

# EXPRESS START-UP LICENSE AGREEMENT

Between: THE UNIVERSITY OF BRITISH COLUMBIA

and

{<@>}

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## EXPRESS START-UP LICENSE AGREEMENT

### BETWEEN:

**THE UNIVERSITY OF BRITISH COLUMBIA**, a corporation continued under the *University Act* of British Columbia with offices at #103-6190 Agronomy Road, Vancouver, British Columbia, V6T 1Z3

("UBC")

### AND:

<@>, a corporation incorporated under the laws of <@>, with a registered office at <@>

(the "**Company**")

(each a "**Party**" and together the "**Parties**")

### WHEREAS:

- A. UBC has been engaged in research during the course of which it has invented, developed and/or acquired certain technology relating to <@>, which research was undertaken by <@> (the "**Investigator(s)**") in the UBC Department of <@>;
- B. It is UBC's objective to utilize its technology for the public benefit, and in a manner consistent with its status as an educational institution and registered charity that is non-profit and tax-exempt;
- C. UBC's Innovation UBC office ("**Innovation UBC**") is responsible for the licensing of technology invented, developed, and/or acquired by the Investigator(s) during the course of their research at UBC.
- D. The Company is a spin-off company of UBC, and at least one UBC faculty member, staff member or student is a founder, and
- E. The Company and UBC have agreed to enter into this license on the terms and conditions set out in this Agreement.

### THE PARTIES AGREE AS FOLLOWS:

#### 1.0 DEFINITIONS

##### 1.1 In this Agreement:

- (a) "**Additional Shares**" is defined in Article 6.1;
- (b) "**Affiliated Company(ies)**" means two or more corporations that are related in the following ways; 1) one of them is a subsidiary of the other, or 2) both are subsidiaries of the same corporation, or 3) 50% or more of the voting shares of each of them is owned or controlled by the same person, corporation or other legal entity;
- (c) "**Affordable Access Plan**" is defined in Article 4.4;

- (d) **"Agreement"** means this express start-up license agreement;
- (e) **"Amendment Agreement"** is defined in Article 4.3(b);
- (f) **"Annual License Fee"** is defined in Article 7.1;
- (g) **"Annual Report"** is defined in Article 13.2(b);
- (h) **"Assignee"** is defined in Article 6.6;
- (i) **"Company Improvements"** means improvements, variations, updates, modifications, and enhancements to the Licensed Technology made and/or acquired at any time after the Start Date:
  - (i) solely by the Company; or
  - (ii) solely by any sublicensees (including any Affiliate of the Company); or
  - (iii) jointly by the Company and any sublicensee (including any Affiliate of the Company);
- (j) **"Confidential Information"** means all information, regardless of its form:
  - (i) disclosed by one Party (the "Discloser") to the other Party (the "Recipient") which (a) is identified as confidential at the time of disclosure, or (b) by its nature or under the circumstances of disclosure a reasonable person would conclude is confidential or proprietary

except that "Confidential Information" does not include information:

  - (ii) possessed by the Recipient before receipt from the Discloser, other than through prior disclosure by the Discloser, as evidenced by the Recipient's business records;
  - (iii) published or available to the general public otherwise than through a breach of this Agreement;
  - (iv) obtained by the Recipient from a third party with a valid right to disclose it, provided that the third party is not under a confidentiality obligation to the Discloser; or
  - (v) independently developed by employees, agents or consultants of the Recipient who had no knowledge of, or access to, the Discloser's information as evidenced by the Recipient's business records;
- (k) **"Effective Termination Date"** means the date on which this Agreement is terminated under Article 19;
- (l) **"FDA"** means the United States Food and Drug Administration;
- (m) **"First Commercial Use"** is defined in Article 15.2;
- (n) **"Fully-Diluted Basis"** is defined in Article 6.1;

- (o) **{“Human Clinical Trials”** is defined in Article 15.2;}
- (p) **“IFRS”** is defined in Article 14.4
- (q) **“Improvements”** means, collectively, the UBC Improvements, the Company Improvements, and the Joint Improvements. Improvements will be added from time to time by way of an amendment to this Agreement;
- (r) **“Initial Discussion”** is defined in Article 4.4;
- (s) **“Indemnitees”** is defined in Article 10.1“
- (t) **Initial Financing”** means the earlier of (A) the completion by the Company of a financing through the sale of its Securities for an aggregate sale price of not less than CAD\$2 million in gross proceeds for the Company, or (B) the collection or receipt of Revenue by Company equal to a cumulative amount of CAD\$2 million;
- (u) **“Initial Patent Expenses”** is defined in Article 8.4;
- (v) **“Innovation UBC”** is defined in the recitals;
- (w) **“Investigator(s)”** is defined in the recitals;
- (x) **“Joint Improvements”** means improvements, variations, updates, modifications, and enhancements to the Technology that are claimed in a patent application (whether or not any patent issues from such application), made and/or acquired at any time after the Start Date jointly by:
  - (i) One or more of the Investigator(s) while employed at UBC; and
  - (ii) the Company or any Sublicensee(s) (including any Affiliates of the Company);

which cannot be legally used or practiced without infringing the Patents or Technology licensed under this Agreement;
- (y) **“LMICs”** is defined in Article 4.4;
- (z) **“Non-Waiving Investigators”** means <@> and <@>;
- (aa) **“Patent Management”** is defined in Article 8.3;
- (bb) **“Patents”** means collectively the rights in and to any and all inventions which are disclosed or claimed in the Canadian, U.S., and foreign patents and patent applications identified in Schedule “A” and all:
  - (i) counterparts, continuations, continuations-in-part, divisionals, continuing prosecution applications, and requests for continued examinations, extensions, term restorations, renewals, reissues, re-examinations, or substitutions thereof;
  - (ii) corresponding international patent applications;

- (iii) corresponding foreign patent applications, including supplementary protection certificates and other administrative protections; and
- (iv) international and foreign counterpart patents;

resulting therefrom, all of which will be deemed added from time to time to Schedule "A";

- (cc) **"Payment Report"** is defined in Article 14.2(a);
- (dd) **"Product(s)"** means goods or services manufactured or provided in connection with the use of all or some of the Technology and/or any Improvements;
- (ee) **"Progress Discussions"** is defined in Article 4.4;
- (ff) **"Publicly Listed"** means an event upon which the Company's common shares or other securities of the Company or securities of another issuer for which common shares or other securities of the Company are exchanged, become publicly listed or quoted on a stock exchange or stock market in in any jurisdiction;
- (gg) **"Revenue"** means all worldwide revenues, receipts, money, and the fair market value of any shares or other securities, or other consideration directly or indirectly collected or received whether by way of cash, credit or other value received by the Company but not including monies collected from any sublicensee or assignee of the Company) from the development, marketing, manufacturing, sale, use or distribution of the Technology and any Improvements, and/or any Products, less:
  - (i) direct sales taxes and customs duties applied on the sales of Products;
  - (ii) credit, allowances or refunds given on account of returned Products (including by recalls);
  - (iii) transportation charges invoiced separately and actually charged to third parties for delivery or return of Products;
  - (iv) bona fide rebates pursuant to patient discount programs or government mandated rebate programs applied to the sale of Products;
  - (v) quantity, cash and other trade discounts actually allowed and taken with respect to the sale of Products;
  - (vi) compulsory payments and cash rebate by the Company related to sales of the Products payable to a governmental authority (or agent thereof) pursuant to applicable law by reason of any national or local health insurance program or similar program, including government-levied fees resulting from healthcare reform polities and annual fees paid pursuant to the Patient Protection and Affordable Care Act;
  - (vii) amount payable to patient through co-pay assistance card or similar form or rebate directly related to the prescription of the Product;

All of the aforementioned deductions will only be allowable to the extent they are commercially reasonable and will be fairly and equitably allocated to the Products

and other products of the Company such that the Products do not bear a disproportionate portion of such deductions.

