

PHARMA COOPERATION AND PROJECT FUNDING AGREEMENT

PREAMBLE

Agreement made this day of 20 , by and

BETWEEN

The ISRAEL-UNITED STATES BINATIONAL INDUSTRIAL RESEARCH AND DEVELOPMENT FOUNDATION, a legal entity created by Agreement between the Government of the State of Israel and the Government of the United States of America (hereinafter referred to as the "Foundation"),

AND

AND

severally and jointly (hereinafter collectively referred to as the "Proposer" and separately as the "Participants").

WHEREAS the Foundation has been established under an Agreement between the Government of the State of Israel and the Government of the United States of America to promote and support joint non-defense industrial research and development activities of mutual benefit to Israel and the United States, and

WHEREAS the Proposer has heretofore submitted to the Foundation a proposal (hereinafter the "Proposal"), entitled " " and on the basis of the Proposal has applied to the Foundation for certain funding assistance for the development of the Product therein described; and

WHEREAS the Foundation has examined and duly approved the Proposal and is willing to provide certain funding for the implementation of the Proposal on the terms and conditions hereinafter set forth;

Now therefore the parties hereto agree as follows:

A. GENERAL

- A.1. The preamble to this Agreement shall be deemed an integral part hereof.
- A.2. The Participants shall be bound and obliged jointly and severally, as herein provided.
- A.3. The Foundation represents that the Executive Director of the Foundation is empowered by its Board of Governors to execute this Agreement and to perform and cause to be performed all acts under the terms hereof on behalf of the Foundation.
- A.4. The following documents are incorporated by reference and made a part of this Agreement:
- A.4.1. The Proposal, dated the _____ day of _____, 20____, as stamped with the Foundation's approval of the _____ day of _____, 20____. Nonetheless, should any provision of the Proposal be inconsistent with any provision of this Agreement, the provisions of this Agreement shall control.
- A.4.2. BIRD Foundation Procedures Handbook.
- A.5. The following definitions shall apply:

“Affiliate” – is an entity under common control, controlled by or controlling either of the Participants

“Agreement” – this Cooperation and Project Funding Agreement

“Approved Project Budget” – the schedule of expenses contemplated to be spent by a Participant as set out in Annex A

“BIRD Foundation Procedures Handbook” – the most recent version available as of the date of this Agreement or its copy on the Foundation’s website

“Calculation Date” – a point in time at which the calculation of the then current balance due by the Proposer is made

“Commercial Product” – an incorporation or implementation of the Product into a commercial product that can be sold alone or in conjunction with other products or components. Such other products or components so long as not, developed as part of or otherwise derived from the Project, shall not be deemed to be part of the Commercial Product.

“Commercial Transaction” – Gross Sales derived by the Proposer, either Participant or any Affiliate

“Conclusion of Product Development” – shall be each or any of a) the conclusion of the development of the Product under the Project or b) the continuation of the development work by Proposer or either Participant following the submission of _____ to a regulatory agency or c) the commencement of marketing of the Product by Proposer or either Participant or d) the continuation of the development of the Product, or part thereof, outside of the Project, by either Participant, whether

on its own or with another third party, regardless of whether or not the joint development effort by the Participants was previously discontinued or terminated.

“Conditional Grant” – funds provided by the Foundation for the implementation of the Proposal

“Foundation” – The Israel-United States Binational Industrial Research and Development Foundation, as referred to in the first paragraph of this Agreement

“Foundation’s pro rata share” – the percentage of the actual expenditures which the Foundation provides

“Full Repayment to the Foundation” – the repayment to the Foundation by the Proposer, and/or either Participant, as the case may be, of their entire obligation(s) pursuant to this Agreement as determined in accordance with Annex C

“Grant Base Index” – the index last published prior to the date of payment of each increment of the grant

“Gross Sales” – the gross revenues derived by the Proposer, either Participant or any Affiliate of either Participant from the sale, leasing or other marketing or commercial exploitation, including service or maintenance contracts, of the Product (other than the Outright Sale to a third party or the licensing of the Product to a third party, as described in Sections B.5.3 and B.6.) or of Commercial Products incorporating or embodying any part of the Product whose development, manufacture, sale or use requires the exploitation of any part of the Product. This term shall include all specific export incentives or bonuses paid to the Proposer on account of sales of the Product for export, but shall not include sums paid for commissions, brokerage, value added and sales taxes on the sale of the Product, or transportation and associated insurance costs, if any of those sums have been included in the gross sale price

