

Example for Reference Only

To establish a license agreement with University of Toronto, contact a Commercialization Manager or Industry Licensing Officer for assistance.

SAMPLE EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT is made and effective as of the • day of [], 20__ (the “**Effective Date**”)

B E T W E E N:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO, a corporation vested with the government, management and control of the University of Toronto by the *University of Toronto Act, 1971* and having offices at Banting Institute, 100 College Street, Suite 413, Toronto, Ontario M5G 1L5, Canada

(hereinafter “**UT**”)

- and -

[] **INC.**, a corporation incorporated under the laws of [] and having its registered address at []

(hereinafter the “**Licensee**”)

WHEREAS [], [], and [] (together the “**Inventors**”), while employed by the University of Toronto made an Invention (as hereinafter defined);

WHEREAS the Inventors have assigned their entire right, title and interest in the Invention to UT;

WHEREAS UT has filed patent applications in relation to the Invention as listed in Schedule “A” hereof;

WHEREAS the Licensee is a company whose purpose is to commercialize, develop, manufacture, market, distribute and sell useful products;

WHEREAS UT and the Licensee desire to enter into a license agreement that will permit the Technology, as hereinafter defined, to be used for commercial purposes;

The license agreement will not be limited to the provisions in this Sample Exclusive License Agreement and may be subject to change as appropriate for a given circumstance.

NOW THEREFORE in consideration of the premises and the mutual covenants, terms, conditions and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the meanings set forth below:

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with the first Person. The term “control” means the ability to direct the management and policies of such Person, whether through ownership of equity, by contract or otherwise;

“**Agreement**” means this Technology License Agreement including all attached schedules, as the same may be supplemented, amended, restated or replaced in writing from time to time;

“**Beneficiaries**” means UT and its Affiliates, as applicable, and UT’s current, former and future trustees, board members, officers, employees, appointees, faculty, professional staff, consultants, affiliated corporations and agents and their respective heirs, successors and assigns and “**Beneficiary**” means one of them;

“**Best Efforts**” means the efforts that a prudent person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as possible; provided, however, that an obligation to use Best Efforts under this Agreement does not require the person subject to that obligation to take actions that would result in a materially adverse change in the benefits to such person of this Agreement;

“**Calendar Year**” means each twelve (12) month period beginning on January 1st and ending on December 31st, provided that for the purpose of this Agreement the first Calendar Year shall begin on the Effective Date and end on December 31st;

“**Confidential Information**” means the specific terms and conditions set forth in this Agreement, the Know-how, and any information, which is non-public, confidential or proprietary in nature, including, without limitation, business information, trade secrets, and any information related to the Technology or any Licensed Product, whether written, oral or in electronic form, provided that tangible materials are marked as confidential, and provided that information given orally is identified as confidential at the time of disclosure, and confirmed as confidential in writing within fifteen (15) days, but shall not include information that:

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- (a) is or becomes generally available to the public other than as a result of any act by a receiving Party to this Agreement;
- (b) is rightfully received from a Third Party without similar restriction or without breach of this Agreement;
- (c) a receiving Party is able to demonstrate, in writing, was known to it on a non-confidential basis; or
- (d) was independently developed by a receiving Party without the use of any of the Confidential Information.

“Copyright” means the rights prescribed in the *Copyright Act* (Canada), including those copyright registrations and applications relating to the Technology identified in Schedule “A” herein;

“Effective Date” means the date first shown in this Agreement;

“Encumbrance” means any mortgage, charge, pledge, hypothecation, lien, encumbrance, restriction, option or security interest of any kind and **“Encumber”** means to create an Encumbrance;

“Field of Use” means all fields of use;

“First Commercial Sale” means the first sale of a Licensed Product or Service in the Territory (as hereinafter defined), by the Licensee or its Affiliates (or their sub-licensee(s)) to any Third Party as evidenced by an invoice or other relevant document to such Third Party;

“Humanitarian Purposes” means a) the use of Licensed Product for research and development purposes by any nonprofit organization or other third party, anywhere in the world that has the express purpose of developing the Licensed Product for use solely for protection from, treatment of, or diagnosis of Neglected Tropical Diseases (as defined by the World Health Organization) in a Low or Middle-income country as that term is defined by the World Bank (hereinafter “LMI Country(ies) and b) sale of Licensed Product in LMI Countries at or below cost of manufacture and distribution;

“Intellectual Property Rights” means all Patents, Copyrights, Trademarks, trade-names and other intellectual property rights, whether registered or not, owned by or licensed to UT relating to the Invention;

“Invention” means the invention titled “[]” as more fully described in the University of Toronto Confidential Invention Disclosure attached hereto as Schedule “B”;

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“Know-how” means any and all trade secrets, technical expertise, knowledge, confidential information and know-how, whether patentable or unpatentable relating to the Invention, whether in written, machine readable, drawing or oral form, including, without limiting the generality of the foregoing, all technical information, raw material, data, product specifications, processes and designs, operating and production data, calculations, computer programs, instructions and techniques, quality control and other standards, and drawings relating thereto developed by UT or the Inventors and which exists as at the Effective Date;

“Licensed Product” means any product derived from any part of the Technology or that results from practicing or using the Technology;

“Licensee Improvements” means any modifications, enhancements, upgrades or additions to the Technology made or created by or for the Licensee;

“Milestones” means those events described in Schedule “C” of this Agreement;

“Net Sales” means the gross amount received by the Licensee or its Affiliates, and any Sub-Licensee (including, without limitation, the fair market value of any non-cash consideration received in connection therewith) net of any of the following charges or expenses that are incurred in connection with the sales, leases or other transfers of Licensed Products or Services the calculation and application of which shall be in accordance with normal industry practice:

- (a) credits, rebates or allowances because of damaged goods or returns with respect to Licensed Products or Services;
- (b) freight, postage, shipping and insurance charges incurred in transporting the Licensed Product(s) to the end customer; and
- (c) taxes, duties or other governmental charges (other than income taxes) levied on, absorbed or otherwise imposed on sales of Licensed Products or Services;

“Parties” means UT and the Licensee collectively, and **“Party”** means one of them;

“Patents” means the patents and/or patent applications listed in Schedule “A” appended hereto, and shall include any divisionals, re-examination or renewals based on the said patents and/or patent applications, any continuation-in-part applications that include claims directed to subject matter specifically disclosed in the said patents and/or patent applications, and any patents which may issue on, from or as a result of any of the foregoing and any reissue of said patents;

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“Patent Costs” means those Third Party charges relating to the filing, prosecution, and maintenance of the Patents.

“Person” includes any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate and a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

“Prime Rate” for any day means the rate of interest expressed as a rate per annum that The Canadian Imperial Bank of Commerce establishes at its head office in Toronto as the reference rate of interest that it will charge on that day for Canadian dollar demand loans to its customers in Canada and which it at present refers to as its prime rate;

“Semi-annual Period” means the periods of time beginning on January 1 and ending on June 30 and beginning on July 1 and ending on December 31 of each year;

“Service” means any service to Third Parties, not provided for free, that is provided by using the Technology, by using a Licensed Product or that relates to a Licensed Product;

“Technology” means the Invention, and includes all Know-how and all Intellectual Property Rights relating to the Invention;

“Territory” means, subject to the provisions of Section 4.3(a) herein, each and every country of the world; and

“Third Party” means, in respect of a Party, a Person who deals with such Party at arm’s length.

1.2 Headings

The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The article, section, subsection and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and are not to be considered part of this Agreement. All uses of the words “hereto”, “herein”, “hereof”, “hereby” and “hereunder” and similar expressions refer to this Agreement and not to any particular section or portion of it. References to an Article, Section, Subsection or Schedule refer to the applicable article, section, subsection or schedule of this Agreement.

1.3 Currency

Unless specified otherwise, all statements of or references to dollar amounts in this Agreement are to lawful money of Canada.

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1.4 Schedules

The following schedules are attached to and incorporated by reference into this Agreement:

Schedule A	Intellectual Property Rights
Schedule B	Confidential Invention Disclosure
Schedule C	Milestones

ARTICLE 2 TECHNOLOGY LICENSE

2.1 Grant of License

- (a) Subject to the terms and conditions hereinafter set forth, UT hereby grants to the Licensee an exclusive license of the Technology, with the exception of Know-how which is licensed non-exclusively, effective throughout the Territory and within the Field of Use:
- (i) to reproduce, make, have made, use, import, export, and sell any Licensed Product;
 - (ii) to engage contractors to reproduce or make components of subsystems that incorporate or embody or that are derived from any parts of the Technology to be used or sold by the Licensee;
 - (iii) to sell any Service;
 - (iv) to copy, translate or modify any Copyright works relating to the Technology;
 - (v) to otherwise practice the Technology (including making improvements as described at Section 4.5 hereof); and
 - (vi) to grant sub-licenses of all rights set out in Paragraphs 2.1(a)(i) through 2.1(a)(v) hereof provided that:
 - 1) the Licensee shall have the right to audit the books and records of each such sub-licensee in the same manner as UT as per Sub-section 3.7(e) hereof; and
 - 2) any such sub-licenses shall also be subject to Section 2.2 hereof.
- (b) Notwithstanding any other provision, the Licensee, its Affiliates and their sub-licensees shall reproduce, make, have made, import, sell, and export the

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Licensed Product, and provide related Services, in accordance with best practices, including but not limited to good manufacturing practices, and provision of services of good and professional quality.

2.2 Sub-Licensing

The Licensee shall:

- (a) promptly notify UT of the proposed terms of all sub-license agreements and the identity of the parties thereto;
- (b) not grant any royalty-free sub-licenses or any sub-licenses for consideration less than fair market value;
- (c) grant sub-licenses solely to Third Parties;
- (d) not grant any irrevocable sub-licenses;
- (e) ensure that sub-licensees are bound by terms consistent with those in Sections 2.1(b) (Grant of License), 2.2 (Sub-Licensing), 2.3 (Reserved Rights), 2.4 (License Restrictions), 3.7 (Accounting and Records), 4.1 (Ownership), 4.6 (Infringement), 4.7 (Confidentiality), 5.3 (Indemnity), 5.4 (Insurance), 5.5 (Limitation of Liability), and Article 7 (General Provisions) herein;
- (f) ensure that sub-licensees do not Encumber any sub-licensed Technology or apply for any intellectual property registrations in respect of any Technology;
- (g) provide UT with reasonable access at UT's cost and expense to books and records during ordinary business hours in order that UT can assure itself that the Licensee's obligations under this Section 2.2 are fulfilled; and
- (h) promptly provide UT with a copy of each sub-license agreement following the execution of such agreements.

2.3 Reserved Rights

The Licensee acknowledges that UT, on behalf of itself and the Inventors have reserved a royalty-free, non-exclusive perpetual irrevocable license to use the Technology for research, educational and administrative purposes including academic publication. The Licensee further acknowledges and agrees to provide Licensed Products to UT for such research or other not-for profit scholarly purposes at a price not to exceed the lowest contracted price in the Licensee's order book or the lowest price offered for sale to Third Parties.