Any non-cash consideration received by the Company will be valued at its fair market value by using generally accepted Canadian accounting principles, including the International Financial Reporting Standards (IFRS). Shares or other securities received shall be payable to UBC (i) immediately in cash after having determined the fair market value as set out above, (ii) in cash following a liquidity event, or (iii) in such equity when possible, the choice between (i), (ii) and (iii) being at UBC's discretion.

For the avoidance of doubt, Revenue will not include Sublicensing Revenue or the fair market value of any Securities or consideration received from any Sale, transfer or merger of the Company's entire business (or that part of Company's business that exercises all rights granted under this Agreement).

- (hh) **"Royalty Due Dates"** means the last day of March, June, September and December of each year during the Term;
- (ii) **"Securities"** means all shares, rights to acquire shares and other securities of the Company, including without limitation all options, convertible debt, warrants, rights of conversion, and other securities or obligations of the Company to issue shares or other securities of the Company;
- (jj) **"Start Date"** means <@>, 20<@>;
- (kk) **"Sublicensing Revenue"** means all revenues, receipts, monies, and the fair market value of any shares or other securities and all other consideration directly or indirectly collected or received whether by way of cash, credit or other value received by the Company under each agreement relating to a sublicense, assignment, grant or transfer of the Company's rights in the Technology and any Improvements, and/or any Products whether by way of sublicense, assignment, development agreement, or otherwise. Without limiting the generality of the forgoing Sublicensing Revenue will include all:
  - (i) milestone payments, royalties, license fees, option fees, and the fair market value of all consideration received in connection with any sublicense, assignment, grant or transfer of the Company's rights in the Technology or any Improvements, and/or any Products; and
  - (ii) research or development fees in excess of the direct reimbursement for the actual costs of such research and development incurred by the Company under a written research plan and agreement,

received by the Company from any sublicensee or assignee relating to the Company's rights in the Technology, Improvements or any Products.

Any non-cash consideration received by the Company related to a sublicense will be valued at its fair market value by using generally accepted Canadian accounting principles, including the International Financial Reporting Standards (IFRS). Shares or other securities received shall be payable to UBC (i) immediately in cash after having determined the fair market value as set out above, (ii) in cash following

a liquidity event, or (iii) in such equity when possible, the choice between (i), (ii) and (iii) being at UBC's discretion.;

- (ll) **"Technology"** means the Patents and all knowledge, know-how and/or technique or techniques invented, developed and/or acquired, before the Start Date by the Investigator(s) while employed at UBC or by the Company relating to, and including, the technology and materials described in Schedule **"A"**, as amended from time to time, including, without limitation all directly related research, data, specifications, instructions, manuals, papers or other related materials of any nature at all, whether written or otherwise, and UBC's Confidential Information;
- (mm) **"Term"** is defined in Article 19.1;
- (nn) **"UBC Improvements"** means Unencumbered improvements, variations, updates, modifications, and enhancements made and/or acquired within 5-years of the Start Date by one or more of the Investigator(s), or individuals under their direct supervisory control, while employed at UBC, relating to the Technology that are solely owned by UBC and cannot be legally used or practiced without infringing the Patents or Technology licensed under this Agreement.
- (oo) **"UBC's Percentage Interest"** is defined in Article 6.1;
- (pp) **"UBC Shares"** is defined in Article 6.1;
- (qq) **"Unencumbered"** means that the product of UBC research is free from any rights, claims, licenses, or obligations granted to any third party through agreements. This includes, but is not limited to, grants, funding agreements, sponsored or collaborative research agreements, or any other contracts that provide rights or impose obligations related to UBC research;
- (rr) **"Valid Claim"** means, as applicable, a claim in any (i) unexpired and issued patent that has not been disclaimed, revoked or held invalid by a final non-appealable decision of a court of competent jurisdiction or government agency or (ii) any pending patent that has not been held unpatentable by a final and unappealable decision of the relevant patent office; and
- (ss) **"Waiving Investigators"** means <@> and <@>.

## **2.0 PROPERTY RIGHTS IN & TO THE TECHNOLOGY {<@>AND IMPROVEMENTS}**

2.1 The Parties acknowledge and agree that:

- (a) UBC owns all right, title and interest in and to the Technology and all UBC Improvements.
- (b) Company owns all right, title and interest in and to the Company Improvements.
- (c) UBC and the Company jointly own all right, title and interest in and to the Joint Improvements.

2.2 The Company will, at the request of UBC, sign all documents as may be required to ensure that ownership of the Technology and all UBC Improvements remains with UBC.

2.3 UBC will, at the request of the Company, sign all documents as may be required to ensure that ownership of the Company Improvements remains with the Company.

2.4 On the last working day of June and December of each year during the Term, both Parties will give the other Party notice of the details of all Improvements developed and/or acquired during the previous 6-month period.

### **3.0 GRANT OF LICENSE**

3.1 Subject to Article 3.4, UBC grants to the Company,) a worldwide exclusive license to use and sublicense the Technology and UBC's rights in any Improvements and to manufacture, have made, distribute, and sell the Products on the terms and conditions set out in this Agreement.

3.2 The license granted under Article 3.1 of this Agreement is also granted to Affiliated Companies, provided that the Company and its Affiliated Companies ensure that:

- (a) without the need for any further action or notice by UBC, such license will automatically terminate immediately upon any particular Affiliated Company ceasing to be an Affiliated Company of the Company;
- (b) each Affiliated Company will perform the terms of this Agreement applicable to the Company (whether or not it is stated to be expressly applicable to an Affiliated Company of the Company) as if such Affiliated Company were a signatory to this Agreement, and shall unconditionally and irrevocably covenant and agree with the UBC as primary obligor, to adopt as its own obligations every obligation of the Company contained or set forth in this Agreement to the extent pertinent to such Affiliated Company's exercise of the license granted under this Agreement;
- (c) the Company unconditionally guarantees the performance of each of its Affiliated Companies with the terms and conditions of this Agreement, and the obligations and liabilities of each of its Affiliated Companies, and the Company under this Agreement shall be joint and several, and UBC shall not be obliged to seek recourse against any Affiliated Company of the Company before enforcing its rights against the Company;
- (d) each Affiliated Company shall for the purpose of reporting Revenues to UBC, through consolidated accounting with the Company, account for, and report, their sales of Products and receipts of Revenues on the same basis as if such sales or Revenues were the sales or Revenues of the Company, which shall then be included in the calculation of royalties due to UBC under this Agreement;
- (e) no Affiliated Company shall sublicense the Technology, any UBC Improvements or the UBC's interest in any Joint Improvements;
- (f) no Affiliated Company will be entitled to seek any recourse against UBC, or to bring any claim against UBC, under or in connection with this Agreement independent of, or in addition to, any claim brought by the Company; and,



- (g) the Company will notify UBC in its Annual Reports and Royalty Reports of each of its Affiliated Companies exercising its rights under this Section 3.2, and of any such Affiliated Companies that ceases to be an Affiliated Company.

3.3 The Company will not cross-license the Technology, UBC Improvements or any Joint Improvements without the prior written consent of UBC.

3.4 The Company acknowledges and agrees that UBC retains the right to use the Technology, any UBC Improvements, and any Joint Improvements without charge in any manner at all for research, scholarly publication, educational and all other non-commercial uses.

