any person or entity granted a Sublicense.

41. **"Technology Transfer Materials"** means the physical materials, data and other information listed under Item N on Part I of this Agreement, as in existence as of the Effective Date, to the extent owned by Harvard. For clarity, Technology Transfer Materials shall not include any inventions claimed in any Valid Claims within the Patent Rights or any other inventions claimed in any other existing or future patents or patent applications.

42. **"Term"** means the period commencing on the Effective Date and ending *on the later of:* (a) the expiration or abandonment of the last Valid Claim within the Patent Rights or (b) the twelfth (12th) anniversary of the date of the First Commercial Sale of the first Licensed Product, if any rights in any Software (and Copyright therein) or Technology Transfer Materials are granted in this Agreement.

43. **"Third Party"** means any entity or person other than (i) Harvard, (ii) Licensee, or (iii) an Affiliate of Licensee.

44. **"Third Party Software"** means any software owned by a third party, whether proprietary or available on an open source basis, including without limitation the software listed in Item O of Part I of this Agreement.

45. **"Threshold Qualifying Offering"** means any Qualifying Offering that results in both (i) at least two million five hundred thousand dollars ($2,500,000) in aggregate investment, in cash, received by Licensee, and (ii) Third Party investors holding at least twenty-five percent (25%) of the capital stock of Licensee on a Fully-Diluted Basis after the closing of such Qualifying Offering.

46. **"Trailing Consideration"** means any payments due for any deferred or contingent aggregate consideration payable to Licensee or its direct or indirect security holders with respect to an Asset Sale, Merger or Stock Sale, including, without limitation, any post-closing milestone payment, escrow or holdback of consideration. For clarity purposes, any portion of the Aggregate Consideration that is not paid at the closing of the applicable Liquidation Event shall constitute Trailing Consideration and be payable if and when actually received by the Licensee or its security holders as set forth above.

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47. **"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.

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