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(if applicable) UT further reserves the right to license the Technology to any Third Parties solely for Humanitarian Purposes. Such licenses for Humanitarian Purposes will a) expressly exclude the right of the Third Party licensee to export or sell Licensed Products from a LMI Country into a market outside of the LMI Country and where UT's Intellectual Property Rights exist and b) require the Third Party licensee to create and maintain distinctive trade dress and trademarks that clearly distinguish Third Party Licensed Products and c) require such Third Party licensee's sale of Licensed Products in such LMI Countries be at or below cost. Notwithstanding the foregoing, prior to issuance of any such license for Humanitarian Purposes UT will notify the Licensee of its intention to grant such license so that the Licensee may have the opportunity to instead engage in discussions for a sublicense with such Third Party.

2.4 License Restrictions

The Licensee acknowledges and agrees that the Licensee, its Affiliates and all sub-licensees:

- (a) shall not use the Technology or advertise, promote, market or otherwise offer Licensed Products or Services for sale in any manner which will adversely affect the reputation of UT;
- (b) shall not, at any time, use the Technology for any purpose except as authorized by this Agreement, nor in any manner likely to negate, impair or dilute any of the rights of UT as owner of the Technology; and
- (c) shall not, at any time, directly or indirectly, dispute or contest:
 - (i) the validity or enforceability of the Patents or the registrations therefor; or
 - (ii) the exclusive ownership rights of UT in and to the Technology.

ARTICLE 3 CONSIDERATION

3.1 License Fee

The Licensee agrees to pay and shall pay to UT a non-refundable initial license fee of [] dollars (\$[]) on or within thirty (30) days following the Effective Date. Such license fee is not creditable to any payments as set forth in Sections 3.2, 3.3, 3.4, 3.5 nor 3.6 hereof.

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Alternative to Paragraph 3.1 (generally used for start-ups)

Equity. In lieu of a License Issue Fee, as partial consideration for the rights conveyed to Licensee by University under this Agreement, Licensee will, upon execution of this Agreement, pay to University a non-refundable License Issue Fee consisting of shares of Common Stock of Licensee equal to _____ percent (___%) of the total outstanding capital stock of Licensee as of the Effective Date on a Fully Diluted basis. "Fully Diluted" shall assume the conversion of all securities then convertible into Common Stock and the exercise of all then outstanding options and warrants to purchase shares of Common Stock, whether or not then exercisable.

Licensee shall issue additional shares of Common Stock such that the University's total share of outstanding stock shall fall below _____ percent (___%) on a Fully Diluted basis, then Licensee shall issue to the University additional shares such that the University's percentage of total outstanding shares on a Fully Diluted Basis shall remain at _____ percent (___%); provided, however, that the foregoing anti-dilution protection shall immediately terminate once the Licensee has received equity infusion of [] dollars (\$___) [amount depends on technology]. Thereafter, no additional shares shall be due to the University.

3.2 Patent Cost Reimbursement

Licensee must reimburse University for all patent expenses invoiced prior to the Effective Date of this Agreement as per the following schedule

- (a) Payment of [] with thirty days of Effective date.
- (b) Payment of [] within six months of the Effective Date.
- (c) Etc

3.3 Royalty

The Licensee, together with all Affiliates, shall pay a royalty (the "**Royalty Payment**") to UT of [] percent ([]%) of the Net Sales made during the term of this Agreement.

3.4 Sub-License Fees

If the Licensee sub-licenses any rights under this Agreement to a Third Party, the Licensee shall pay UT twenty-five percent (25%) of the upfront sub-license fees and any periodic milestone payments, sub-license maintenance fees, sub-license milestone payments and similar non-royalty payments made by sub-licensees to Licensee on account of sub-licenses pursuant to this Agreement (the "**Sub-License Fees**").

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3.5 Sub-License Royalty Payment

If the Licensee sub-licenses any rights under this Agreement to a Third Party (a “**Sub-Licensee**”), then Licensee must obtain a royalty on the Net Sales of such Sub-Licensee at least equivalent to the Royalty Payment, which shall be payable by Licensee to UT on a flow-through basis.

3.6 Annual Minimum Payment

- (a) Three (3) years following the date of the First Commercial Sale, and each and every Calendar Year thereafter (during the term of this Agreement), the Licensee agrees to pay and shall pay to UT an annual minimum payment (“**AMP**”) of [] dollars (\$[]).
- (b) For further clarity, the greater of the AMP in a particular Calendar Year and the total Royalty Payment and Sub-License Royalty Payment due in the same Calendar Year shall be payable to UT. In any event, the Licensee shall pay the outstanding balance of the AMP to UT within sixty (60) days following December 31st of each Calendar Year in which such AMP becomes due and payable pursuant to this Section.

3.7 Milestones

- (a) In relation to each Licensed Product, the Licensee shall use its Best Efforts to carry out those activities set out in Schedule “C”: Milestones hereto.
- (b) Subject to any applicable federal or provincial or state privacy laws or regulations, the Licensee shall provide UT with the following reports within thirty (30) days following June 30th and December 31st of each year during the term of this Agreement:
 - (i) a semi-annual development update, in relation to each Licensed Product, disclosing a summary of research results (containing sufficient detail acceptable to UT, acting reasonably) obtained during the preceding six (6) month period; and
 - (ii) a semi-annual updated business plan.

Said reports are expected to demonstrate continued progress toward the Milestones and to ensure that Licensed Product opportunities and revenue potential is maximized. For further clarity, the semi-annual development update shall not be required if the Licensed Product is available for commercial sale on the June 30th or December 31st corresponding to said update.