#### **4.0 SUBLICENSING**

4.1 The Company can grant sublicenses of the Technology or any Improvements to third parties, subject to:

- (a) the sublicensee having a market capitalization, or in the case of a private company shareholders equity, of \$100 million (Canadian funds) or more;
- (b) the Company providing UBC with a non-redacted signed copy of each sublicense granted within 30 days of it being signed by the Company and sublicensee;
- (c) the sublicensee expressly agreeing to indemnify UBC in accordance with the indemnification provision set forth in Article 10 of this Agreement; and
- (d) the sublicense agreement not materially conflicting with any terms in this Agreement

Notwithstanding the foregoing, the Company shall have the right, without complying with 4.1(a) – (d) above, to contract with third parties for the research, development, manufacture or other routine functions related to the development or commercialization of Products, provided that such functions shall not include any rights to sell or distribute Products (other than to supply or distribute manufactured Products to the Company).

4.2 Any sublicense granted by the Company will be granted only to the sublicensee and cannot be assigned or further sub-sublicensed without the prior written consent of UBC.

4.3 If this Agreement is terminated before the end of the Term, any sublicense entered into by the Company prior to such termination will remain in full force and effect so long as the sublicensee is not then in breach of its sublicense agreement, and provided that each such sublicensee:

- (a) will agree in writing to be bound to UBC as licensor under the terms and conditions of this Agreement to the extent that such terms and conditions apply to the grant of such pre-termination sublicense;
- (b) will negotiate in good faith with UBC an appropriate agreement, or amendment to this Agreement (an “**Amendment Agreement**”), to substitute itself for the Company under terms substantially similar, in the aggregate, the terms of this Agreement, such Amendment Agreement to include the exclusivity or non-exclusivity (as the case may be) and field of use as were granted from the Company to the sublicensee prior to the termination;

- (c) will agree in writing that UBC is not bound by any provision of the Company's sublicense agreement to perform or assume any actions, covenants or obligations that are uniquely personal to the Company, or which are not an action, covenant or obligation of UBC under this Agreement: for example research collaboration obligations, warranties or indemnities of the Company or any other actions, covenants or obligations of the Company related to the use or development of the sublicensed technology; and
- (d) will pay all of UBC's reasonable legal costs and other reasonable expenses that arise in connection with extending such post-termination rights to the sublicensee, including without limitation all costs that arise in connection with the negotiation of any agreements with the sublicensee including any Amendment Agreement

4.4 Within 12 months of receiving FDA (or its foreign equivalents) approval of a Product, Company will provide UBC with either (a) an Affordable Access Plan (defined below), or (b) a written explanation as to why such an Affordable Access Plan is not needed or infeasible. In the case of (b), Company agrees to discuss such reasoning with UBC in good faith within one (1) month thereafter ("**Initial Discussion**") and, if following such Initial Discussion UBC concludes an Affordable Access Plan is reasonable and desired, to provide an Affordable Access Plan to UBC within three (3) months of such Initial Discussion. The "**Affordable Access Plan**" means Company's and/or its sublicensees plans (including strategies and timelines) reasonably intended to support affordable access in a) Low and Middle Income Countries as defined by the World Bank Group ("**LMICs**"), and b) vulnerable, underserved, and special needs populations in Canada, such as through licensing or partnerships including with non-profit organizations. To the extent such Affordable Access Plan includes the Company's Confidential Information, Company will also provide a non-confidential version or statement of such Plan that the UBC can make available to third parties. Within thirty (30) days of UBC's request (but no more often than once annually), Company agrees to confer with the UBC to review Company's progress, and to consider in good faith any modifications suggested by the UBC, with respect to its Affordable Access Plan ("**Progress Discussions**"). For clarity, while UBC may invite a designated entity to join either the Initial and/or Progress Discussions under this Paragraph 4.4, such discussions will at all times be made subject to the confidentiality obligations set forth in Article 11.1

## 5.0 ROYALTIES

5.1 In consideration of the license granted under this Agreement, the Company will pay to UBC a royalty on Revenue equal to the sum of:

- (a) 2.0% Revenue in all countries of the world where the manufacture, use, sale, offer for sale, import or other exploitation of a Product is covered by a Valid Claim within the Patents; and
- (b) 1.0% of the Revenue in all countries of the world where the manufacture, use, sale, offer for sale, import or other exploitation of a Product is not covered by a Valid Claim within the Patents.

For greater clarity, if a Product is manufactured in a country where the Product or its manufacture is covered by a Valid Claim within the Patents, and then is sold or otherwise practiced in a country where the Product is not covered by a Valid Claim within the Patents, then the higher royalty payable under 5.1(a) is payable.

5.2 If the Company needs to enter into additional royalty-bearing licenses with one or more arms-length third parties (other than a sublicensee, as described in Article 4), where such additional licenses are required for the manufacture, sale or supply of Products by the Company, then the royalty on Revenue payable by the Company under Article 5.1, may be reduced by up to 50% of the amount of the total third-party royalty rate in excess of the royalty rate payable under Article 5.1(a) or 5.1(b), as applicable, provided that such third-party licenses include substantially the same royalty-stacking provisions as contained in this Article 5.2, and only if the total royalty obligations to third parties (excluding the royalty due under Article 5.1 to UBC) exceed 3% of Revenue (not including the royalty due under Article 5.1). The parties acknowledge and agree that the final royalty rate payable by the Company to UBC on Revenue will never be reduced to less than 50% of the royalty rates set out in Article 5.1(a) or 5.1(b) as applicable.

5.3 In addition to the royalty on Revenue set out in Article 5.1, the Company will pay to UBC a royalty on Sublicensing Revenue received by the Company from any sublicensees, determined according to the following table:

<b>Development Trigger*</b>	<b>Royalty Rate on Sublicensing Revenue*</b>
TBD	20%
TBD	15%
TBD	10%
*The royalty rate on Sublicensing Revenue set out above will be fixed and determined based on the stage of development of the sublicensed Product that is the most advanced through as of the date of the grant of sublicense under the relevant sublicense agreement, and thereafter all Sublicensing Revenue received under or in connection with that sublicense agreement will be subject to that fixed royalty rate regardless of the subsequent further clinical development of such Product.	

5.4 The royalty is due and payable within 30 days of each respective Royalty Due Date and is to be calculated with respect to the Revenue and the Sublicensing Revenue in the 3-month period immediately before the applicable Royalty Due Date.

5.5 All royalties paid by the Company to UBC under this Agreement will be paid without any reduction or deduction of any nature or kind at all. If the Company receives any Revenue or Sublicensing Revenue in a currency other than Canadian dollars, the currency will be converted to the equivalent in Canadian dollars on the date that any amount is payable to UBC, at the rate of exchange set by the Bank of Montreal for buying Canadian dollars with such currency. The amount of Canadian dollars resulting from the conversion is to be included in Revenue or Sublicensing Revenue.

5.6 Products are deemed to have been sold by the Company and included in the Revenue upon the Company's actual receipt of payment for such Product. The Company is deemed to receive Sublicensing Revenue when the consideration is received from the sublicensee.

5.7 Any transaction, disposition, or other dealing involving all or part of the Technology or any Improvements or Products, between the Company and another person that is not made at fair market value is deemed to have been made at fair market value, and the fair market value of the transaction, disposition, or other dealing will be added to and deemed part of the Revenue or the Sublicensing Revenue, as the case may be, and will be included in the calculation of royalties under this Agreement.