“Index” – the U.S. Consumer Price Index, CPI-U

“Indexed Payments” – the result of multiplying each grant payment received by the Proposer by the last known Index on the Calculation Date and dividing by the Grant Base Index

“Indexed Repayment” – the result of multiplying the Repayment received by the Foundation by the last known Index on the Calculation Date and dividing by the Repayment Base Index

“Intellectual Property” – patents, copyrights, trademarks, inventions, trade secrets, confidential information, product design, engineering specifications and drawings, technical information and all types of computer programs

“Interim Reporting Segment” – an interim period of time for which technical and fiscal reports need to be submitted

“Late Payment Interest Rate” – 4% more than the average prime rate prevailing at the JP Morgan Chase Bank, N.Y.C. (or any successor bank to that bank), during the period from the date payment was due until payment is actually made

“License Agreement” – an agreement between the Proposer, or either Participant, or any Affiliate of either Participant and a third party, whereby such third party receives the right to use the Product in exchange for a payment. “License Agreements” shall not include any license agreements, which Proposer, or either

Participant, or any Affiliate of either Participant enters into as a necessary, common or convenient means by which products are sold to end-users in the ordinary course of business

“Outright Sale” – the transfer of ownership of the Intellectual Property and/or technology relating to the Product, and/or the Product, in each case in whole or in part, to a third party

“Participants” – the term used for the Israeli Company and the U.S. Company signing this Cooperation and Project Funding agreement

“Product” – the outcome of the development work or any derivative thereof carried out by the Proposer and/or either Participant pursuant to the terms of this Agreement, including patented inventions

“Program Plan” – schedule of program activities as described in the Proposal and as presented in graphical form (GANTT chart) in Annex D

“Project” – the process for the development of the Product with the funding assistance of the Foundation

“Proposal” – the documents submitted by the Participants to the Foundation describing the technical and business aspects of the proposed program

“Proposer” – as defined in the preamble

“Repayment” – the grant repayment due by the Proposer to the Foundation upon (i) the Conclusion of Product Development, and/or (ii) from Gross Sales and/or (iii) from proceeds derived from the outright sale of any portion of the Product to a third party or the licensing of any portion of the Product to a third party

“Repayment Base Index” – the Index last published prior to the date on which a Repayment is received by the Foundation from Proposer

“Termination of this Agreement” – termination deriving from the payment by the Proposer of any and all of its obligations pursuant to Section B, termination resulting from revocation by the Foundation of the Agreement, or termination of the Agreement by the Proposer with the consent of the Foundation.

“Total Indexed Grant” – the result of multiplying the total of the Indexed Payments by the appropriate percentage level from the table shown in Section B.3.1.c

“Total Indexed Repayments” – the total of the Indexed Repayments.

“Transfer of Control” – the transfer of the ability to direct a company's affairs; a person or entity, as the case may be, shall be presumed to be in control of a company if he/she, or it, holds half or more of any means of control in the company, including, without limitation, the ability to nominate or appoint, either alone or together with others, at least half of the directors of the board of the company, or if he/she, or it, has veto rights, whether at shareholders or board level.

B. PROJECT FINANCING

B.1. The Foundation hereby agrees to fund, by Conditional Grant, the implementation of the Proposal in the maximum sum of \$ _____ or 50% of the actual expenditures on the Project, as contemplated in the Approved Project Budget, whichever is less, and at the times and as may otherwise be set forth in Annex B hereto.