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3.8 Accounting and Records

- (a) The Royalty Payments, the Sub-License Fees and the Sub-License Royalty Payments (collectively the "**Fees**") under Sections 3.2, 3.3 and 3.4 hereof are to be paid by the Licensee to UT on a semi-annual basis and shall be made within sixty (60) days following the last day of each Semi-annual Period in which such Fees become due and payable pursuant to this Agreement. For further clarity, Licensed Products or Services shall be deemed to have been sold under this Agreement (and under any sub-license) when Licensed Products are delivered (or Services are performed) and payment is received by the Licensee.
- (b) The Parties acknowledge that the royalties and fees payable hereunder for all sales of Licensed Products and Services within Canada are subject to the tax under Part IX of the *Excise Tax Act* (Canada) ("**GST/HST**"). The Licensee hereby agrees to provide UT with a statement as to the Licensee's GST/HST status and to remit such amounts to UT as required by law. UT is registered to collect GST/HST under registration number R108162330.
- (c) Fees shall be paid to UT free and clear of all taxes including income taxes, except such taxes as the Licensee shall be required by law to withhold.
- (d) The Licensee agrees to keep complete and accurate books of account in which the particulars of all sales of the Licensed Product and/or Service are recorded in sufficient detail to enable Fees payable hereunder to be determined.
- (e) UT or UT's authorized representatives, shall have the right from time to time, upon ten (10) days prior written notice to Licensee, to audit the Licensee's said books and records of accounts and all of the documents and other materials in the possession or under the control of the Licensee with respect to the subject matter of this Agreement. UT reserves the right to confirm any information learned in the course of such audit with any Person that has purchased a Licensed Product or Service from the Licensee to verify the accuracy of the Licensee's payments of Fees and compliance with the terms hereunder. The Licensee shall preserve and keep available to UT all such books and records, documents, contracts, and other data (including reports of audits undertaken by the Licensee of the books and records of its own sub-licensees) with respect thereto for a period of six (6) years after the date of each such record.
- (f) In the event that any audit of the books and records of the Licensee reveals an error in excess of five percent (5%) to the detriment of UT, then the Licensee shall bear all the costs of said examination and pay forthwith all

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outstanding amounts together with interest thereon as set out under Subsection (h) hereof.

- (g) Each payment of the Fees hereunder shall be accompanied by a statement, certified correct by an authorized officer of the Licensee, setting forth:
 - (i) the amount of the Royalty Payment, the Sub-Licensee Fees and/or the Sub-License Royalty Payments due and payable for that Semi-annual Period; and
 - (ii) a written disclosure of all Licensee Improvements (if any).
- (h) Interest shall be payable on any amounts owed by one Party to another Party which are not paid when due, at the Prime Rate plus three percent (3%) per annum, compounded monthly. The payment of interest shall not be deemed an alternative to the payment of amounts owing on the due dates, which payment shall be deemed to be in default, and UT may terminate this Agreement as provided in Section 6.2 hereof.

ARTICLE 4 INTELLECTUAL PROPERTY

4.1 Ownership

All aspects and parts of the Technology shall be exclusively owned by UT and nothing herein shall serve to, or should be construed to transfer any ownership rights whatsoever in the Technology.

4.2 Know-how

- (a) UT shall furnish a summary of the relevant Know-how to the Licensee within a reasonable period of time following the Effective Date, including all patents described in Schedule "A" (including the latest draft of any applications which have not matured into patents), together with all documentation that is reasonably necessary for understanding the Technology, to the extent that it exists and is within the control of UT, along with oral explanations of the Know-how and of unwritten Confidential Information.
- (b) The Licensee shall be conclusively deemed to have received all necessary delivery under this Section 4.2 if the Licensee has not notified UT within ninety (90) days after the Effective Date that such delivery has not occurred.

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4.3 Patents and Patent Applications

- (a) Subject to Subsection 4.3(b) hereof, UT shall, as between UT and the Licensee, bear the responsibility to file, prosecute and maintain the Patents in accordance with its standard practices. Such Patents shall be filed, prosecuted and maintained in the name of the UT. UT shall use reasonable efforts to obtain those patents and shall not allow those patents to lapse for failure to comply with maintenance obligations. UT, after non-binding consultation with the Licensee, shall determine in which countries to pursue patent applications, provided that if UT elects not to pursue a patent application in any country, the Licensee shall be entitled to do so and UT shall provide such assistance to the Licensee, at the Licensee's cost and expense, in this regard as the Licensee may reasonably request. The Licensee may elect not to support a patent application in any country. Such an election must be made no later than sixty (60) days after a written request is submitted by UT to the Licensee. Should the Licensee either elect not to support a patent application in that country or should sixty (60) days elapse without the Licensee responding to the request by UT, UT may, at its sole discretion, file such patent or continue such prosecution in that country at its own cost and expense. In such a case, the Licensee would not have any rights to or in any patents arising from such applications and the definition of "Territory" for the purposes of this Agreement shall not include any such country.
- (b) Following the Effective Date, the Licensee shall reimburse UT for all Patent Costs, except in respect of those countries in which it has elected not to prosecute applications; UT to invoice Licensee for Patent Costs.
- (c) UT undertakes to keep the Licensee reasonably advised of the progress of prosecution and of any actions UT proposes to take or has taken in connection with the prosecution or maintenance of the Patents or any patent application included in the definition of Patents. UT will diligently endeavor to provide the Licensee with copies of correspondence and all actions issued by patent authorities and shall use Best Efforts to incorporate, any comments, remarks or suggestions the Licensee may promptly provide to UT in writing at least ten (10) days prior to any due date established by UT for preparation of a response or amendment and in all cases thirty (30) days prior to any patent office due dates of which it becomes aware.
- (d) Nothing contained in this Agreement (including, without limitation, the provisions of this Section 4.3) shall interfere with, amend or supercede any obligations of the Inventors to UT (or the obligations of UT to the Inventors) which exist under contract as of the date hereof.

