

Foundation Agreement with Biotechnology/Pharmaceutical Company

Source: [Schaner and Lubitz, PLLC](#)

N.B.: This is a short-form agreement for an award to a biotech or pharma company, generally used for awards of \$5 million and under. While it also could be used for awards of larger amounts, these tend to have unique complications that require longer form agreements.

_____, 201__

[Organization]
[address]

Development Program: Clinical Trial for _____

Amount of Award: \$ _____

Name of Awardee: _____, LLC/Inc. (“Awardee”)

Dear _____:

We are pleased to inform you that the [Organization] (“[Organization]”) is hereby issuing an award for the Development Program described in Exhibit A and disbursed in accordance with Exhibit B up to the amount indicated above. The awardee, Awardee, shall be responsible for the payment of all of the remaining costs required to complete the Development Program and for costs associated with continuing CRE necessary to further develop and commercialize the Product. Each party’s obligations hereunder will commence and apply upon the execution of this Agreement. The Award is in furtherance of [Organization]’s charitable mission to _____. The Award is subject to the following terms, conditions and policies of this Letter Agreement (“Agreement”):

1. Disbursement of Award; [ORGANIZATION] Know-How; Reports.

(a) The Award will be disbursed by [Organization] to Awardee in accordance with the Milestone Payment Schedule set forth in Exhibit B. Any [Organization] funds not expended on the Development Program must be returned to [Organization] and upon such return, the amounts of such returned funds will not be included as part of the “Award” for purposes of calculating any royalties or other amounts owed by Awardee to [Organization] pursuant to Paragraph 2(b).

(b) To the extent [Organization] provides or makes available any information, expertise, know-how or other intellectual property related to _____ or the treatment, prevention, or cure thereof (“[Organization] Know-How”) to Awardee, [Organization] hereby grants to Awardee a non-exclusive, transferable, sublicensable (through multiple tiers), worldwide right and license under all of [Organization]’s

rights in such [Organization] Know-How to assist Awardee to research, develop, commercialize, make, have made, use, sell, have sold, offer for sale, import, export and otherwise exploit the Product.

(c) During the Development Program, Awardee agrees to provide [Organization] and the Project Advisory Group (“PAG”) specified below with a reasonably detailed, written report every three (3) months, summarizing progress toward achieving the goals of the Development Program. In addition, Awardee shall prepare and deliver to [Organization] a closing report within thirty (30) days after the completion of the Development Program. Awardee shall continue to report to [Organization] annually through the PAG (as hereafter provided for) on the progress of its development activities regarding the Product until the earlier of first commercial sale of the Product or such research efforts are abandoned by Awardee, its Affiliates and its sublicensees, solely as a result of scientific failure.

2. Royalties. In consideration of [Organization]’s Award under this Agreement, Awardee agrees to pay to [Organization] royalties as follows:

(a) Awardee shall pay a one-time royalty to [Organization] in an amount equal to the Royalty Cap. Such amount shall be paid in three (3) equal installments: the first within ninety (90) days of the first commercial sale of the Product; and the remaining installments on or before the first and second anniversaries of such date.

(b) In addition to the royalty payable pursuant to subparagraph (a) above, Awardee shall pay to [Organization] a one-time royalty equal to the Actual Award within sixty (60) days after the end of the first calendar year after which aggregate Net Sales of the Product exceed \$_____ million.

(c) In the event of a license, sale or other transfer of the Product (excluding Net Sales) or a Change of Control Transaction, Awardee shall pay to [Organization] _____ () times the amount of the Actual Award (the “Disposition Payment”). Such payment shall be made within sixty (60) days after any transactions giving rise to such payment. Notwithstanding the payment of the Disposition Payment, the royalties specified in subparagraphs (a) and (b) shall survive, provided that the royalty specified in subparagraph (a) shall be reduced by the Disposition Payment.