- B.2. The Proposer shall provide in timely fashion all budgetary funds in excess of those provided hereunder by the Foundation.
- B.3. Proposer shall make Repayments to the Foundation pursuant to the terms and conditions as set out in Section B.3.1., below.
 - B.3.1. Upon the Conclusion of Product Development, the Conditional Grant provided by the Foundation shall be repayable in accordance with Sub Section B.3.1a. and/or Sub Section B.3.1b., and/or Section B.5. and/or Section B.6. Repayment shall be made pursuant to any or all of these aforementioned Sections, as applicable.
 - a) Upon the Conclusion of Product Development, the Conditional Grant and Other Sums provided to the Proposer by the Foundation shall become immediately repayable by the Proposer. Such Repayment will be in an amount equal to the total grant paid to Proposer linked to the Index. Should the Proposer wish to extend the due date of the Repayment, a request for approval of such extension shall be made to the Foundation that shall be entitled to approve or reject such extension, in its sole discretion. All Repayments made by the Proposer to the Foundation of the total Conditional Grant paid, shall be linked to the Index and shall be in accordance with the formula set out in Section B.3.1.c and to the extent of the monetary obligation described in Section B.3.
 - b) Whether prior to, or upon the Conclusion of Product Development, to the extent that Repayments to the Foundation shall derive from Gross Sales, the Conditional Grant shall be repaid in U.S. Dollars at the rate of 5% of the Gross Sales.
 - c) When the Proposer shall have repaid the following maximum percentages in equivalent dollars valued at the time of Repayment (as determined in accordance with Annex C) of the Conditional Grant in any of the following years, no additional payments to the Foundation on account of the Conditional Grant shall be required.

Years Following Original Date of Termination of Project Development	Maximum Percentage of Conditional Grant to be Repaid(indexed according to Annex C of this Agreement)
---	--

1	100%
2	113%
3	125%
4	138%
5 or more	150%

- B.3.2. The Commercial Product shall be deemed to have been sold, or otherwise commercially exploited, if the Commercial Product, or any part of it, or any improvement, modification or extension of the Commercial Product is put to the benefit of a third party, whether directly or indirectly, and whether standing alone or incorporated into or co-joined with other hardware or processes, and for which benefit the said third party gives something of value. This provision shall not apply to transactions between the Participants or between the Participants and their

parents, subsidiaries or other Affiliates unless the transaction relates to the use of the Commercial Product, or any part of it, by any one of the aforesaid as a purchaser, or any improvement, modification or extension of the Commercial Product, for its or any of its Affiliates own use. Should any such parent, subsidiary or other Affiliate resell the Commercial Product separately identified or incorporated in a system, the sales price shall be the price to third parties from the parent, subsidiary or Affiliate making the sale.

- B.3.3. If the Commercial Product or any part of it is a part of another product (not developed as part of or otherwise derived from the Project) sold, or otherwise commercially exploited, the sales price of such product for purposes of calculating Repayments according to Section B.3. shall be that portion of the sales price of that product that is represented by the Commercial Product as may be agreed upon by the Proposer and the Foundation, or if, despite good faith efforts by the Proposer and the Foundation to agree upon said portion of the sales price and the parties have not reached agreement, then as shall be reasonably established by the Foundation. If there shall have been established a market price for the Commercial Product, that market price shall be the basis for Repayments according to Section B.3., notwithstanding the incorporation of the Commercial Product in another product as aforesaid.
- B.4. All Repayments shall be due to the Foundation on a semi-annual calendar basis, and sales reports, certified by each Participant's chief executive officer or in the case of a publicly traded corporation, the managing officer of the relevant unit of such corporation. The sales reports shall accurately represent the amount due to the Foundation upon the Conclusion of Product Development and/or the amount receivable by each Participant from the Gross Sales and/or the amount receivable by each Participant from the sale of the Product, as well as revenue from any License Agreement as referred to in Section B.6. Such sales reports shall be submitted even if there have been no sales or revenue for such semi-annual calendar period. Any and all material misrepresentation or inaccuracy in said sales reports shall constitute a fundamental breach of this Agreement pursuant to Section I.1. and the Conditional Grant shall be deemed to have been revoked in whole, and the provisions of Sections I.1, I.2., I.3, I.4, I.5 and I.7 shall apply in every respect.
- B.4.1 The sales report together with any payment that may be due shall be submitted within ninety (90) calendar days following the end of each semi-annual period. All late Repayments shall bear interest at the Late Payment Interest Rate.
- B.5. The Proposer shall not make an Outright Sale to a third party of any portion of the Product, prior to Full Repayment to the Foundation, without the prior written consent of the Foundation.
- B.5.1. The Proposer shall furnish to the Foundation reasonable prior notice with respect to any proposed sale as referred to in Section B.5., the notice to include the name of the prospective purchaser, the price and the other terms of the proposed sale, and all other relevant information concerning the proposed sale.
- B.5.2. The Foundation shall promptly provide consent to a sale as referred to in Section B.5, after receipt and review of the notice referred to above, provided that its rights

pursuant to this Agreement are fully guaranteed to the Foundation's satisfaction, and that the Foundation is satisfied that the proposed sale is at a price and upon terms no less than the actual market value of the portion of the Product. The Foundation shall be entitled in its sole discretion to designate a representative or representatives to review the terms of the proposed sale and to seek to determine the actual market value of the Product, and the Proposer shall cooperate with, and furnish all pertinent information, to any such representative or representatives.