## 6.0 EQUITY

6.1 As part of the consideration of the license granted under this Agreement, the Company will on the Start Date (and thereafter, as required under this Section 6.1), issue to UBC and the Non-Waiving Investigators the number of shares in the capital of the Company (the "**UBC Shares**") set out in Schedule "**D**", such that, following such issuance and on completion of the Initial Financing, the UBC Shares will represent at least 5% of all issued and outstanding shares of each share class of the Company as of the Start Date, calculated on a fully-diluted basis, meaning that any and all contemplated share issuances pursuant to any options, rights of conversion, warrants, unvested or escrowed shares or other securities or obligations of the Company to issue shares will be included in such calculation as if such rights to acquire shares or other securities of the Company had been fully exercised, issued, vested and released from escrow (hereinafter referred to as "**fully-diluted basis**"). Further, the Company agrees that prior to the completion of the Initial Financing, UBC's and the Non-Waiving Investigators percentage interest in the issued and outstanding share capital of the Company will not be diluted by the issuance of additional shares or new classes of shares to less than 5% of the issued and outstanding share capital of the Company on a fully-diluted basis ("**UBC's Percentage Interest**"). Therefore, if after execution of this Agreement and concurrently with closing of the Initial Financing, the Company issues shares to any person, corporation or other entity and it is necessary to issue additional shares to UBC and the Non-Waiving Investigators to maintain UBC's Percentage Interest in the Company, then the Company will issue any such additional shares (the "**Additional Shares**") to UBC and the Non-Waiving Investigators without payment of additional consideration by UBC or the Non-Waiving Investigators. At UBC's election, the Additional Shares that would otherwise be issued to the Non-Waiving Investigators may instead be issued to UBC, in order to address potential tax implications for the Non-Waiving Investigators. The Company agrees to issue the Additional Shares in accordance with UBC's election and acknowledges that UBC may manage such shares or any proceeds thereof pursuant to its arrangements with the Non-Waiving Investigators.

6.2 The Company represents and warrants to UBC that:

- (a) the Company has been duly incorporated in accordance with all applicable laws;
- (b) the capitalization table in Schedule "**D**" is correct and includes all issued Securities of the Company as of the Start Date; and,

6.3 The Company acknowledges and agrees that:

- (a) the UBC Shares will be deemed to be fully paid for by UBC and the Non-Waiving Investigators as of the date of issuance and will be the absolute property of UBC and the Non-Waiving Investigators, and neither all nor any portion of the UBC Shares will be refundable to the Company (in whole or in part) under any circumstances;

- (b) the UBC Shares will have the same rights and restrictions as the equity issued to the Company's founders; and
- (c) other than any restrictions contained in the articles of the Company or shareholders' agreement to which the Company and UBC are signatories, the shares will be free from any pooling, escrow or other trading restrictions requirements, subject to applicable securities laws and any applicable hold periods pursuant to such laws.

6.4 If the Company becomes Publicly Listed, the Company will concurrently register the UBC Shares for sale or exchange, as the case may be.

6.5 The Company will enter into a shareholders agreement with UBC and all shareholders of the Company including the Company's founders and Non-Waiving Investigators.

6.6 If the Company proposes to sell any Securities prior to the closing of the Company's first Series A equity financing (as generally recognized in the venture financing market) from one or more bona fide third-party investors, then UBC and/or its assignee will have the right to purchase up to 5% of the securities issued in each offering on the same terms and conditions as are offered to other purchasers in each such financing. The Company will provide thirty days advanced written notice of each such financing, including reasonable detail regarding the terms and purchasers in the financing. After the Series A equity financing, this right to purchase additional securities shall automatically terminate and be of no further force or effect.

## 7.0 **ANNUAL LICENSE FEE**

7.1 The Company will pay to UBC, in addition to all other amounts due under this Agreement, an annual license fee (the "**Annual License Fee**"). The Annual License Fee is payable, in advance, on or before each anniversary of the Start Date of each year during the Term, according to the following table:

<b>Date</b>	<b>Annual License Fee (\$CAD)</b>
Second and third anniversary of the Start Date.	\$5,000
Fourth and fifth anniversary of the Start Date.	\$10,000
Sixth anniversary of the Start Date and each subsequent anniversary of the Start Date thereafter during the Term.	\$20,000

7.2 The Annual License Fee will not be refunded to the Company (in whole or in part) under any circumstances.

## 8.0 PATENTS

8.1 UBC will own the Patents and will ensure that the Patents broadly claim for UBC's benefit (or UBC and the Company's benefit for any Joint Improvements) all inventions disclosed by the Technology, any UBC Improvements, and any Joint Improvements. The Company will pay all costs of preparing, filing, prosecuting and maintaining the Patents in the jurisdictions in which the Company designates that a Patent is required. The Company will, on UBC's request, pay to UBC a reasonable payment as an advance against expected Patent expenses. UBC will provide to the Company all material information and documents received, prepared or filed in connection with the Patents. UBC will notify the Company and reasonably consider the Company's comments before taking any substantive actions related to the Patents.

8.2 The Company may identify any process, use or products arising out of the Technology, any Joint Improvements, and any UBC Improvements that may be patentable, and UBC, at the reasonable request of the Company, will make reasonable efforts to apply for a Patent in the name of UBC (or UBC and the Company for any Joint Improvements) and on the filing of a Patent application under this Article 8.2, the Company will become the licensee of the Patent on the terms and conditions set out in this Agreement.

8.3 The Company may request to assume responsibility for the management of the Patents once the Company has completed the Initial Financing. Upon UBC's approval, not to be unreasonably withheld, the Company will, entering into an appropriate client engagement agreement with UBC and the relevant patent counsel, be responsible for preparing, filing, prosecuting and maintaining the Patents ("**Patent Management**") in UBC's name, and will ensure that the Patents broadly claim for UBC's benefit all inventions disclosed by the Technology and any Improvements. Upon UBC's approval, not to be unreasonably withheld, the Company may select the patent counsel to continue prosecution of the Patents. The Company will provide to UBC all material information and documents received, prepared or filed in connection with the Patents. The Company will notify UBC and obtain UBC's approval before taking any substantive actions related to the Patent Management. The Company will include all comments and changes reasonably required by UBC and subject to the last sentence of this Article 8.3 the Company will not:

- (a) limit the scope of, or abandon any claim within, or otherwise allow to lapse, any Patent; or
- (b) fail to maintain any Patent;

in any country, without UBC's prior written approval. If the Company intends to abandon, allow to lapse, or not continue the Patent Management of a Patent in any country, then the Company will, not less than 60 days before any required action relating to such Patent, notify UBC and UBC will then have the right, at its option, to assume the Patent Management of such Patent, in which case such Patent will be excluded from the Patents licensed under this Agreement.

8.4 UBC will be responsible for up to a total of \$20,000 of the initial expenses incurred in connection with the preparation, filing, prosecution and maintenance of the Patents (the "**Initial Patent Expenses**"). For clarity UBC will only be responsible for \$20,000 total, not on a per-patent basis. The Company will be responsible for all costs incurred in connection with the preparation, filing, prosecution and maintenance of the Patents in excess of the Initial Patent Expenses, including:

- (a) with respect to Patent expenses in excess of the Initial Patent Expenses incurred by UBC prior to the Start Date, the Company will reimburse UBC for such excess costs within 30-days of the completion of the Initial Financing; and
- (b) with respect to Patent expenses in excess of the Initial Patent Expenses incurred by UBC after the Start Date, the Company will reimburse UBC within 30 days of the date of any UBC invoice.

8.5 During the Term, the Company will not contest the validity or scope of any Patents licensed under this Agreement.

8.6 The Company will ensure proper patent marking for all uses of the Technology and any Improvements licensed under this Agreement and will clearly mark the appropriate Patent numbers on any Products made using the Technology and any Improvements.

## **9.0 DISCLAIMER OF WARRANTY**

9.1 UBC represents and warrants that as of the Start Date, and having made no inquiry, to the best of the knowledge of the UBC staff having responsibility for the commercialization of the Technology at Innovation UBC:

- (a) all of the inventors listed on the Patents have assigned to UBC their rights in the Patents, and
- (b) Innovation UBC has not received any written notice from a third party alleging that the Technology infringes the intellectual property rights of any third party.