3. Commercially Reasonable Efforts. Awardee shall use Commercially Reasonable Efforts to conduct the Development Program during the term of this Agreement. After the Development Program is completed, Awardee shall exercise Commercially Reasonable Efforts to continue to develop the Product.

4. Program Advisory Group (“PAG”).

(a) Awardee and [Organization] shall form a PAG. The PAG serves the function of allowing [Organization] to oversee the use of its funding. The PAG shall terminate and cease to exist on the earlier of the commercialization of the Product or the termination of this Agreement. The PAG shall consist of two (2) individuals appointed by Awardee and two (2) individuals appointed by [Organization]. One of such

individuals from Awardee and [Organization], respectively, shall be the principal liaison to the Development Program. A party may replace the individuals appointed by such party and designate a different individual as the principal liaison upon written notice to the other party.

(b) The role of the PAG shall be to determine, discuss and propose amendments to the Development Program and budget, to determine whether payment milestones have been achieved, and provide recommendations on other issues raised by either party relating to the Development Program, provided that no change to the Development Program shall be made without the written agreement of both parties.

5. Interruption License. Awardee hereby grants the Interruption License to [Organization], which Interruption License shall be effective as provided below. Upon written notice from [Organization] following an Interruption (the “Interruption Notice”), Awardee shall elect, within thirty (30) days of such Interruption Notice, one of the following options by notice to [Organization]:

- (a) Awardee shall reasonably demonstrate, in the form of a written progress report, that an Interruption has not occurred, or that Awardee, an Affiliate thereof, or a licensee or sublicensee of either of the foregoing is exercising Commercially Reasonable Efforts to research, develop or commercialize the Product;
- (b) Awardee shall provide [Organization] with notice within such thirty (30) day-period that Awardee, an Affiliate thereof, or a licensee or sublicensee of either of the foregoing, has plans to resume Commercially Reasonable Efforts to develop or commercialize the Product and resumes such Commercially Reasonable Efforts within the ninety (90) day period following such notice;
- (c) The Interruption License shall become effective, as set forth below; or
- (d) [Organization] may elect in lieu of the Interruption License, within thirty (30) days of the Interruption Notice, to have Awardee pay to [Organization] the greater of (A) _____ () times the Actual Award, and (B) the total of the Actual Award plus Interest up to the time of such election; and in the event of such election and payment, this Paragraph 5 shall otherwise no longer be applicable.

If Awardee has elected (a) or (b) above within thirty (30) days of the Interruption Notice, the Interruption Notice shall be deemed satisfied and be of no further force or effect unless [Organization] notifies Awardee within thirty (30) days after receipt of Awardee’s progress report under (a) above or provides notice under (b) above that [Organization] disputes such progress report or notice, as the case may be. If [Organization] provides timely notice of its dispute, the parties shall resolve such dispute in accordance with the dispute resolution provision of this Agreement.

If Awardee has elected (a) or (b) above, [Organization] has disputed such election, the resolution of the dispute is concluded and the final outcome of such dispute resolution is that such election was defective, Awardee shall be deemed to have made the election specified in (c) above. If Awardee has made (or is deemed to have made) the election specified in (c) above, the Interruption License shall be effective upon such election (or deemed election) (such date, the “Interruption License Effective Date”). The Interruption License shall be an exclusive (even as to Awardee), worldwide license to [Organization] under the Awardee Development Program Technology to manufacture, have manufactured, license, use, sell, offer to sell, and support the Product in the Field. Awardee shall deliver to [Organization], within ninety (90) days after the Interruption License Effective Date, a copy of all materials and data in its possession or control constituting Development Program Technology, to the extent required by [Organization] to make, use, or sell the Product in the Field. In the event that Awardee assigns all of or certain of its rights and obligations to develop and commercialize the Product at any time to a third party, such third party shall be subject to the obligations of the Interruption License. The Interruption License shall be deemed to constitute intellectual property as defined in Section 365(n) of the U.S. Bankruptcy Code; provided, however, that nothing in this Agreement shall be deemed to constitute a present exercise of such rights and elections. Awardee agrees that [Organization], as a licensee of such rights, shall retain and may exercise all of its rights and elections under the U.S. Bankruptcy Code.