- B.5.3. Should there be an Outright Sale of any portion of the Product to a third party prior to Full Repayment to the Foundation by the Proposer, by either Participant, or by any Affiliate of either Participant, one-half of all proceeds of the sale shall be applied as received until there has been Full Repayment to the Foundation. If any such sale is (i) in exchange for a non-cash asset or (ii) part of the sale of a group of assets, and no separate value is assigned by the parties to the portion of the Product sold, the Proposer and the Foundation shall seek to agree: as to (i) the value of the asset received; and as to (ii) the portion of the consideration that can be reasonably allocated to the sale. If no such agreement is reached within a reasonable time, or if any value assigned by the parties is in the view of the Foundation not reasonable under all of the circumstances, the matter shall be resolved pursuant to Section M.4. Payments due and not made following receipt of proceeds by the Proposer shall bear interest at the Late Payment Interest Rate. Payments under this Section B.5.3 shall be deemed payments against Proposer's obligations under Section B.3 and, for the avoidance of doubt, the payments in this Section B.5.3, together with any other Repayments, shall not exceed the maximum percentages set out in Section B.3.1 (b).
- B.5.4. At any time prior to Full Repayment to the Foundation the Proposer shall provide notice to the Foundation, either prior to, or no later than thirty (30) calendar days after any Transfer of Control of either Participant as a result of the sale of shares, or a merger or an amalgamation of either of the Participants with any other company. Any failure to provide notice as provided in this Section B.5.4. within the time specified herein shall constitute a fundamental breach (or breach for cause) of this Agreement pursuant to Section I.1 and, unless the Proposer shall have cured the breach pursuant to Section I.2, the Conditional Grant shall be deemed to have been revoked in whole, and the provisions of Sections I.1., I.2., I.3., I.4., I.5. and I.7. shall apply in every respect.
- B.5.5. In the case of any Transfer of Control of a Participant, or in the case of a merger or amalgamation, all as referred to in Section B.5.4., if the notice by the Proposer called for by Section B.5.4 has been provided in a timely manner, there will be a rebuttable presumption that the Transfer of Control, or the merger or amalgamation, as the case may be, will lead to termination of the Project prior to the Termination of Product Development, and as a result any of such events shall be deemed to constitute an Outright Sale of the Product to a third party pursuant to Section B.5.3., notwithstanding any other provision of this Agreement. The foregoing presumption will be subject to possible rebuttal by the Proposer only by the presentation of suitable detailed evidence to the Foundation to be submitted no later than ninety (90) days after the Transfer of Control, or the merger or amalgamation, as the case may be. The Foundation undertakes to consider any such presentation of evidence made in a timely manner as provided herein in good faith, and to decide in which

instances to agree that the Transfer of Control, or the merger or amalgamation, as the case may be, shall not be deemed to be equivalent to such an Outright Sale. In all other cases, the Transfer of Control, or the merger or amalgamation, as the case may be, shall be deemed to constitute such an Outright Sale.

- B.6. If the Product becomes the subject of any License Agreement between Proposer, either Participant, or an Affiliate of either Participant, on the one hand, and a third party, on the other hand, Proposer shall pay to the Foundation 30% of all payments received by it or by any other such company under such License Agreement. Payments under this Section B.6. shall be deemed payments against Proposer's obligations under Section B.3. and, for the avoidance of doubt, the payments in this Section B.6, together with any other Repayments, shall not exceed the maximum percentages set out in Section B.3.1(b)

C. CONDUCT OF THE PROJECT

- C.1. The Proposer agrees to do the work set out in the Proposal in accordance with good standards relevant to such undertakings, and shall expend funds received hereunder only in accordance with such Proposal and the requirements of this Agreement.
- C.2. The Proposer agrees to comply with the Program Plan as set forth in Annex D.
- C.3. The Proposer hereby appoints _____ as Israel project manager and _____ as U.S. project manager for the implementation of the project during the period of this Agreement and in accordance with the Program Plan.
- C.4. The Proposer shall not make substantial transfers of funds from one budget item to another, change key personnel or their duties and responsibilities, or diminish their time allocated to the proposed work hereunder without prior written approval by the Foundation, which approval shall not be unreasonably withheld.
- C.4.1. Should any key person be absent from work, or should such absence be expected, for ninety (90) days or more, or should there be any significant reduction in the total personnel force assigned to the project under the Proposal, the Proposer shall forthwith notify the Foundation.