9.2 Other than expressly set out in Article 9.1, UBC makes no representations, conditions, or warranties, either express or implied, regarding the Technology, any Improvements, or the Products. Without limitation, UBC specifically disclaims any implied warranty, condition, or representation that the Technology, any Improvements, or the Products:

- (a) correspond with a particular description;
- (b) are of merchantable quality;
- (c) are fit for a particular purpose; or
- (d) are durable for a reasonable period of time.

UBC is not liable for any loss, whether direct, indirect, consequential, incidental, or special, which the Company or any third parties may suffer arising from any defect, error or fault of the Technology, any Improvements, or Products, or their failure to perform, even if UBC is aware of the possibility of such defect, error, fault or failure. The Company acknowledges that it has been advised by UBC to undertake its own due diligence regarding the Technology, any Improvements, or Products.

9.3 Nothing in this Agreement:

- (a) constitutes a warranty or representation by UBC or that anything made, used, sold or otherwise disposed of under the license granted in this Agreement will not infringe the patents, copyrights, trade-marks, industrial designs or other intellectual property rights of any third parties, or any patents, copyrights, trade-marks,

industrial design or other intellectual property rights owned, in whole or in part, by UBC, or licensed by UBC to any third parties;

- (b) constitutes an express or implied warranty or representation by UBC that the Company has, or will have the freedom to operate or practice the Technology or any Improvements, or the freedom to make, have made, use, sell or otherwise dispose of Products; or
- (c) imposes an obligation on UBC to bring, prosecute or defend actions or suits against third parties for infringement of patents, copyrights, trade-marks, industrial designs or other intellectual property or contractual rights.

9.4 Notwithstanding Article 9.3, if there is an alleged infringement of the Technology or any Improvements or any right with respect to the Technology or any Improvements, the Company has the first right to institute and prosecute litigation. Company agrees to use reasonable efforts to settle with the infringing party without litigation. If reasonable efforts are unsuccessful and Company provides claim chart evidence of the infringement to UBC, then Company may institute and prosecute a litigation against the infringing party so long as it conforms to the requirements of this Article. If Company decides to institute litigation it will notify UBC in writing and give UBC the opportunity to institute the litigation jointly. Company will diligently pursue the litigation. UBC agrees to reasonably co-operate to the extent of signing all documents necessary to vest in the Company the right to start the litigation, provided that all the direct and indirect costs and expenses of bringing and conducting the litigation or settlement are paid by the Company, including expenses and counsel fees incurred by UBC. Company will keep UBC reasonably apprised of all developments in the litigation and will make a good faith effort to incorporate UBC's input on any substantive submissions or positions taken in the litigation regarding the scope, validity and enforceability of the Patent. Company will not initiate, prosecute, settle or otherwise compromise any such suite in a manner that adversely affects UBC's interests without UBC's prior written consent. UBC may be named as a party only if:

- (a) Company's and UBC's respective counsel recommend that such action is necessary in their respective opinion to achieve standing;
- (b) UBC is not the first named party in the action; and
- (c) the pleadings and any public statements about the action state that Company is pursuing the action and that Company has the right to join UBC as a party.

All amounts recovered by the Company as a result of such litigation shall first be applied to reimburse the Company for its direct, documented external expenses (e.g., reasonable attorneys' fees, expert witness fees, court costs) incurred in pursuing the litigation. Any remaining amounts, after such reimbursement, will be included in the Company's Sublicensing Revenue and subject to payment of a royalty to UBC in accordance with Article 5. If any complaint alleging infringement of any patent or other proprietary rights is made against the Company or a sublicensee of the Company regarding the use of the Technology, any UBC Improvements or Joint Improvement, or the development, manufacture, use or sale of the Products, the Company:

- (d) will promptly notify UBC on receipt of the complaint and will keep UBC fully informed of the actions and positions taken by the complainant and taken or proposed to be taken by the Company on behalf of itself or a sublicensee;



- (e) will pay all costs and expenses incurred by the Company or any sublicensee of the Company in investigating, resisting, litigating and settling the complaint, including the payment of any award of damages and/or costs to any third party;
- (f) will not make any decision or take any action concerning or governing any final disposition of the complaint without full consultation with, and approval by, UBC; and
- (g) to the extent that the court may permit, allow UBC, at its discretion, to participate as a party in any litigation involving the complaint, provided that any additional expenses generated by such participation will be paid by UBC (subject to the possibility of recovery of some or all of the additional expenses from the complainant).

## **10.0 INDEMNITY & LIMITATION OF LIABILITY**

10.1 The Company indemnifies, holds harmless and defends UBC, its affiliates and its directors, officers, governors, senators, employees, agents, students, and subcontractors (the “**Indemnitees**”) from and against any and all claims, (including all associated legal fees and disbursements actually incurred) arising out of the exercise of any rights under this Agreement, including without limitation against any damages or losses, whether direct, indirect, consequential, incidental or special, arising in any manner at all from or out of the use of the Technology or any Improvements or Products licensed under this Agreement by the Company or its sublicensees or their customers or end-users.

10.2 UBC's total liability, whether under the express or implied terms of this Agreement, in tort (including negligence) or at common law, for any loss or damage suffered by the Company, whether direct, indirect, consequential, incidental or special, or any other similar damage that may arise or does arise from any breaches of this Agreement by the Indemnities, is limited to C\$10,000.

10.3 The Company acknowledges and agrees that UBC will not be liable for indirect, consequential or incidental or special damages arising from any breach or breaches of this Agreement.

10.4 Notwithstanding the termination or expiration of this Agreement, the rights and obligations in Article 10 will survive and continue to bind the Company and its successors and permitted assigns.

## **11.0 CONFIDENTIALITY**

11.1 Each party will keep and use the other party's Confidential Information in confidence and will not, without the other party's prior written consent, disclose the other party's Confidential Information to any person or entity, except to the party's directors, officers, employees, faculty, students and professional advisors who require the Confidential Information to assist such party in performing its obligations under this Agreement. The Company will maintain an appropriate internal program limiting the distribution of UBC's Confidential Information to only those officers, employees and professional advisors who require such Confidential Information in performing the Company's obligations under this Agreement and who have signed appropriate non-disclosure agreements.

11.2 Any party required by judicial or administrative process to disclose the other party's Confidential Information, will promptly notify the other party and allow it reasonable time to oppose the process before disclosing the Confidential Information.

11.3 The Company acknowledges that this Agreement, generally, contains negotiated terms that UBC may be required to disclose to third parties under the Freedom of Information and Protection of Privacy Act (RSBC 1996 C.165).

11.4 Notwithstanding anything contained in this Article 11, each party acknowledges and agrees that the other party may identify the title of this Agreement, the parties to this Agreement, the Products, and the names of the inventors of the Technology and any Improvements, and that UBC may also disclose to the Investigator(s) all Annual Reports provided to UBC by the Company under this Agreement, the amount of all payments made to UBC by the Company under this Agreement, the manner or method by which such payments were calculated and all Payment Reports delivered to UBC by the Company in connection with such payments.

11.5 Notwithstanding the termination or expiration of this Agreement, the rights and obligations in this Article 11 will survive and continue to bind the parties, their successors and permitted assigns.

## **12.0 PUBLICATION**

12.1 UBC is not restricted from presenting at symposia, national or regional professional meetings, or from publishing in journals or other publications, accounts of its research relating to the Technology and any UBC Improvements or Joint Improvements, provided that the Company is provided with copies of the proposed disclosure at least 60 days before the presentation or publication date. On receiving a copy of the proposed disclosure the Company may, within 30 days of receipt, give notice to UBC that it objects to the proposed disclosure. The Company may object to the proposed disclosure on the grounds that it either:

- (a) it contains the Company's Confidential Information; or
- (b) that it discloses UBC's Confidential Information related to any Improvement which requires patent protection.