6. Indemnification by Awardee.

(a) Awardee shall indemnify, defend and hold harmless [Organization], its Affiliates, and their respective directors, officers, employees, consultants, committee members, volunteers, agents and representatives and their respective successors, heirs and assigns (each, a “[Organization] Indemnitee”), from and against any and all claims, suits and demands of third parties and losses, liabilities, damages for personal injury, property damage or otherwise, costs, penalties, fines and expenses (including court costs and the reasonable fees of attorneys and other professionals) payable to such third parties arising out of, and relating to any such third party claims resulting from:

(i) the conduct of the Development Program by Awardee or its Affiliates or their respective directors, officers, employees, consultants, agents, representatives, licensees, sublicensees, subcontractors and/or investigators (each, an “Awardee Party”) under this Agreement and/or pursuant to one or more agreements between Awardee and any Awardee Party, or any actual or alleged violation of law resulting therefrom;

(ii) Awardee’s or its Affiliates’ development, manufacture, or commercialization of the Product developed in whole or in part as a result of the Development Program;

(iii) any claim of infringement or misappropriation with respect to the conduct of the Development Program by or on behalf of Awardee or its Affiliates, or Awardee’s or its Affiliates’ third party

licensees' or sublicensees' manufacture, use, sale, or import of the Product developed in whole or in part as a result of the Development Program; and

(iv) any tort claims of personal injury (including death) relating to or arising out of any such injury sustained as the result of, or in connection with, the conduct of the Development Program by or on behalf of Awardee or its Affiliates, or Awardee's or its Affiliates' third party licensees' or sublicensees' (other than [Organization] or any of [Organization]'s licensees or sublicensees development, manufacture, or commercialization of the Product developed in whole or in part as a result of the Development Program; in each case except to the extent the claim, suit, demand, liability, damage, or loss results from the negligence, willful misconduct or other fault of a [Organization] Indemnitee.

(b) [Organization] will indemnify, defend and hold harmless Awardee, its Affiliates and their respective directors, officers, employees, consultants, agents and representatives and their respective successors, heirs and assigns ("Awardee Indemnitees") from and against any and all claims, suits and demands of third parties and losses, liabilities, damages for personal injury, property damage or otherwise, costs, penalties, fines and expenses (including court costs and the reasonable fees of attorneys and other professionals) payable to such third parties arising out of, resulting from, or relating to any exercise of any rights under the Interruption License by or on behalf of [Organization], any designee, assignee or successor in interest thereto, or any licensee or sublicensee of any of the foregoing, except to the extent the claim, suit, demand, liability, damage or loss results from the negligence or willful misconduct of a Awardee Indemnitee after the effective date of the Interruption License.

(c) A party entitled to indemnification under this Paragraph 6 (the "Indemnified Party") will promptly notify the other Party (the "Indemnifying Party") of any claims, suits, demands, losses, liabilities, damages costs, penalties, fines, or expenses subject to indemnification under this Paragraph 6 of which it is made aware. The Indemnified Party will cooperate, and exert efforts to cause other Indemnified Parties to cooperate, in assisting the Indemnifying Party in presenting a defense, if requested to do so. The Indemnifying Party shall have sole control to select defense counsel, direct the defense of any such complaint or claim, and the right to settle claims at the Indemnifying Party's sole expense, provided that any such settlement does not incur non-indemnified liability for or admit fault by any Indemnified Party. In the event a claim or action is or may be asserted, the Indemnified Party shall have the right to select and to obtain representation by separate legal counsel. If the Indemnified Party exercises such right, all costs and expenses incurred for such separate counsel shall be borne by the Indemnified Party. No Indemnified Party shall settle or enter into any voluntary disposition of any matter subject to indemnification under this Paragraph 6 without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld.