D. REPORTING REQUIREMENTS

- D.1. The Proposer shall submit to the Foundation, in writing, the following reports:
- a) interim fiscal and technical reports to be submitted simultaneously within 30 days following the expiration of the first _____-month period;
 - b) final fiscal and technical reports to be submitted simultaneously within 60 days following Termination of Product Development.
- D.1.1. Any failure to submit reports in a timely fashion pursuant to Section D.1 shall be deemed a fundamental breach and a breach for cause pursuant to this Agreement.

- D.1.2. The reports to be submitted pursuant to this Section D shall be in form and substance in accordance with the most recent formats for technical and fiscal reports, as shown on the Foundation's web site.
- D.2. Proposer shall provide to the Foundation at Proposer's expense, briefings on the progress of the work hereunder, within 45 days following any request from time to time by the Foundation. Such briefings shall be in accordance with such form and detail as the Foundation may reasonably request.
- D.3. All the reports referred to in Section D.1 shall accurately represent the status of the Project, including, without limitation, the level of cooperation between the Participants and the progress of the development work of the Product. Any and all material misrepresentation or inaccuracy in any report shall constitute a fundamental breach of this Agreement pursuant to Section I.1. and the Conditional Grant shall be deemed to have been revoked in whole, and the provisions of Sections I.1., I.2., I.3., I.4., I.5. and I.7. shall apply in every respect.

E. PUBLICATIONS

- E.1. In any publication in scientific or technical journals of data or other information derived from the work hereunder, or any publication related to the work, and/or marketing and/or promotion of the Product but not including product literature or manuals, the support of the Foundation shall be acknowledged.
- E.2. To the extent so required to permit the Foundation free dissemination of such publications or information, which the Foundation is privileged to disseminate, subject to the limitations of Section F, the Proposer shall be deemed hereby to waive any claim or rights with respect to such.
- E.3. The Proposer shall furnish to the Foundation two (2) copies of all publications resulting from Foundation-supported work as soon as possible after publication.

F. PROPRIETARY INFORMATION, INTELLECTUAL PROPERTY

- F.1. Proprietary information, clearly identified as such, submitted to the Foundation in the Proposal, in any report or verbally, or obtained by Foundation personnel observation pursuant to any request or briefing, shall be treated by the Foundation as confidential. At the request of Proposer or either Participant, a confidential disclosure agreement may be entered into separately by the parties. Nothing contained in the foregoing shall restrict the right of the Foundation to make public the fact of the Foundation's support for the Project, and the identification of the Participants therein. The details of any such publication, except for those permitted by the immediately preceding sentence of this Section F.1, shall be subject to prior approval by the Participants
- F.2. Each Participant represents and warrants to the Foundation that, to the best of its knowledge, it owns, or has obtained the rights to use all of its Intellectual Property, free and clear of all liens, claims and restrictions, required for implementation of the Proposal. To the best of each Participant's knowledge, no Intellectual Property owned by such Participant with respect to the Proposal infringes upon any

Intellectual Property rights of others and each Participant knows of no infringement upon any intellectual rights of others as to the Intellectual Property owned by the other Participant.

G. PATENTS AND ROYALTIES

G.1. If Proposer or either of the Participants elects to apply for letters patent on any Product developed in whole or in part from performance of Foundation-supported activity, such applicant shall, at its own expense apply in the United States and in Israel, and in such other countries and at such times as the Proposer or either of the Participants may deem appropriate. The Foundation will consider providing certain funding for the patent registration costs in accordance with the regulations as set out in the BIRD Foundation Procedures Handbook, as may be amended from time to time.