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- (e) The Parties may vary the terms of Sub-sections 4.3 (a) or 4.3 (b) but only upon the written agreement of their authorized representatives.

OR IF THE LICENSEE IS FULLY RESPONSIBLE FOR PATENTS:

- (a) Licensee shall bear the responsibility to file, prosecute and maintain the Patents in accordance with its standard practices. Such Patents shall be filed, prosecuted and maintained in the name of UT. Licensee shall use reasonable efforts to obtain those patents and shall not allow those patents to lapse for failure to comply with maintenance obligations. Licensee, shall determine in which countries to pursue patent applications, provided that if Licensee elects not to pursue a patent application in any country, UT shall be entitled to do so and Licensee shall provide such assistance to UT, at UT's cost and expense, in this regard as UT may reasonably request. In such a case, Licensee would not have any rights to or in any patents arising from such applications made by UT and the definition of "Territory" for the purposes of this Agreement shall not include any such country.
- (b) Licensee shall directly pay for all Patent Costs, except in respect of those countries in which it has elected not to prosecute applications.
- (c) Licensee undertakes to keep UT advised of the progress of prosecution and of any actions Licensee proposes to take or has taken in connection with the prosecution or maintenance of the Patents or any patent application included in the definition of Patents. Licensee will ensure that UT is copied on correspondence and all actions issued by patent authorities and shall use Best Efforts to incorporate, any comments, remarks or suggestions UT may promptly provide to Licensee in writing at least ten (10) days prior to any due date established by Licensee for preparation of a response or amendment and in all cases thirty (30) days prior to any patent office due dates of which it becomes aware.
- (d) Nothing contained in this Agreement (including, without limitation, the provisions of this Section 4.3) shall interfere with, amend or supersede any obligations of the Inventors to UT (or the obligations of UT to the Inventors) which exist under contract as of the date hereof.
- (e) The Parties may vary the terms of Sub-sections 4.3 (a) or 4.3 (b) but only upon the written agreement of their authorized representatives.

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4.4 Small Entity Designation

If the Licensee, any sublicensee and/or any holder of an option to obtain a sublicense does not qualify, or at any point during the term of this Agreement ceases to qualify, as a “small entity” as provided by:

- (a) the United States Patent and Trademark Office (USPTO), and/or
- (b) the Canadian Intellectual Property Office (CIPO)

then the Licensee shall so notify the USPTO and CIPO immediately, and the Licensee shall comply with the USPTO and/or CIPO regulations regarding payment of fees with respect to the Patents.

4.5 Improvements

- (a) If the Licensee produces or has produced any Licensee Improvements, then the Licensee shall grant to UT, a right to use such Licensee Improvements for the purposes set out in Section 2.3 hereof and on the same terms and conditions as set out therein.
- (b) Subject to Section 4.1 hereof, all Licensee Improvements, and any intellectual property rights associated therewith, shall be owned exclusively by the Licensee.

4.6 Infringement

- (a) The Licensee will notify UT promptly upon becoming aware of any claim or assertion by a Third Party that a Licensed Product and/or Service infringes or otherwise is in violation of a Third Party’s patents or intellectual property. The Parties shall promptly enter into discussions with the Third Party to determine the existence and extent of the infringement and the Parties’ mutually agreed course of action. Each Party will absorb its own costs of the discussions.
- (b) The Licensee and UT may agree to jointly defend or pursue litigation, but neither of them shall bind or commit the other to any course of action which involves liability for legal costs, expenses or damages. If the Licensee and UT agree to jointly defend or pursue litigation, then the Parties will agree in advance on their level of participation (including, but not limited to, the funding and time to be provided by each Party) in any such claim, action or proceeding, and each Party will absorb its own costs in relation to any such claim, action or proceedings. The Parties acknowledge and agree that they shall share anything awarded by a court or paid as a settlement by a Third Party in proportion each Party’s level of participation as set forth above. If

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Example for Reference Only

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the Licensee and UT fail to agree, within a reasonable time, having regard to the normal progress of litigation, as to any course of action which might be jointly taken, then either of them may take or defend proceedings alone, if legally entitled to act alone, and shall be entitled to retain anything awarded to it by a court, or paid to it as a settlement by the Third Party. Where either the Licensee or UT wishes to act alone or are unable to agree on a joint defense, but formalities require participation of the other, then the other shall join in the proceeding to the extent necessary for formalities. Each will cooperate with the other in making available all necessary documents and witnesses for any legal proceedings, subject to the prompt re-imbursement by the requesting Party of any out-of-pocket expenses. If either the Licensee or UT proceed alone, it shall indemnify the other for reasonable legal costs for representation that is reasonably necessary and for any court-ordered payments. Neither the Licensee nor UT shall settle any such claim without the prior written consent of the other, such consent not to be unreasonably withheld.