If the Company's objection is based on the proposed disclosure containing the Company's Confidential Information, then UBC will remove such Confidential Information from the proposed disclosure, after which UBC will be free to present and/or publish the proposed disclosure. If the Company's objection is based on the proposed disclosure containing UBC's Confidential Information related to any Improvements requiring patent protection, then UBC will delay the proposed disclosure for up to 6 months from the date UBC delivered the proposed disclosure to the Company, during which time a patent application may be filed in accordance with Article 8. After expiry of such 6-month delay UBC will be free to present and/or publish the proposed disclosure.

## **13.0 PRODUCTION & MARKETING**

13.1 The Company will not use UBC's name or any UBC trade-mark or any other service mark, logo, insignia, seal, design, symbol or device used by UBC without the prior written consent of UBC. Notwithstanding Article 11, the Company and UBC may each issue a press

release or otherwise publicize the fact that the Company has entered into this Agreement with UBC.

13.2 The Company represents and warrants to UBC that it has the infrastructure, expertise and resources to:

- (a) develop and commercialize the Technology and any Improvements;
- (b) monitor patent infringement regarding any Patent licensed under this Agreement; and
- (c) handle the Technology and any Improvements with care and without danger to the Company, its employees, agents, or the public.

13.3 The Company will:

- (a) complete the Initial Financing within 24 months of executing this Agreement and will notify UBC in writing, within five days of completion of Initial Financing;
- (b) establish and maintain a bona fide Board of Directors that:
  - (i) within 12 months of executing this Agreement, will include at least one director who is not an employee or officer of the Company or a relative of an employee or officer of the Company; and
  - (ii) within 36 months of executing this Agreement, will include a second such director who is not an employee or officer of the Company or a relative of an employee or officer of the Company; and
- (c) until such time that the Company becomes Publicly Listed, deliver to UBC an updated cap table and financial statements, including a balance sheet and a statement of income, prepared by a reputable accounting firm within 90 days after the end of each fiscal year of the Company.

#### **14.0 ACCOUNTING RECORDS & REPORTS**

14.1 The Company will maintain at its principal place of business separate accounts and records of all Revenues sublicensees and Sublicensing Revenues and all business done in connection with the Technology, any Improvements, and Products. The accounts and records will be in sufficient detail to enable accurate and complete reports and returns to be made under this Agreement and the Company will cause all sublicensees to keep similar accounts and records.

14.2 The Company will complete and deliver to UBC:

- (a) within 30 days of each and every Royalty Due Date, a payment report in a form sufficient to verify accurately and completely the Revenue and Sublicensing Revenue, together with a calculation of the royalty and other amounts payable under this Agreement (a "**Payment Report**"). Each Payment Report will:
  - (i) include without limitation, each Product by name and description, sales of each Product by country of sales, price per unit and any deductions taken from gross revenue, method of calculation of any currency conversion,

method by which the royalty amount is calculated, attribution of royalty rates to individual products, and

- (ii) be signed by a senior officer of the Company to verify the accuracy and completeness of the information contained in the Payment Report.

A separate Payment Report for each sublicense, including an accounting statement setting out in detail how the amount of Sublicensing Revenue was determined; and

- (b) on or before <@> of each year during the Term, starting on <@>, an Annual Report in the form attached as Schedule "B" (or an amended form as required by UBC from time to time) (an "**Annual Report**").

14.3 The Company acknowledges that UBC is relying on the Company's Payment Reports to accurately, completely and in a timely manner, report the Company's Revenue and Sublicensing Revenue, and that UBC is not under any obligation to verify, or conduct its own due diligence on the accuracy or completeness of the Company's Payment Reports. A failure by the Company to provide accurate, complete and timely reports to UBC, including without limitation accurate, complete and timely Payment Reports and Annual Reports, will be a material breach of this Agreement pursuant to Article 20.3(a). Subject to Article 20.6, any legal claim by UBC against the Company for breach of these obligations and for royalties or other amounts owing to UBC as a result of such breach will be deemed to have been discovered by UBC only after UBC has actual knowledge of such claim. The Company further agrees that it will, from time to time at UBC's request, provide to UBC:

- (a) such additional accounts, records and documents as UBC may require to corroborate the accuracy and completeness of the Company's Payment Reports; and/or
- (b) a Payment Report in a form prescribed by UBC.

14.4 The calculation of royalties will be carried out in accordance with generally accepted Canadian accounting principles, including the International Financial Reporting Standards ("**IFRS**") applied on a consistent basis.

14.5 The Company will retain the accounts and records referred to in Article 14 throughout the Term and for not less than 2 years thereafter and will permit any duly authorized representative of UBC to inspect, at UBC's expense and during the Company's normal business hours:

- (a) all of such accounts and records; and
- (b) the Company's premises, including any research or production facilities;

for the purpose of determining whether or not the Company is in compliance with this Agreement. The Company will provide to the representative all reasonable documents and evidence (including sample products) necessary to verify the accounts and records and compliance with this Agreement, and will allow copies to be made of the accounts, records and agreements. If an inspection of the Company's records by UBC shows an under-reporting or underpayment by the Company of more than 5% to UBC for any 12-month period, then the Company will reimburse

UBC for the cost of the inspection as well as pay to UBC any amount found due (including any interest, as set out in Article 21.5 below) within 30 days of notice by UBC to the Company.

14.6 UBC will use reasonable efforts to ensure that all information provided to or obtained by UBC or its representatives under this Article 14 is treated as confidential by UBC.

## **15.0 INSURANCE**

15.1 During the Term (and for the longer of either 3 years after the end of the Term, or 3 years after the last Product is sold) the Company will procure and maintain insurance (including public liability and commercial general liability insurance), as would be acquired by a reasonable and prudent businessperson carrying on a similar line of business.

15.2 Notwithstanding Article 15.1, at least one month before {<@>the earlier of the start of any Product testing involving human subjects ("**Human Clinical Trials**") or} the first use or sale of the Technology, any Improvements or a Product in exchange for valuable consideration ("**First Commercial Use**") the Company will give notice to UBC of the terms and amount of the product liability, {<@>clinical trials,} public liability, and commercial general liability insurance and such other types of insurance which it has placed. The Company will ensure that its insurance:

- (a) is placed with a reputable and financially secure insurance carrier;
- (b) includes the Indemnitees as additional insureds, or include a waiver of subrogation against UBC, and a severability of interest and cross-liability clauses; and
- (c) provides coverage regarding all activities under this Agreement;

15.3 The Company will also require each sublicensee to procure and maintain:

- (a) public liability and commercial general liability insurance and such other types of insurance as would be acquired by a reasonable and prudent businessperson carrying on a similar line of business; and
- (b) in any event, at least one month before {<@>the earlier of any Human Clinical Trials or} the First Commercial Use by the sublicensee, product liability, {<@>clinical trials,} public liability and commercial general liability insurance in reasonable amounts, with a reputable and financially secure insurance carrier.

## **16.0 ASSIGNMENT**

16.1 Subject to Article 16.2, the Company will not assign, transfer, mortgage, pledge, financially encumber, grant a security interest, permit a lien to be created, charge or otherwise dispose of any or all of the rights granted to it under this Agreement without the prior written consent of UBC.

16.2 The Company may assign this Agreement as part of a sale, transfer or merger of the Company's entire business (or that part of Company's business that exercises all rights granted under this Agreement), provided that before any such assignment, the following conditions must be met:

- (a) the Company must give UBC 30 days' prior written notice of the assignment, including the financial terms of the assignment and the intended assignee's name and contact information;
- (b) the assignee must have the financial and technical ability to assume the obligations under this Agreement, and the assignee (and its principals) must be of good and reputable character;
- (c) the assignee must agree in writing with UBC to be bound by this Agreement; and
- (d) in addition to any other consideration payable to UBC under this Agreement on such assignment, UBC must have received from the Company a C\$20,000 assignment fee.

