

COOPERATION AND PROJECT FUNDING AGREEMENT

Agreement made this day of _____, 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

(hereinafter referred to as "the SCT Participant")

Each of _____ and _____ shall hereinafter collectively referred to as the "Proposer" and separately as the "Participants"

PREAMBLES

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 Preambles to this Agreement shall be deemed an integral part hereof.
- A.2. The Participants shall be bound and obligated jointly and severally in this Agreement, unless expressly stated otherwise herein.
- 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 _____, _____. 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

“Baseline” – as defined in Section F.3.2.

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

“Board of Governors” – the Board of Governors of the Foundation that is comprised of government officials representing the State of Israel and the Government of the United States of America

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

“Change of Control” - a transaction resulting in a change of control of the 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 50.01% or more of any means of control in the company, including, without limitation, the right 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 the transferor entity, has veto rights, whether at shareholders or board level

“Claim” as defined in Section L.1

“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.

“Commercialization Reports” – as defined in Section F.6.1

“Completion of Project” – as defined in Section P

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

“Effective Date” – as defined in Section P

“First Payment Due Date” - the date of the first payment for the Small Companies Track that will be the last day of the third full calendar month after the end of the first full fiscal year after the Completion of Project has occurred

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

“Full Repayment-” – as applicable, the repayment to the Foundation in accordance with Sections F.3.1 or F.3.1.1.(b) or F.3.2.(d), as the case may be, or as set forth in Sections G.5 and G.7.2, as the case may be, and in all cases the Repayments are indexed as set forth in Section F.4

“Grant Base Index” – the Index last published prior to the date of payment of each increment of the grant or Repayment, as applicable

“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 an Outright Sale) 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 Grant Base Index

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

“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

“Outright Sale” – any transfer of ownership of any 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 Agreement

“Product” – as defined in Annex F, including, but not limited to, the outcome of the development work and the Program Plan, or any derivative thereof, carried out by the Proposer and/or either Participant pursuant to the terms of this Agreement

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

“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 preambles

“Repayment” – the grant repayments due by the Proposer to the Foundation from the Gross Sales derived from any commercialization of the Product and/or repayments to the Foundation arising from a Repayment Event as set forth in Section G. Alternatively, grant repayments for a Participant that has elected for the Small Companies Track shall be made as set forth in Section F.3.2 and/or repayments to the Foundation arising from a Change of Control as set forth in Section G.4 – G.6

“Repayment Event” – any repayment event as referred to in Section G triggering Repayments, as set forth in Section G

“Revenue Reports” – as defined in Section F.6.2

“SCT Participant” – the Participant on the Small Companies Track as defined in the Preambles

“non-SCT Participant” - the Participant that was not eligible or did not elect for the Small Companies Track as defined in Section F.3.2 and will make Repayments according to Section F.3.1

“Small Companies Track” or **“SCT”** – the alternative track for Repayments set forth in Section F.3.2

“Termination of this Agreement” – termination deriving from (a) the payment by the Proposer of any and all of its obligations pursuant to Section F and/or Section G, (b) termination resulting from revocation by the Foundation of the Agreement, or (c) 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 F.3.1.1.b or, to the extent applicable, the result of multiplying the total of the Indexed Payments by 90% or 120% according to F.3.1 i or ii, or to the extent applicable, the result of multiplying the total of the Indexed Payments by the percentage for Full Repayment set forth in F.3.2, G.4.2., or G.5, as the case may be

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

B. CONDUCT OF THE PROJECT

- B.1. The Proposer agrees to do the work set out in the Proposal in accordance with good professional standards and shall expend funds received hereunder only in accordance with such Proposal and/or the requirements of this Agreement.
- B.2. The Proposer shall comply with the Program Plan.
- B.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.
- B.4. The Proposer shall act according to the BIRD Foundation Procedures Handbook, including not to make substantial transfers of funds from one budget item to another, not to change (nor permit any change of) key personnel or their duties and responsibilities or make any significant reduction in the total workforce, nor diminish their time allocated to the proposed work hereunder without prior written approval by the Foundation, which approval shall not be unreasonably withheld.
- B.5. [The Proposer hereby represents and warrants that there is no change in any of the details or information of the ownership structure of the Proposer that was uploaded with the Proposer’s executive summary of the Project submitted to the Foundation.] **OR** [The Proposer hereby confirms that the ownership structure of the Proposer has changed from the details and information uploaded and submitted to the Foundation with the Proposer’s executive summary of the Project and represents and warrants that the new ownership structure has been updated through the Foundation’s Upload system.] Any misrepresentation or inaccuracy in the ownership structure and/or failure to update any new ownership structure on the Upload system prior to the date of this Agreement 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.