4.7 Confidentiality

- (a) All Confidential Information will remain the property of its owner or the Party that furnished it as the case may be.
- (b) For a period of five (5) years from the date of disclosure of Confidential Information, each Party agrees to maintain in confidence all Confidential Information disclosed with the same degree of care as it normally takes to preserve its own confidential information of similar grade, but in any event, no less than a reasonable degree of care.
- (c) Each Party may only disclose Confidential Information to persons with a “need to know” who shall be made aware of, and be required to observe and comply with the covenants and obligations contained herein, and the Confidential Information shall only be used to carry on or facilitate the business of the Licensee as contemplated under this Agreement.
- (d) A Party may disclose Confidential Information pursuant to the requirements of a government agency or pursuant to a court order, provided that the Party shall take all reasonable steps, including, but not limited to the seeking of an appropriate protective order, to preserve the confidentiality of the Confidential Information provided.
- (e) If this Agreement is terminated for any reason, any Party in receipt of Confidential Information shall promptly deliver or destroy all Confidential Information of the disclosing Party without retaining copies thereof, except that the receiving Party may retain in the office of its legal counsel one (1) copy of written Confidential Information for record purposes only.

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Example for Reference Only

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- (f) In the event that a Party becomes aware of, or perceives any threat that, any Confidential Information may be disclosed contrary to the provisions of this Section 4.7, or in the circumstances referred to in Subsection 4.7(d), such Party shall immediately provide written notice thereof to the other Party.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND INDEMNITY

5.1 Representations and Warranties of Parties

The representations of the Licensee and UT, one to the other are as follows:

- (a) The Licensee is a corporation duly organized, validly existing and in good standing, and it has the right and authority to enter this Agreement, and do all acts and things as required or contemplated to be done, observed and performed by it hereunder.
- (b) The execution, delivery and performance of this Agreement does not contravene any law, rule or regulation of either Party or of the jurisdiction in which it is incorporated or organized.
- (c) UT is a corporation duly organized, validly existing and in good standing, and it has the right and authority to enter this Agreement and the right to grant the license as provided herein and that such grant is not in conflict with any other agreement to which it is a party.

5.2 Disclaimers

Except for the foregoing representations and warranties provided in Section 5.1 hereof, the Technology and other rights granted hereunder are supplied and licensed to the Licensee by UT on an “as is” basis, and UT disclaims all representations, warranties and conditions of any kind, whether express or implied, statutory or otherwise, including without limitation:

- (a) all representations, warranties and conditions as to the patentability, validity, scope or enforceability of the Technology;
- (b) all representations, warranties and conditions that any use of the Technology will be free from infringement of intellectual property rights of any Third Party; and
- (c) all representations, warranties and conditions as to quality, merchantable quality, merchantability or fitness of the Technology for any particular purpose.

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Example for Reference Only

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5.3 Indemnity

- (a) The Licensee shall defend and shall hold harmless and indemnify each and all of the Beneficiaries, from and against any and all claims, threats, loss, liabilities, damages, fees or expenses, including reasonable attorney's fees, (individually a "**Claim**" and collectively the "**Claims**") by reason or arising out of any acts or failure to act by or out of any use of the Technology or a Licensed Product or a Service by the Licensee or its sub-licensee(s) or their respective servants, agents, Affiliates, officers, directors, stock-holders, employees or customers.
- (b) Notwithstanding anything contained herein: (i) the Licensee shall not be entitled to settle any Claim against any one or more Beneficiaries without the prior written approval of the UT in respect of which such Claim has been made, which approval shall not be unreasonably withheld; (ii) the Licensee shall consult with UT and shall keep UT reasonably informed with respect to all Claims in respect of which indemnification may be sought hereunder; and (iii) the Licensee shall not be required to indemnify UT, to the extent allowed by law where such Claim is caused by the gross negligence or willful misconduct of UT.
- (c) The indemnity provided herein shall survive any termination or assignment of this Agreement subject to any prescription rights available to the Licensee under the *Limitations Act, 2002*. The Licensee acknowledges that UT is entering this Agreement and obtaining the foregoing indemnification on its own behalf and also on behalf of the other Beneficiaries and is holding the rights contained in this Section in trust for the other Beneficiaries.

5.4 Insurance

- (a) The Licensee, at its own expense and at all times during the term of this Agreement, and for the duration of its indemnity obligations which survive the expiration or premature termination of this Agreement pursuant to Section 5.3 hereof, shall carry and maintain in full force and effect comprehensive general liability insurance that covers UT in any and all claims brought in a form and with a carrier satisfactory to UT.
- (b) Upon the achievement of the First Commercial Sale or a sub-license agreement with a Third Party, the Licensee shall agree to amend such general liability insurance to include product liability provisions, in a form and with a carrier satisfactory to UT. The lower limit of such policy shall be [] Million Dollars (\$[,000,000) per incident and [] Million Dollars (\$[,000,000) annual aggregate unless UT specifically agrees in writing to such lesser amount. Upon the reasonable request of UT, the amount of insurance coverage shall be increased to a reasonable amount.

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Example for Reference Only

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- (c) The coming into force of this Agreement is conditional upon UT having reviewed a certificate of insurance from the relevant insurance company, in a form acceptable to UT, acting reasonably, evidencing the Licensee's compliance with the provisions of this Section 5.4. Such policy shall contain an endorsement by the insurer providing that it shall not be cancelled or amended without thirty (30) days prior notice to UT. The Licensee shall provide a certificate of such insurance to UT annually hereafter on the anniversary of the Effective Date.