## **17.0 GOVERNING LAW**

17.1 This Agreement is governed by, and will be construed in accordance with, the laws of British Columbia and the laws of Canada in force in that province, without regard to its conflict of law rules. All parties agree that by executing this Agreement they have attorned to the jurisdiction of the Supreme Court of British Columbia. The parties agree that the British Columbia Supreme Court has exclusive jurisdiction over this Agreement.

## **18.0 NOTICES AND PAYMENT**

18.1 All reports and notices or other documents that a party is required or may want to deliver to any other party will be delivered in writing either by personal delivery, commercial courier or by electronic transmission at the address for the receiving party as set out below, or to such other address that a party may designate. Any notice will be deemed to have been received on the date it was delivered, or, if by electronic transmission, on the day on which it is transmitted (with notice of receipt by the receiving party).

- (a) UBC:  
 Innovation UBC  
 The University of British Columbia  
 #103 – 6190 Agronomy Road  
 Vancouver, British Columbia  
 V6T 1Z3  
 Telephone: (604) 822-8580  
 Attention: Managing Director
- (b) Company:

18.2 The Company will pay all amounts due to UBC under this Agreement as follows:

- (a) by cheque made payable to "The University of British Columbia" and delivered to Innovation UBC; or

- (b) by wire transfer in accordance with the instructions provided by Innovation UBC.

## **19.0 TERM**

19.1 The term (the "**Term**") of this Agreement starts on the Start Date and ends on the expiry of the last Patent licensed under this Agreement, unless terminated earlier under Article 20.

## **20.0 TERMINATION OF AGREEMENT**

20.1 This Agreement automatically and immediately terminates without notice to the Company if any proceeding under the *Bankruptcy and Insolvency Act* of Canada, or any other statute of similar purpose, is started by or against the Company.

20.2 UBC may immediately terminate this Agreement by giving notice to the Company if one or more of the following occurs:

- (a) the Company becomes insolvent, as evidenced, for example (without limitation) by the appointment of a receiver, a receiver manager, the issuance of financial statements which according to IFRS would render the Company insolvent, the termination of a majority of the Company's employees, the vacation of the Company's chief place of business or the Company ceasing or threatening to cease carrying on business;
- (b) any execution or other process of any court becomes enforceable against the Company, or if any similar process is levied on the rights under this Agreement or on any money due to UBC and is not released or satisfied by the Company within 30 days from the process becoming enforceable or being levied;
- (c) if the Company has breached or otherwise failed to comply with any applicable securities laws, regulations or requirements;
- (d) the Technology or any of the UBC Improvements or Joint Improvements becomes subject to any security interest, lien, charge or encumbrance in favour of any third party claiming through the Company;
- (e) if the Company breaches Article 4.1, 13.1 or 15;
- (f) if any sublicensee of the Company is in breach of its sublicense with the Company and the Company does not cause the sublicensee to cure the breach within 30 days of receipt of notice from UBC; or

20.3 Other than as set out in Articles 20.1 and 20.2, either party may terminate this Agreement for any breach which is not remedied after providing the following notice to the party in breach:

- (a) 30 days' notice in the case of any breach which can reasonably be remedied within 30 days of the delivery of such notice; or
- (b) if the breach cannot be remedied within 30 days and the breach is not remedied within such further period as may be reasonably necessary, or within 90 days after receipt of notice, whichever is sooner.

20.4 If this Agreement is terminated under Article 20.1, 20.2 or 20.3, the Company will make all outstanding payments to UBC under Articles 5 and 7, and UBC may proceed to enforce payment of all outstanding royalties or other monies owed to UBC and to exercise any or all of the rights and remedies available under this Agreement or otherwise available by law or in equity, successively or concurrently, at the option of UBC. The Company will pay all charges or expenses incurred by UBC in the enforcement of its rights or remedies against the Company under this Article 20.4, including without limitation UBC's legal fees and disbursements on an indemnity basis.

20.5 Within 5 days of the Effective Termination Date the Company and, subject to Article 4.3, all sublicensees will cease to use the Technology, any Improvements, and UBC's Confidential Information in any manner and will cease to make and sell the Products. Within 30 days of the Effective Termination Date the Company will deliver to UBC an accounting to state the inventory or stock of Products manufactured and remaining unsold on the Effective Termination Date. If this Agreement was terminated under Article 20.2 or 20.3, UBC will instruct that the unsold Products be stored, destroyed or sold under its direction. If this Agreement was terminated under Article 20.1, no Products will be sold without the prior written consent of UBC. The Company will continue to make royalty payments to UBC under Articles 5 and 7 on all Products that are sold in accordance with this Article 20.5, notwithstanding anything contained in, or any exercise of rights by UBC, under Article 20.

20.6 The Company acknowledges and agrees that UBC's right to conduct an inspection and enforce the Company's obligations under Article 14, and to collect any royalties or other amounts owing to UBC under this Agreement, will remain in full force and effect:

- (a) at all times during the Term, and
- (b) if this Agreement is terminated or expires, for a period of not less than 2 years after such termination or expiry,

and that such rights, or claims by UBC against the Company, will not be barred by the basic limitation period applicable under Part 2 of the *Limitation Act*, SBC 2012, c 13 or any amendment thereto. The Company further acknowledges and agrees that with respect to such rights and claims by UBC, the basic limitation period under Part 2 of the *Limitation Act* will be extended so as not to expire at any time during the Term, and if this Agreement is terminated or expires will be further extended so as not to expire for a period not less than 2 years after such termination or expiry.

## **21.0 MISCELLANEOUS COVENANTS OF COMPANY**

21.1 The Company represents and warrants to UBC that the Company is a corporation duly organized, existing and in good standing under the laws of British Columbia or Canada and has the power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement, all of which have been duly and validly authorized by all requisite corporate proceedings.

21.2 The Company will comply with all applicable laws, regulations and ordinances, with respect to the Technology and any Improvements and this Agreement.

21.3 The Company will pay all taxes and any related interest or penalty designated in any manner at all and imposed as a result of the existence or operation of this Agreement, including without limitation tax which the Company is required to withhold or deduct from



payments to UBC. The Company will provide to UBC evidence as may be required by Canadian authorities to establish that the tax has been paid. The royalties specified in this Agreement are exclusive of taxes. If UBC is required to collect a tax to be paid by the Company or any of its sublicensees, the Company will pay the tax to UBC on demand.

21.4 The obligation of the Company to make all payments under this Agreement is absolute and unconditional and is not, except as expressly set out in this Agreement, affected by any circumstance, including without limitation any set-off, compensation, counterclaim, recoupment, defence or other right which the Company may have against UBC, or anyone else for any reason at all.

21.5 The Company will pay interest on all amounts due and owing to UBC under this Agreement but not paid by the Company on the due date, at the rate of 12.68% per annum, calculated annually not in advance. The interest accrues on the balance of unpaid amounts from time to time outstanding, from the date on which portions of the amounts become due and owing until payment in full.

## **22.0 MANAGEMENT OF CONFLICTS OF INTEREST**

22.1 The Company confirms that its directors, officers, and employees have read and understood UBC's COI Policy (SC3), Inventions Policy (LR11), and Research Policy (LR2) (<https://universitycounsel.ubc.ca/board-of-governors-policies-procedures-rules-and-guidelines/policies/>), and that UBC may amend these policies or introduce new policies from time to time.

22.2 While the Investigator(s) retain the right to continue to perform academic research at UBC related to the Technology, and which may lead to the development of Improvements, the Company and UBC agree, that:

- (a) in the absence of an additional written agreement between UBC and the Company, Company and Company's employees are not permitted to use any UBC facilities or equipment, including the research facilities and equipment made available to the Investigator(s) by reason of the Investigator(s)' appointment at UBC; and
- (b) any disclosures of inventions made to the Company by the Investigator(s), students, post-doctoral fellows, or other UBC staff or personnel, are subject to UBC Policy LR11 and will be immediately forwarded by the Company to Innovation UBC.