7. **Insurance.** Awardee shall maintain at its own expense, with a reputable insurance carrier, coverage for Awardee, its Affiliates, and their respective employees written on a per occurrence basis commensurate

with a reasonable assessment of the risks associated with the development efforts being conducted by Awardee, the following policies: Commercial general liability insurance, including contractual liability as respects this Agreement for bodily injury and property damage and, no later than the first use administration of the Product to a human subject, the Product liability and clinical trials liability.

Maintenance of such insurance coverage will not relieve Awardee of any responsibility under this Agreement for damage in excess of insurance limits or otherwise. On or prior to the Effective Date of this Agreement, Awardee shall provide [Organization] with an insurance certificate from the insurer(s), broker(s) or agent(s) (hereinafter collectively the “Insurance Providers”) evidencing the applicable insurance coverage. At its request, [Organization] may review Awardee’s insurance coverage with relevant Awardee personnel no more than one time per year.

8. Intellectual Property Rights. All inventions, data, know-how, information, results, analyses, and other intellectual property rights resulting from the Development Program shall, as between the parties, be owned by Awardee and the preparation, filing and maintenance of all patents resulting from the Development Program shall, as between the parties, be the sole responsibility, and under the sole control, of Awardee. Subject to Paragraph 5, [Organization] hereby assigns and transfers to Awardee all of [Organization]’s right, title, and interest in and to all inventions and other intellectual property resulting from the Development Program, [Organization]’s access to, or knowledge or use of, any Awardee Development Program Technology, the Product, or confidential or proprietary information of Awardee, and all intellectual property rights related to any of the foregoing, free and clear of all liens, claims, and encumbrances.

9. Termination of Agreement.

(a) Either party may terminate this Agreement for cause, without prejudice to any other remedies available to the terminated party with respect thereto, by providing the other party with written notice of such cause and intent to terminate; provided, however, that the other party shall have thirty (30) days following the receipt of written notice to cure such cause. For this Paragraph 9, “cause” shall mean (i) a party’s material breach of its covenants or obligations under this Agreement, (ii) a bankruptcy or similar filing by a party or a proceeding under the applicable bankruptcy laws or under any dissolution or liquidation law or statute now or hereafter in effect and filed against such party or all or substantially all of its assets if such filing is not dismissed within sixty (60) days after the date of its filing, or (iii) Awardee’s material failure to achieve any Milestone within ninety (90) days of its anticipated achievement day.

(b) The following provisions shall survive the termination of this Agreement: Paragraphs 2, 5, 6, 7, 8, 9, 10 (solely with respect to the confidentiality obligations therein), 11, and 12.

10. Audits. At the request of [Organization], from time to time, Awardee shall permit [Organization], upon reasonable notice, to audit and examine such books and records of Awardee as may be necessary for

verifying Awardee's expenditures of the Award and the payment of royalties, if any, but no more frequently than once every calendar year. All non-public information made available by Awardee as part of any such audit, as part of any other reports (whether written or non-written), or otherwise under this Agreement (including, but not limited to, in connection with the PAG) shall be regarded as Awardee's confidential information and [Organization] hereby covenants that, except to the extent required by law (provided that [Organization] promptly notifies Awardee of such requirement and permits Awardee to seek, and reasonably cooperates with Awardee at Awardee's expense in seeking, a protective order therefor or other confidential treatment thereof), it shall not use any such information for any purpose other than determining whether Awardee has complied with its obligations hereunder (provided that [Organization] may also use information provided through the PAG to further the purposes of the PAG hereunder) or, in the event of the grant of the Interruption License, the exercise thereof, or disclose any such information to any third party, and shall maintain such information in confidence in a manner at least as restrictive as its manner of treating its own confidential information of similar nature and in any event not less than with a reasonable degree of care.

10. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of [Organization's state].

(b) Dispute Resolution.