5.5 Limitation of Liability

- (a) IN NO EVENT SHALL UT NOR ANY OF ITS DIRECTORS, OFFICERS, CONTRACTORS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR EXPENSES OF ANY TYPE (INCLUDING BUT NOT LIMITED TO ANY DAMAGES FOR LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, LOST BUSINESS OR LOST SAVINGS) ARISING OUT OF THIS AGREEMENT OR THE TECHNOLOGY, WHETHER SUCH DAMAGES OR EXPENSES ARISE OUT OF BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH), OR TORT OR ON ANY OTHER STATUTORY OR COMMON LAW BASIS, EVEN IF UT OR ANY OF ITS DIRECTORS, OFFICERS, CONTRACTORS, EMPLOYEES OR AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) IN NO EVENT SHALL UT'S TOTAL LIABILITY FOR ALL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO UT BY THE LICENSEE UNDER THIS AGREEMENT.
- (c) The Parties acknowledge and agree that the exclusions of liability contained herein reflect the allocations of risk between the Parties and the price of the Technology under license, and accordingly are reasonable and appropriate in the circumstances and were a material factor in determining the Fees payable hereunder.

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ARTICLE 6 TERM AND TERMINATION

6.1 Term

This Agreement shall come into effect upon the Effective Date, and unless earlier terminated in accordance with the terms hereof, shall terminate on the expiration or invalidity of the last issued Patent with respect to the Technology.

6.2 Termination

- (a) The occurrence of any one or more of the following events shall constitute an event that allows for the termination of this Agreement and shall, in addition to any other right or remedy UT may have, permit UT to immediately terminate this Agreement if:
 - (i) any order is made or a resolution passed for the winding-up of the Licensee or if a petition (voluntary or involuntary) is filed under the *Bankruptcy and Insolvency Act* (Canada) against the Licensee or an authorized assignment for the benefit of creditors is made by the Licensee or if a receiver or agent is appointed by or on behalf of a secured creditor of the Licensee or pursuant to a court order or an application is made under the *Companies' Creditors Arrangement Act* (Canada) or notice of intention to make a proposal is filed or a proposal is made by the Licensee to its creditors under the *Bankruptcy and Insolvency Act* (Canada);
 - (ii) an encumbrancer, whether permitted or otherwise, takes possession of any substantial part of the assets of the Licensee, or any process of a court, execution, distress, or analogous process becomes enforceable or is enforced against any substantial part of the assets of the Licensee and the Licensee is not instituting proceedings to vacate or lift such execution, distress or analogous process;
 - (iii) the Licensee ceases or threatens to cease to carry on its business, commits any act of bankruptcy, becomes insolvent, proposes a compromise or arrangement to its creditors or makes an unauthorized sale in bulk of its assets; or
 - (iv) the Licensee is liquidated, dissolved or its corporate charter expires or is revoked.
- (b) Other than as provided in Section 6.1 and Subsection 6.2(a) hereof, this Agreement may be terminated for material breach of any provision hereof by any of the Parties upon at least ninety (90) days prior written notice to

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Example for Reference Only

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the Party asserted to be in breach thereof, provided that if the defaulting Party cures the breach within such ninety (90) day period, the Agreement shall continue in full force and effect (provided that if such breach is cured and is thereafter breached again and is curable within a period of time shorter than ninety (90) days, the subsequent cure period shall be such shorter period of time as is commercially reasonable).

- (c) Termination as set forth in this Section 6 shall not relieve any of the Parties of any obligations accrued under this Agreement prior to the date of termination. Each of Sections 1.1 (Definitions); 2.3 (Reserved Rights); 2.4 (License Restrictions); 3.7 (Accounting and Records); 4.1 (Ownership); 4.5 (Improvements); 4.7 (Confidentiality); 5.3 (Indemnity); 5.4 (Insurance); 5.5 (Limitation of Liability); Subsection 6.2(c) (Survival); Section 6.3 (Effect of Termination); and Article 7 (General Provisions) shall survive termination of this Agreement.

6.3 Effect of Termination

Upon termination of this Agreement:

- (a) the Licensee shall immediately cease use of the Technology and the Licensed Products;
- (b) the Licensee shall pay promptly all amounts it owes hereunder to UT;
- (c) the Licensee shall assign any and all sub-licenses granted under this Agreement to UT;
- (d) subject to Subsection 4.7 (e) hereof, the Licensee shall destroy or return to UT all Confidential Information (and if destroyed certify its destruction in writing); and
- (e) the Licensee will grant UT a first option for the exclusive right to commercialize the Licensee Improvements and related know-how on terms and conditions to be negotiated in good faith between the Parties and upon successful negotiations of such terms will transfer to UT all data, government approvals and other documents that are necessary for such commercialization. In any event, UT shall have the right to use any such Licensee Improvements for the purposes set out in Section 2.3 hereof and on the same terms and conditions as set out therein.

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Example for Reference Only

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**ARTICLE 7
GENERAL**

7.1 Time

Time is of the essence of each provision of this Agreement.

7.2 Assignment and Sub-licenses

- (a) Neither Party may sell, assign, encumber, license or otherwise transfer any of its rights, duties or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Licensee is responsible for any and all activities of any sub-licensee and the sub-licensee shall adhere to all confidentiality, indemnity and insurance requirements set forth in this Agreement. No sub-license granted by the Licensee shall be less favorable with respect to any term or condition to UT than the license granted herein. Further the Licensee shall be vicariously liable for any breaches of the obligations under this Agreement in connection with the activities of a sub-licensee.

7.3 Notices

Any notice, demand or other communication required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if delivered personally or sent by prepaid registered mail to its address or electronically by email to the attention of the person set forth below:

- (a) In the case of a notice to the Licensee:

[]

Attention: []

Email:

- (b) In the case of a notice to UT:

For legal matters:

The Governing Council of the University of Toronto
University of Toronto Innovations & Partnerships Office
Banting Institute,
100 College Street, Suite 413,
Toronto, Ontario M5G 1L5, Canada

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Example for Reference Only

To establish a license agreement with University of Toronto, contact a Commercialization Manager or Industry Licensing Officer for assistance.