H. RIGHTS OF THE GOVERNMENTS OF ISRAEL AND THE UNITED STATES

H.1. Regardless of the patent rights acquired by Participants by mutual agreement or pursuant to Section G.1., the Governments of Israel and of the United States shall each have a non-exclusive, irrevocable, royalty-free license to make or have made, to use or have used, and to sell or have sold any such Product specified, throughout the world for all governmental purposes: provided, however, that in any contracting situation involving a Product made under this Agreement, the Government of Israel shall give preference to the Participant retaining the entire right, title, and interest in the Product in Israel, and provided that "governmental purposes" shall not include manufacture of such Product where it is commercially available at reasonable prices. Notwithstanding the foregoing, except for military purposes or in emergency situations, neither the Government of Israel nor the Government of the United States, nor the Foundation, shall have the right to sell or otherwise dispose of in any third country any product incorporating the Product or part of the Product without the prior written permission of the Participant which has acquired the entire right and interest in the Product in that third country. Such Participant shall not withhold permission where appropriate royalties are paid by the Foundation or government(s) concerned.

H.2. In addition to the patent rights specified in Section H.1., the Foundation reserves for itself and the Governments of Israel and the United States the right to use the Product, technical information, data, know-how and Intellectual Property arising out of, or developed under, this Agreement for any noncommercial purpose, and without charge.

H.3. In order that the rights of the Foundation and the Governments of Israel and the United States described herein shall be exercisable, the Participants agree that any component, element or other part of the system described as the Product in the Preamble to this Agreement, whose use is necessary to the full enjoyment of the Product, will be made available, at reasonable prices, by the Participants either as a commercially purchasable item, or by special arrangement, and will be sold to the Foundation and/or the Government of Israel and/or the Government of the United States, also at reasonable prices.

- H.4. Notwithstanding the foregoing provisions of this Section H., it is understood and agreed that, so long as any Intellectual Property that comprises part or all of the Product is marketed by Proposer, by either Participant, or by others with the rights to market such Intellectual Property, neither the Government of Israel nor the Government of the United States shall have the right to obtain a license to use such Intellectual Property unless the license fee normally imposed in the ordinary course of business by either of the Participants or by others with the rights to market such Intellectual Property is paid, and the standard license agreement is executed.

I. TERMINATION OF THE AWARD

- I.1. Notwithstanding anything to the contrary herein, the Foundation may revoke the Conditional Grant, in whole or in part, for any fundamental breach of the Agreement, or breach for cause, pursuant to the laws of the State of _____, upon written notice to the Participants.
- I.2. Notwithstanding whether any notice has been delivered to the Foundation by either Participant, the Foundation shall be entitled, upon written notice to the Participants, to revoke the Conditional Grant upon becoming aware of any of the following events of default:
- (i) the insolvency of either Participant; or
 - (ii) any material adverse change in the financial position of either Participant; or
 - (iii) a dispute between the Participants that has, or may reasonably be expected to have, a negative effect on the continuation of the Project, as set out in the Proposal; or
 - (iv) any change in the business of either Participant as a result of which such Participant is no longer interested in continuing the Project, and notwithstanding the continued interest of the other Participant.

Notwithstanding anything to the contrary in Section I.1. or I.2., the Proposer may cure the default within thirty (30) calendar days after the date of its receipt of said notice of revocation.

- I.3. Notwithstanding any other provision in this Agreement to the contrary, the Foundation shall not be obliged to provide any further funding after notice of revocation until and unless the said default is cured and so demonstrated to the reasonable satisfaction of the Foundation.
- I.4. Should the Conditional Grant be revoked for reason of _____ fundamental breach (or breach for cause), in addition to the Foundation's rights under Section I.5., the Foundation and the Governments of Israel and the United States shall continue to be entitled to all of their rights pursuant to Section H.
- I.5. If the Foundation shall revoke the Conditional Grant as aforesaid, all funds given to Proposer in accordance with Section B.1. shall become due immediately, without need for demand. Such funds shall be repaid with interest at the Late Payment Interest Rate from the date of notice of the revocation.

I.6. The Proposer may not terminate this Agreement or abandon the Project without the prior written consent of the Foundation, which consent shall not be unreasonably withheld. The Foundation declares that it will furnish such a consent if it is satisfied that, despite good faith efforts, the Proposer has not succeeded in developing the Product, or if the Product has been developed the Proposer has not succeeded in effecting any sales or other commercial exploitation of the Product, except in the cases referred to in Section B.5.5.