(i) In the event of any dispute, claim or controversy arising out of, relating to or in any way connected to the interpretation of any provision of this Agreement, the performance of either party under this Agreement or any other matter under this Agreement, including any action in tort, contract or otherwise, at equity or law (a "Dispute"), either party may at any time provide the other party written notice specifying the terms of such Dispute in reasonable detail. As soon as practicable after receipt of such notice, an officer of each party shall meet at a mutually agreed upon time and location to engage in good faith discussions for the purpose of resolving such Dispute. If the Dispute is not resolved within thirty (30) days of such notice, either party may institute arbitration in accordance with (ii) below.

(ii) In the event any Dispute is not resolved in accordance with (i) above, such Dispute shall be resolved by final and binding arbitration. Whenever a party decides to institute arbitration proceedings, it shall give written notice to that effect to the other party. Arbitration shall be held in Washington, D.C., according to the then-current commercial arbitration rules of the Center for Public Resources ("CPR"), except to the extent such rules are inconsistent with this subparagraph. The arbitration will be conducted by one (1) independent, neutral arbitrator who shall be mutually acceptable to both parties, such acceptance not to be unreasonably withheld, and who shall be appointed in accordance with CPR rules. If the parties are unable to mutually agree on such an arbitrator, then the arbitrator shall be appointed in

accordance with CPR rules. Any arbitrator chosen hereunder shall have educational training and industry experience sufficient to demonstrate a reasonable level of relevant scientific, financial, medical and industry knowledge. Within twenty (20) days of the selection of the arbitrator, each party shall submit to the arbitrator a proposed resolution of the Dispute that is the subject of the arbitration (the "Proposals"). The arbitrator shall thereafter select one of the Proposals so submitted as the resolution of the Dispute, but may not alter the terms of either Proposal and may not resolve the Dispute in a manner other than by selection of one of the submitted Proposals. If a party fails to submit a Proposal, the arbitrator shall select the Proposal of the other party as the resolution of the Dispute. The arbitrator shall agree to render its opinion within thirty (30) days of the final arbitration hearing. No arbitrator shall have the power to award punitive damages regardless of whether any such damages are contained in a Proposal, and such award is expressly prohibited. The proceedings and decisions of the arbitrator shall be confidential, final and binding on all of the parties. Judgment on the award so rendered may be entered in any court having jurisdiction thereof. The parties shall share the costs of arbitration according to the decision of the arbitrator. Nothing in this subparagraph will preclude either party from seeking equitable or injunctive relief, or interim or provisional relief, from a court of competent jurisdiction, including a temporary restraining order, preliminary injunction, or any other form of permanent or interim equitable or injunctive relief, concerning a dispute either prior to or during any arbitration.

(c) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement. Facsimile and other electronically scanned signatures shall have the same effect as their originals.

(d) All communications between the parties with respect to any of the provisions of this Agreement will be sent to the addresses set out below, or to such other addresses as may be designated by one party to the other by notice pursuant hereto, by prepaid, certified air mail (which shall be deemed received by the other party on the seventh (7th) business day following deposit in the mail), or other electronic means of communication (each of which shall be deemed received when transmitted), with confirmation by first class letter, postage pre-paid, given by the close of business on or before the next following business day:

if to [Organization], at:

[insert]

with a copy to:

if to Awardee, at:

[insert]

With a copy to:

(e) The paragraph headings are for convenience only and will not be deemed to affect in any way the language of the provisions to which they refer.

(f) Awardee will not, by amendment of its organizational or governing documents, or through reorganization, recapitalization, consolidation, merger, dissolution, sale, transfer or assignment of assets, issuance of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms, provisions, covenants or agreements of this Agreement.

(g) This Agreement may not be assigned by any party without the consent of the other party, except that either Party may assign this Agreement without such consent to an Affiliate of such party or in connection with the transfer, whether by sale of assets, merger or otherwise, of all or substantially all of the assets or business of such party to which this Agreement relates. Any assignment that is not in accordance with this subparagraph 10(g) will be null and void *ab initio*.