Attention: Director, Innovations
Email: commercialization@utoronto.ca

With a copy to: [Commercialization Manager]
Email:

For patent related matters:

Attention: Patent Portfolio Manager
Name:

E-mail:
With a copy to: Patents@utoronto.ca

Each notice sent in accordance with this Section shall be deemed to have been given and received:

- (i) if delivered, on the day it was delivered if received within normal business hours;
- (ii) if mailed, on the fifth (5th) business day following the date on which it was mailed, unless an interruption of postal services occurs or is continuing on or within the five (5) business days after the date of mailings in which case the notice shall be deemed to have been received on the fifth (5th) business day after postal service resumes;
- (iii) upon confirmation by recognized national overnight courier or confirmed electronic mail.

Either Party may by notice to the other, given as aforesaid, designate a changed address, email address or telecopier number.

7.4 Severability

In the event any term or any part of any term of this Agreement is determined to be void or unenforceable, such term or part of a term shall be considered separate and severable from this Agreement and the remaining terms shall continue in full force and effect.

7.5 Governing Law & Attornment

This Agreement shall be governed by, and interpreted and enforced in accordance with the laws in force in the Province of Ontario and the federal laws of Canada applicable therein

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Example for Reference Only

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(excluding any conflict of laws, rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Section 7.6 hereof, each Party hereby attorns and submits to the exclusive jurisdiction of the Ontario Superior Court of Justice in any action or proceeding arising out of or relating to this Agreement. Further, each Party hereby agrees that all such claims in respect of such actions or proceedings shall be heard and determined in Toronto in such Ontario court.

7.6 Conflict Resolution

- (a) Each Party forthwith following the execution of this Agreement will nominate a representative to form a committee to address any and all conflicts between the Parties hereto pursuant to the terms of this Agreement (the “**Committee**”). Each Party may change its representative on the Committee at any time upon written notice to the other Party.
- (b) If a Party hereto (the “**First Party**”) disagrees with the other Party hereto (the “**Second Party**”) about any matter which is the subject matter of this Agreement, the First Party shall give the Second Party and the Committee written notice of the conflict. The Second Party shall have ten (10) days to consider the matter and then both the First Party and the Second Party shall have the next ten (10) days to resolve the conflict. If they cannot resolve the conflict within the said time frame, they shall refer it to the Committee which shall then have ten (10) days to work with both Parties to try and resolve the conflict.
- (c) If the Committee cannot resolve the conflict within the time period set out above, then the conflict shall be resolved according to Section 7.5 hereof.

7.7 Further Assurances

The Parties agree to execute, acknowledge and deliver all such further instruments, and to do all such other acts, as may be necessary or appropriate to carry out the intent and purpose of this Agreement.

7.8 Waiver of Rights

No failure or delay on a part of a Party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or future exercise thereof or the exercise of any other right, power or remedy. No waiver by a Party hereto of a default hereunder shall operate against such Party as a waiver of such default unless made in writing and signed by an authorized officer of such Party.

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Example for Reference Only

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7.9 Relationship of the Parties

- (a) The relationship of the Licensee to UT is that of an independent contractor and neither the Licensee nor its agents or employees shall be considered employees of UT. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the Licensee and UT.
- (b) A Party will not use the name of any other Party, nor any member of such Party's staff in any advertising or publicity without the prior written approval of an authorized representative of the body whose name is to be used. However, a Party may notify others of the fact that this Agreement is in effect.

7.10 Force Majeure

No Party shall be liable to any other party for delay or failure in the performance of any of its obligations hereunder if such failure is caused by Force Majeure, as hereinafter defined. For the purposes hereof, "**Force Majeure**" means any act of God, action or failure to act of any government or governmental or regulatory authority, failure of supplies, materials, equipment, labour or transportation being provided by any other person, power failure or shortage, strike, lockout, work slowdown or stoppage, accident, fire, flood, explosion, storm, other natural occurrence, sabotage or other event beyond the control of the relevant party.

7.11 Rights and Remedies

In the event that any Party should breach or violate any covenant or obligation in this Agreement, the non-breaching Party shall be entitled, subject to Section 7.6 hereof, to exercise any right or remedy available to it at law. Such rights shall include, without limitation, termination of this Agreement, and damages.

7.12 Entire Agreement

This Agreement, including all attached schedules which are hereby incorporated by reference, sets forth the entire agreement and understanding of the Parties relating to the subject matter contained herein and merges all prior discussions and agreements between them, and neither Party shall be bound by any definition, condition, warranty or representation other than expressly stated in this Agreement. Any amendment to this Agreement shall not be effective unless it is in writing and signed by the duly authorized signing officers of each Party.

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7.13 Counterparts and Electronic Exchange of Signatures

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, together, shall constitute one and the same instrument.

A Party may send a copy of its signed counterpart to the other Party by facsimile transmission (telecopier) or email.

7.14 Succession

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, administrators and other legal representatives and, to the extent permitted hereunder, their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a legally binding manner.

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

Per: _____
Name:
Title:
Date:

[] INC.

Per: _____
Name:
Title:

Date:

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SCHEDULE "A"
INTELLECTUAL PROPERTY RIGHTS

Patents and/or Patent Applications:

Country:

Title:

Application No.:

Patent No.:

Filing Date:

Issue Date:

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Example for Reference Only

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SCHEDULE "B"
CONFIDENTIAL INVENTION DISCLOSURE

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**SCHEDULE “C”
MILESTONES**

Event:	Due Date:

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