I.7. If upon termination of the Project development work for any reason other than revocation by the Foundation, the entire budgeted sum has not been expended, the Proposer shall forthwith return to the Foundation its *pro rata* share of such unexpended portion. If not repaid forthwith, such sum shall bear interest in accordance with Section I.5.

J. SURVIVAL OF PROVISIONS

Notwithstanding revocation or other termination of this Agreement, the following provisions shall survive such revocation or other termination of this Agreement: Sections A., B., D., E., F., G., H., I.3, I.4., I.5., I.7., K., L., M., N. and Annex C. If, however, the termination of this Agreement derives from the payment by the Proposer of all of its obligations to the Foundation pursuant to Section B, the following provisions only shall survive the termination of this Agreement: Sections A., E., F., H., K., L. and M.

K. PROPOSER'S RECORDS

K.1. The Proposer shall maintain business and financial records and books of account for the work hereunder and revenues achieved, identifiable within the framework of the business and financial records of the Proposer. Such books and records shall be in usual and accepted form. In case revenues are generated by an Affiliate, the Affiliate will maintain such records as well.

K.2. Books and records of the work hereunder shall show Proposer's contribution. Upon request by the Foundation, the Proposer shall provide evidence of its compliance herewith.

K.3. The Foundation may examine, or cause to be examined, the financial books, vouchers, records and any other documents of the Proposer relating to this Agreement at reasonable times and intervals during the term of this Agreement and for a period of one (1) year following termination, or for so long as payments per Sub-Section.B.3., Sub-Section.B.5., and/or Sub-Section B.6, are due, or may become due to the Foundation, whichever shall be the later. Such examination shall be conducted upon prior coordination with Proposer. Such examination rights will be applicable to any Affiliate which generates revenues from the Product

L. SUITS AGAINST THE FOUNDATION

L.1. The Proposer shall defend all suits brought against the Foundation, its officers or personnel, indemnify them for all liabilities and costs and otherwise hold them harmless on account of any and all claims, actions, suits, proceedings and the like

arising out of, or connected with or resulting from the performance of this Agreement by either or both of the Participants, or from the manufacture, sales, or distribution or use by either or both of the Participants of the Product, whether brought by either or both of the Participants or their respective personnel or by third parties. The Proposer will fully consult in good faith with the Foundation and its counsel at all stages regarding defense of a Claim. Any settlement that does not fully release the Foundation from any and all Claims must be approved in advance, in writing, by the Foundation.

- L.2. The Proposer agrees that persons employed by it, or otherwise retained by the Proposer, in connection with the Project, shall be deemed to be solely its own employees or agents, and that no relationship of employer and employee or principal and agent shall be created between such employees or agents and the Foundation, either for purposes of tort liability, social benefits, or for any other purpose. The Proposer shall indemnify the Foundation and hold it harmless from court costs and legal fees, and for any payment, which the Foundation may be obliged to make as a result of a cause of action based upon an employee-employer or principal-agent relationship as aforesaid.

M. MISCELLANEOUS CONDITIONS

- M.1. The Foundation makes no representation, by virtue of its funding the work hereunder, or receiving any payments or royalties as a result of this Agreement, as to the safety, value or utility of the Product or the work undertaken, nor shall the fact of participation of the Foundation, its funding or exercise of its rights hereunder be deemed an endorsement of the Product or of the Proposer, nor shall the name of the Foundation be used for any commercial purpose or be publicized in any way by the Proposer except within the strict limits of this Agreement.
- M.2. Without derogating from the provisions set forth in Section B.5 of this Agreement the Proposer and/or either Participant, as the case may be may not assign and/or transfer any of their rights and obligations under this Agreement or any of the work undertaken pursuant to it without the prior written consent of the Foundation, in its sole discretion, unless there will be a Full Repayment to the Foundation.
- M.3. This Agreement shall be construed under the laws of the State of . The exclusive forums for the resolution of any dispute arising from this Agreement shall be the State of Israel or Washington, D.C. in the U.S., as the moving party may elect. Execution of this Agreement shall be taken as submission to the forum selected pursuant to this Section.
- M.4. Any dispute concerning the subject matter of this Agreement shall be resolved through arbitration, unless the Foundation and the other parties to such dispute agree otherwise, in writing. If the forum is in Israel, the arbitration will be conducted pursuant to the rules of the Israeli Institute for Commercial Arbitration. If the forum is in the United States, the arbitration will be conducted pursuant to the rules of the American Arbitration Association.
- M.5. Proposer undertakes to comply with all applicable laws, rules and regulations of the State of Israel and the United States of America and any applicable State or

Commonwealth, and will apply for and obtain all necessary licenses and permits for the carrying out of its obligations hereunder.