(h) Nothing herein contained shall be deemed to create an agency, joint venture, amalgamation, partnership or similar relationship between [Organization] and Awardee. Notwithstanding any of the provisions of this Agreement, neither party to this Agreement shall at any time enter into, incur, or hold itself out to third parties as having authority to enter into or incur, on behalf of the other party, any commitment, expense, or liability whatsoever, and all contracts, expenses and liabilities in connection with or relating to

the obligations of each party under this Agreement shall be made, paid, and undertaken exclusively by such party on its own behalf and not as an agent or representative of the other.

(i) The Communications Department of [Organization] and Awardee shall agree on any press release or other public announcement, other than an academic, scholarly, or scientific publication, concerning the terms of this Agreement or this Award prior to its public release, except to the extent any such release or announcement is required by law, rule, or regulation or the rules of any securities exchange. The parties agree that they intend to advance the body of general scientific knowledge of _____ and its potential therapies and cures and the parties acknowledge that Awardee intends to, as commercially and scientifically reasonable based on the results of the Development Program, publish the results of the Development Program in a scientific peer-reviewed publication on a timely basis. [Organization]'s support for the Development Program shall be acknowledged in any press releases and publications relating to the Development Program.

(j) In accordance with the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines, Awardee shall take reasonable steps to ensure that the payments received from [Organization] are not distributed to terrorists or their support networks or used for activities that support terrorism or terrorist organizations. Awardee certifies that it is in compliance with all laws, statutes and regulations restricting U.S. persons from dealing with any individuals, entities, or groups subject to Office of Foreign Assets Control (OFAC) sanctions.

(k) Awardee shall provide [Organization] on the effective date with a description of its other sources of support and update that description from time to time during the Development Program.

(l) Awardee shall provide [Organization] with a copy of its public filings, such as annual reports, with governmental units from time to time during the Development Program.

11. Definitions.

(a) Unless otherwise defined in this letter, the following shall apply:

- “Actual Award” means the total amount of the Award actually paid to Awardee.
- “Affiliate” shall mean, with respect to a party, any entity, which directly or indirectly controls, is controlled by, or is under common control with, such party. For these purposes, "control" shall refer to (a) the ownership, directly or indirectly, of at least fifty percent (50%) of the voting securities or other ownership interest of an entity; or (b) the possession, directly or indirectly, of the power to direct the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- “Awardee Development Program Technology” shall mean all technology, in whole or in part, discovered, developed, or controlled, by Awardee or its Affiliates, as a result of the Development Program under this Agreement (solely for purposes of the Interruption License), including, without limitation,

technology owned or controlled by Awardee prior to Awardee's performance of the Development Program under this Agreement that is necessary in the performance of the Development Program under this Agreement. Without limitation, Awardee Development Program Technology shall include data, technical information, source codes, know-how, inventions (whether or not patented), trade secrets, laboratory notebooks, and processes and methods.

- "Change of Control Transaction" shall mean the consummation of a transaction, whether in a single transaction or in a series of related and substantially contemporaneous transactions, constituting (i) a merger, share exchange or other reorganization, (ii) the sale by one or more stockholders of a majority of the voting power of Awardee, or (iii) a sale of all or substantially all of the assets of Awardee (or that portion of its assets related to the subject matter of this Agreement), in which the stockholders of Awardee immediately prior to such transaction do not own a majority of the voting power of the acquiring, surviving or successor entity, as the case may be; provided that a Change of Control shall not include a bona fide financing transaction for the benefit of Awardee (i.e in which Awardee raises capital for general working or business purposes) in which voting control of Awardee transfers to one or more persons or entities who acquire shares of Awardee, and the existing Awardee shareholders receive no consideration directly or indirectly in connection with the transaction.