C. REPORTING REQUIREMENTS

C.1. The Participants shall submit to the Foundation, in writing, the following reports:

- a) Separate Fiscal reports from each Participant and joint interim technical reports to be submitted simultaneously within 30 days following the expiration of each [x] -month period for a total of [x] interim segments;
- b) Separate Fiscal reports and joint final technical reports (part I and part II) to be submitted simultaneously within 60 days following Completion of Project; and
- c) Separate Commercialization Reports as described in Section F.6.1. to be submitted on a semi-annual basis from the Completion of Project by the non-SCT Participant. Such Commercialization Reports shall be submitted even if there have been no sales for such semi-annual calendar period.
- d) Separate Revenue Reports as described in Section F.6.2. to be submitted annually within 2 months of the end of each fiscal year by the SCT Participant, commencing after the end of the first full fiscal year after the Completion of Project has occurred

The reports to be submitted pursuant to this Section C.1 shall be in form and substance in accordance with the most recent formats for technical and fiscal reports, and Commercialization Reports and Revenue Reports, as shown on the Foundation's web site.

C.2. During the term of the Project, the Proposer shall respond to the Foundation's questions and requests for clarification and updates in connection with said reports, as well as provide to the Foundation, briefings on the progress of the work hereunder, following any request from time to time by the Foundation. Such questions/requests shall not be burdensome on the operations of the Proposer, unless there is reasonable justification, and briefings shall be in accordance with such form and detail as the Foundation may reasonably request.

Subsequent to the completion of the Project, the Foundation shall have the right to request from time to time briefings and/or supplemental reports from the Proposer, and receive such briefings, and/or supplemental reports, in writing no later than 45 days from any such request, and, in addition, the Foundation will be entitled to require the Proposer to participate in follow-up meetings for clarification, to the extent required by the Foundation.

C.3. All the reports referred to in Section C.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 and the appropriate details will accurately chart and reflect the progress of the Project in comparison to the plan submitted in the Proposal and the details set forth in Annexes D & E of this Agreement.

Any and all material misrepresentation or inaccuracy or omission in any report, or failure to deliver a report or the audited financial statements as referred to in C.7. below, in a timely fashion, or failure to respond in a timely fashion and/or to the Foundation's satisfaction to the Foundation's questions and requests for clarification and updates in connection with said 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.

- C.4. The Foundation shall be entitled from time to time to carry out audits on the Participants that relate to the Project (and the revenue of the SCT Participant), and the Proposer shall give the Foundation's representatives full access to all relevant evidence and paperwork and further allow them access to their premises for the purposes of carrying out such audits. Failure to provide access and cooperate with the Foundation shall constitute a fundamental breach of this Agreement pursuant to Section I.1.
- C.5. Notwithstanding anything to the contrary in this Agreement, the Proposer agrees that the Foundation has been entitled, and shall be entitled to supply the reviewers who were/shall be involved in the Foundation evaluation and execution processes, auditors and any officials acting on behalf of the governmental stakeholders for the relevant program (including the relevant Departments and Ministries thereof) with the deliverables that have been and will be submitted to the Foundation, to include, without limitation, a copy of this Agreement with all its Schedules and Exhibits and the reports filed pursuant to this Section C.
- C.6. 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, including without limitation those referred to in Section K, at reasonable times and intervals during the term of this Agreement, and, in addition, (a) for expenses reported for the Project, said examination shall apply for a period of three (3) years following the submission of the last fiscal report for the Project, and (b) for sales reports (including commercialization reports), said examination shall apply for so long as Repayments as per Section F.3., and Section G, 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.
- C.7. The SCT Participant shall: (i) submit to the Foundation its written declaration of the gross revenue, or, alternatively the unaudited financial statements if available, within 3 months of the end of its/their financial year, and (ii) shall further arrange annually for its auditor to prepare audited financial statements within 6 months of the end of its current financial year (as may be extended if required with the written consent of the Foundation) and shall promptly deliver a certified copy of the audited financial statements to the Foundation.

D. PUBLICATIONS

- D.1. The support of the Foundation shall be acknowledged 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.
- D.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 E., the Proposer shall be deemed hereby to waive any claim or rights with respect to such dissemination.
- D.3. The Proposer shall supply to the Foundation a digital copy of all publications resulting from Foundation-supported work as soon as possible after publication.

E. PROPRIETARY INFORMATION, INTELLECTUAL PROPERTY

- E.1. Except for 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, Proprietary information 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 if, and only if, identified as confidential in writing. At the request of Proposer or either Participant, a confidential disclosure agreement may be entered into separately by the parties.
- E.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.