M.6. Notices and communications shall be e-mailed to an officer of the receiving party or shall be hand-delivered or mailed by prepaid first-class mail (airmail if transmitted internationally) addressed to:

a. The Israel-U.S. Binational Industrial Research and Development Foundation

Office Address:
Kiryat Atidim, Building 4
Tel Aviv 6158001
Israel

Mailing Address:
P.O. Box 58054
Tel Aviv 6158001
Israel

b.

Office Address:

Mailing Address:

c.

Office Address:

Mailing Address:

Any notice delivered to a party as set forth above shall be deemed to be service of notice on such party.

N. LIMITATION ON PAYMENTS

Notwithstanding any contrary interpretation of this Agreement or the Annexes hereto and except for the indemnities set forth in Section L. that shall not be limited, Proposer's total obligation hereunder for payments to the Foundation shall not exceed the amount calculated in accordance with the applicable percentage provided in Section B.3.1(c) in equivalent dollars valued at time of repayment as determined in accordance with Annex C. In any event, only in the case that it transpires that not one of the following happens: (i) Conclusion of Product Development, (ii) Gross Sales, (iii) Outright Sale of the Product to a third party, nor (iv) license of the Product under a License Agreement, shall the Proposer have no obligation to make any Repayments to the Foundation.

O. COOPERATION AND PROJECT FUNDING AGREEMENT OVERRIDES

In so far as concerns the Foundation, in any instance in which a provision or provisions in the agreement between the Participants contradicts a provision in this Agreement, the provision or provisions in this Agreement shall override.

P. EFFECTIVE DATE

The effective date of this Agreement shall be the _____ day of _____, 20____. The development work shall commence on the aforementioned date and, unless sooner terminated by the Foundation in accordance with Section. I., the development work shall terminate (_____) months following the effective date.

Signed the day and date above first given

Printed Name: Eitan Yudilevich, Ph.D.

Signature: _____

Title: Executive Director

(for the BIRD Foundation)

Printed Name: _____

Signature: _____

Title: _____

(for)

Printed Name: _____

Signature: _____

Title: _____

(for)

STANDARD

Annex A
Approved Project Budget
Israeli Company

STANDARD

Annex A
Approved Project Budget
U.S. Company

STANDARD

**ANNEX B
PAYMENT OF CONDITIONAL GRANT**

1. First Payment - On signing – Israeli Company: \$
U.S. Company: \$

2. Second Payment –

After receipt and approval of the first interim technical and fiscal reports for the first -month period, or after actual expenditures on the project have equaled or exceeded the required expenditure, whichever is later.

	Required Expenditure	Payment
Israeli Company:	\$	\$
U.S. Company:	\$	\$

However, if at the required time of submission of the first interim technical and fiscal reports, work on the project or expenditures thereon prove to be materially behind plan, in accordance with Annex D and Annex A, respectively, the Foundation will review the project with Proposer and determine a suitable course of action with respect to further payments against the Conditional Grant, if any.

3. Final Payment - After receipt and approval of the final technical and fiscal reports - the balance due Proposer up to the total sum of the Conditional Grant in accordance with Section B.1.
4. The Participants shall be responsible for bearing all bank and similar charges relating to payments made by the Foundation to the Participants.

ANNEX C
LINKAGE OF CONDITIONAL GRANT REPAYMENTS

The monies given as a Conditional Grant shall be linked in value, until full Repayment, to the Index. As each increment of the grant is given, it shall thereafter be linked to the Grant Base Index. Upon Repayment of any portion of Proposer's obligations under Section B.3, Section B.5, or Section B.6., such Repayment shall be linked to the Repayment Base Index.

At any Calculation Date, Proposer's obligations shall be calculated according to the following formula:

The Total Indexed Grant less the Total Indexed Repayment.

STANDARD

**ANNEX D
APPROVED PROGRAM PLAN**

STANDARD