- "Commercially Reasonable Efforts" or "CRE" shall mean the level of effort, expertise and resources that is substantially and materially consistent with industry standards for companies of similar size and financial resources to research, develop and commercialize the Product, provided such research, development and commercialization is technically feasible, devoting the degree of attention and diligence to such efforts that is substantially and materially consistent with industry standards for a product at a comparable stage in development, with similar market potential, and taking into account, without limitation, issues of safety and efficacy, proprietary position, the competitive environment, the regulatory environment, and other relevant scientific, technical and commercial factors, and for companies of similar size and financial resources.

- "Field" shall mean the treatment of _____.

- "Interest" shall mean the prime rate applicable during the relevant time period, as published in the *Wall Street Journal*, plus five (5) percentage points.

- "Interruption" shall mean the cessation of Commercially Reasonable Efforts to develop a Product for more than three hundred sixty (360) consecutive days at any time before the first commercial sale of the Product. For clarity, delays resulting from events outside of Awardee's reasonable control (e.g., technical difficulties, shortages of supplies or materials, delays in preclinical or clinical studies or regulatory processes, etc.) will not be deemed cessation of Commercially Reasonable Efforts.

▪ “Net Sales” shall mean, for any period, the gross amount received for sales of the Product in the Field by Awardee or any Awardee Affiliate, sublicensee or transferee as applicable (a “Selling Person”), to a non-Affiliate of the Selling Person, less the following deductions, in each case to the extent specifically related to the Product and taken by the Selling Person or otherwise paid for or accrued by the Selling Person (“Permitted Deductions”):

trade, cash, promotional and quantity discounts and inventory management fees paid to wholesalers;

tariffs, duties, excises and taxes on sales (including sales or use taxes or value added taxes) to the extent imposed upon and paid directly with respect to such sales (and excluding national, sales or local taxes based on income);

freight, insurance, packing costs and other transportation charges allocated to the sale;

invoiced amounts that are written off as uncollectible in accordance with Selling Person’s accounting policies, consistently applied;

amounts repaid or credits taken by reason of damaged goods, rejections, defects, expired dating, recalls or returns or because of retroactive price reductions, billing errors, or trial prescriptions;

charge back payments, rebates and discounts granted to (i) managed healthcare organizations, (ii) federal, state or provincial or local governments or other agencies, (iii) purchasers and reimbursers or (iv) trade customers, including wholesalers and chain and pharmacy buying groups;

discounts paid under state legislated or seller-sponsored discount prescription drug programs or reductions for coupon and voucher programs; and

documented custom duties actually paid by the Selling Person.

Sales of the Product between or among Awardee and its Affiliates and sublicensees for resale, or for use in the production or manufacture of the Product, shall not be included within Net Sales; provided, however, that any subsequent sale of the Product (or any Product produced or manufactured using the Product) by Awardee or its Affiliate or sublicensee or transferee to another non-Affiliate third party shall be included within Net Sales. Net Sales shall exclude any sale or other distribution for use in a clinical trial or other Development activity, for compassionate or named-patient use or for test marketing.

- “Product” shall mean _____.
- “Royalty Cap” shall mean _____ (____) times the Actual Award.

[Signatures on Following Page]

We are pleased to make the Award described in this Agreement. Please indicate your agreement to the terms set forth in this Agreement by signing below.

Sincerely,

[Organization]

By: _____

Name: _____

Title: _____

Agreed:

[Awardee]

By: _____

Name: _____

Title: _____

Exhibit A

Development Program Plan and Budget

Exhibit B
Payment Schedule

Milestone	Milestone Payment	Expected Milestone Completion Date
Upon Execution	\$ _____	
Upon Dosing of First Trial Participant	\$ _____	
Upon Dosing of Median Trial Participant	\$ _____	
Last Patient, Last Visit	\$ _____	
Submission to [Organization] and [Organization]'s approval of final integrated clinical and statistical report	\$ _____	

Payments shall be made by [Organization] within forty-five (45) days of receipt from Awardee of the corresponding invoice and supporting documentation verifying occurrence of such milestone and PAG verification.