## **23.0 GENERAL**

23.1 Nothing contained in this Agreement is to be deemed or construed to create between the parties a partnership or joint venture. No party has the authority to act on behalf of any other party, or to commit any other party in any manner at all or cause any other party's name to be used in any way not specifically authorized by this Agreement.

23.2 Subject to the limitations in this Agreement, this Agreement operates for the benefit of and is binding on the parties and their respective successors and permitted assigns.

23.3 No condoning, excusing or overlooking by any party of any default, breach or non-observance by any other party at any time or times regarding any terms of this Agreement operates as a waiver of that party's rights under this Agreement. A waiver of any term, or right

under, this Agreement will be in writing signed by the party entitled to the benefit of that term or right, and is effective only to the extent set out in the written waiver.

23.4 No exercise of a specific right or remedy by any party precludes it from, or prejudices it in, exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.

23.5 All terms which require performance by the parties after the expiry or termination of this Agreement, will remain in force despite this Agreement's expiry or termination for any reason.

23.6 Part or all of any Article that is indefinite, invalid, illegal or otherwise voidable or unenforceable may be severed and the balance of this Agreement will continue in full force and effect.

23.7 This Agreement sets out the entire understanding between the parties and no changes are binding unless signed in writing by the parties to this Agreement.

23.8 Time is of the essence in this Agreement.

23.9 This Agreement may be signed in counterparts either through original copies or by facsimile or electronically, each of which will be deemed an original and all of which will constitute the same instrument.

23.10 Unless the contrary intention appears, the singular includes the plural and vice versa and words importing a gender include other genders.

**SIGNED BY THE PARTIES AS AN AGREEMENT** on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ but effective as of the Start Date.

SIGNED FOR AND ON BEHALF of  
**THE UNIVERSITY OF BRITISH COLUMBIA**  
by its authorized signatory:

\_\_\_\_\_  
Authorized Signatory

SIGNED FOR AND ON BEHALF of  
<@COMPANY>  
by its authorized signatory:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Please print Name and Title of Signatory

**SCHEDULE "A"**

**DESCRIPTION OF "TECHNOLOGY"**

UBC File #	Inventor(s)	Description	Patent #

{<@>List all materials that UBC will provide to the Company, and that must be returned by the Company when the license is terminated. For example, biological materials, software and physical samples.}

## **SCHEDULE "B"**

### **UBC Express Start-Up License Agreement Annual Report**

The information to be completed below will constitute the annual report required under the UBC Express Start-Up License Agreement (the "**Agreement**"). Any information or documents provided by the Company in this report will not be interpreted as limiting the obligations of the Company contained in the Agreement. This report is in addition to the Payment Report to accompany each royalty payment.

Date of Report: \_\_\_\_\_ Person Preparing This Report: \_\_\_\_\_

Name of Company: \_\_\_\_\_ UBC File Number: \_\_\_\_\_

Jurisdiction of Corporation: \_\_\_\_\_ Head Office  
Address: \_\_\_\_\_

Contact Person for Company \_\_\_\_\_

Licensed Technology: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

1. Please provide a brief report on the status of development of the UBC Technology, progress on creating a commercial Product or subsequent marketing of the Product as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Has the Company filed any patent applications for modifications or improvements relating to the original UBC Technology? Please provide details, and attach copies of all relevant documents.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Has the Company become aware of any potential third party infringing the UBC patents or related intellectual property? If so, please provide details and outline what the Company is doing about this.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Has the Company met any milestone or performance objectives in the past year as set forth in the Agreement? Please outline the past year's accomplishments.

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5. Does the Company expect to meet any milestone or performance objective in the coming year as set forth in the Agreement? If so, please provide details.

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6. Is the Company proposing to grant any sublicenses to third parties? If so have copies of the proposed sublicense agreement been provided to the Technology Manager at Innovation UBC for review and approval? If not, please enclose a copy of each proposed sublicense agreement.

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7. Does the Company anticipate starting any clinical trials or making any sales of Products in the next 12 months? Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, then please provide:

a) UBC with 30 days' advance notice of the anticipated start of any clinical trials and the date of first sale of a Product utilizing the Technology;

b) copies of insurance certificates in compliance with the Agreement; and

c) a completed Payment Report.

8. Does your company have public liability insurance? If so, please attach a copy of the insurance policy naming UBC as an insured as required by the Agreement.

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9. Has the Company completed the Initial Financing? If yes, then please provide details of the financing and/or issuance of any Securities, and confirm that UBC's percentage interest in the issued and outstanding share capital of the Company has not been diluted by the issuance of additional Securities or new classes of Securities to less than 5% of the issued and outstanding share capital of the Company on a Fully Diluted Basis. If

UBC's percentage interest has been diluted to less than 5% of the issued and outstanding share capital of the Company on a Fully Diluted Basis, then confirm that the Company will issues Additional Shares to UBC without charge to maintain UBC's Percentage Interest in the Company at 5%.

10. Please indicate the number of full-time equivalents the Company currently employs:

\_\_\_\_\_

**Prepared by** \_\_\_\_\_ **Date** Id/mm/yy **Phone** \_\_\_\_\_

I \_\_\_\_\_ (print name), of \_\_\_\_\_ (title) hereby certify the foregoing information as true and correct.

\_\_\_\_\_  
Signature                      Date Signed

Once completed, please submit this report to:

**Managing Director  
Innovation UBC  
#103 – 6190 Agronomy Road,  
Vancouver, BC  
V6T 1Z3**

## **SCHEDULE "C"**

### **ADDRESS FOR NOTICES & PAYMENT INSTRUCTIONS**

1. The address for delivery of notices to UBC is:

The Managing Director  
Innovation UBC  
University of British Columbia  
#103 – 6190 Agronomy Road  
Vancouver, British Columbia  
V6T 1Z3  
Telephone: (604) 822-8580

2. Payment of all amounts due to UBC under the terms of this license may be made as follows:

a) by cheque made payable to "The University of British Columbia" delivered to UBC at the above address and reference the invoice number; or

b) by wire transfer in accordance with the instructions set out below:

Note: Please ensure ALL of the information is provided for efficient receipt of wire payments:

#### **For Wire Transfer:**

	<b>CAD</b>	<b>USD</b>
<b>Beneficiary Bank (SWIFT tag 57):</b>	Royal Bank of Canada 6th Floor - 885 West Georgia St. Vancouver, B.C., Canada V6C 3G1 Bank: 003 Transit: 03215 SWIFT Code: ROYCCAT2	Royal Bank of Canada 6th Floor - 885 West Georgia St. Vancouver, B.C., Canada V6C 3G1 Bank: 003 Transit: 03215 SWIFT Code: ROYCCAT2
<b>Beneficiary (SWIFT tag 59):</b>	Account Number: 1018027 University of British Columbia 6190 Agronomy Road, 5 <sup>th</sup> Floor Vancouver, BC, Canada, V6T 1Z3	Account Number: 4003919 The University of British Columbia 6190 Agronomy Road, 5 <sup>th</sup> Floor Vancouver, BC, Canada, V6T 1Z3
<b>Correspondent Bank:</b>	N/A	JP Morgan Chase, New York SWIFT code: CHASUS33 Routing number: 021000021
<b>Remittance Detail (SWIFT tag 70):</b>	Please include: 1 Reference: Indicate invoice number and/or UBC file number 2 UBC contact: Innovation UBC – Finance Officer (7-5016)	



**SCHEDULE "D"**

**SHARE ISSUANCE TO UBC AND NON-WAIVING INVESTIGATORS**

**SCHEDULE "E"**

**CAPITALIZATION TABLE OF THE COMPANY**