

For illustrative purposes only. In the case of an exclusive license granted in all or many fields, the licensee may initially be focused on a limited number of products or uses for the licensed technology. To support Harvard's mission to promote the public good by commercializing Harvard-owned technology as broadly as possible, Harvard may include provisions similar to those given below to encourage a licensee to develop products proposed by third parties, or to sublicense the licensee's rights in the Harvard patent rights to such a third party, to allow the development and commercialization of additional products.

### **Third Party Proposed Products Language**

#### **Definition:**

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

#### **Provision:**

#### **“Third Party Proposed Products.**

If a Third Party makes a bona fide proposal to Harvard for developing a Third Party Proposed Product and Harvard is interested in having such Third Party Proposed Product developed and commercialized, Harvard may notify Licensee of the Third Party's proposal, and shall include in such notification non-confidential information regarding the Third Party proposal. Within sixty (60) days after the receipt of such notification from Harvard, Licensee shall notify Harvard whether it is interested in developing such Third Party Proposed Product.

If Licensee notifies Harvard within such sixty (60) day period that it is interested in developing such Third Party Proposed Product, the parties will negotiate in good faith and agree, during the sixty (60) days following such notification, upon a development plan with respect to such Third Party Proposed Product, which development plan will be similar to the Development Plan with respect to other Licensed Products developed by Licensee, subject to necessary adjustments, and will include reasonable milestones. If the parties agree on such development plan and milestones within such sixty (60) day period, Licensee shall maintain its exclusive license(s) hereunder with respect to such Third Party Proposed Product, but shall be obligated (a) to use commercially reasonable efforts to develop and commercialize the Third Party Proposed Product in accordance with such new development plan and (b) to meet the milestones with respect to the Third Party Proposed Product.

If (a) the parties do not agree on a development plan and milestones that are acceptable to Harvard, in its reasonable judgment or (b) the parties agree on such a development plan and milestones, but Licensee thereafter fails to comply in any material respect with such mutually agreed development and commercialization obligations, and fails to cure such noncompliance after notice from Harvard within the time periods specified in Section \_\_, Harvard will be entitled to terminate the licenses hereunder with respect to such Third Party Proposed Product and will be free to grant to Third Parties licenses under the relevant Patent Rights to make, have made, offer for sale, sell, have sold and import such Third Party Proposed Product.

If Licensee states in its notification to Harvard that it is not interested in developing such Third Party Proposed Product but that it wishes to grant a Sublicense to such Third Party with respect to such Third Party Proposed Product, Licensee will have ninety (90) days (or such longer time as will be agreed to by the parties in writing) to negotiate and enter into such a Sublicense agreement with such Third Party; provided, however, that if Licensee demonstrates that it and such Third Party have entered into a term sheet with respect to such a Sublicense agreement during such ninety (90) days, Licensee will be entitled to extend the period for the execution of a binding Sublicense agreement by an additional sixty (60) days.

If Licensee fails to enter into such a Sublicense agreement within such ninety (90) day period or one hundred fifty (150) day period, as applicable, Licensee shall promptly (but in any event within fifteen (15) days after the end of such period) provide Harvard in writing an explanation for such failure along with the proposed terms offered by Licensee to Sublicensee. If Harvard determines in its good faith judgment that the terms offered by Licensee to such Third Party were not commercially reasonable, Harvard shall notify Licensee of such determination and provide Licensee with an additional thirty (30) days to enter into a Sublicense with such Third Party. If Licensee fails to enter into an agreement with such Third Party within such additional thirty (30) day period, then Harvard will be entitled to terminate the licenses hereunder with respect to such Third Party Proposed Product and will be free to grant to Third Parties licenses under the relevant Patent Rights to make, have made, offer for sale, sell, have sold and import such Third Party Proposed Product.