F. PROJECT FINANCING

- F.1. Subject to the Proposer complying in full with Sections F.1.1 and F.1.2. below, 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, subject to the requirements below.

Each Participant shall demonstrate the following requirements:

- F.1.1. Each Participant shall demonstrate to the Foundation's satisfaction that it has the financial resources to match the Foundation's payments and that any other funding

and/or awards from either the U.S. Federal Government or the Israeli Government shall not be used by a Participant for matching the Foundation's payments; and

F.1.2. Each Participant shall further demonstrate to the Foundation's satisfaction that each is a viable going concern throughout the period of the Project.

F.2. The Proposer undertakes from the Effective Date through all the stages of the Project until the Completion of Project (i) to possess the financial resources to pay for all the items in the Approved Project Budget and (ii) to update the Foundation in the event of any significant change in its financial status and ability to comply with such commitment.

Any failure or omission of the Proposer to possess the aforesaid financial resources at any time until Completion of Project and/or match the payments of the Conditional Grant and/or either Participant is not a going concern shall entitle the Foundation in its sole discretion to stop its payments of the Conditional Grant.

F.3 The following shall be the Repayment methods for each track:

F.3.1. The non-SCT Participant shall make Repayments to the Foundation based on Gross Sales and the SCT Participant pursuant to the election as set forth in Section F.3.2. below. The Proposer will also make repayments in connection with any Repayment Event as set forth in Section G. In addition, either or both Participants shall be entitled, at their discretion, to make a Full Repayment at any time after the Completion of Project as set forth in Section F.3.2(d).

In case Repayments are actually made by both Participants, or only by SCT Participant, the following shall be deemed to be Full Repayment:

- i. Repayment by the Proposer of 90% of the Conditional Grant (as linked to the Grant Base Index) if repayment will be completed within 3 consecutive reporting years by the SCT Participant after the First Payment Due Date and
- ii. Thereafter, Repayment of 120% of the Conditional Grant (as linked to the Grant Base Index),

except and provided that the Repayment obligations of the SCT Participant only will cease upon the expiry of the first 5 years after the actual first payment by the SCT Participant of the Repayments to the Foundation as set forth in Section F.3.2., subject to, and unless there will be at any time in the future, a Repayment Event as set forth in Section G,

and to the extent Full Repayment as above has not been made, the Repayment obligations of the non-SCT Participant shall continue until Full Repayment is made (i.e. *until 120% of the Conditional Grant is repaid as linked to the Grant Base Index*).

F.3.1.1 The Repayments based on Gross Sales by the non-SCT Participant shall be made on the following basis:

- a) The Conditional Grant shall be repaid in U.S. Dollars at the rate of 5% of the Gross Sales, such Repayments to be in equivalent dollars valued at time of Repayment. The rate of change of value shall be that designated in Section F.4 hereto.
- b) If Repayments are only made by the non-SCT Participant, or there is a Repayment Event that only relates to the non-SCT Participant, or (iii) if there shall be a breach or omission by the non-SCT Participant that as a result of which this Agreement is either terminated or revoked by the Foundation the following maximum percentages in equivalent dollars valued at the time of Repayment (as determined in accordance with Section F.4) of the Conditional Grant in any of the following years shall be considered as Full Repayment, and no additional payments to the Foundation on account of the Conditional Grant shall be required by the non-SCT Participant.

Years following date of Completion of Project*	Maximum percentage of Conditional Grant to be repaid (indexed according to Section F.4 of this Agreement)
1	100%
2	113%
3	125%
4	138%
5 or more	150%

F.3.1.2. 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, and/or any improvement, modification or extension of it, by any one of the aforesaid as a purchaser. 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.

F.3.1.3. 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 based on Gross Sales by the Proposer according to this Section F.3.1. (and for the sake of clarity, not for Repayments based on the SCT) 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 a market price for the Commercial Product shall have been established, that market price shall be the basis for Repayments according to this Section F.3.1., notwithstanding the incorporation of the Commercial Product in another product as aforesaid.

F.3.2. The Repayments to be made by the SCT Participant are based on the Small Companies Track and shall be made on the following basis:

The Repayments will be based on the annual growth of gross revenue of the SCT Participant compared to the gross revenue recorded in the first full fiscal year after the Effective Date ("Baseline"). The annual Repayment amount will be calculated as 7% of the increase between the recorded gross revenue of the SCT Participant for the first full fiscal year after Completion of Project occurs and the gross revenue recorded in the Baseline, as recorded in its annual audited financial statements. Repayments will be made in U.S. Dollars, or the NIS equivalent at the date of each Repayment. By way of illustration only, if the gross revenue in the Baseline shall be \$100,000 and the gross revenue shall increase to \$110,000 in the second year, the 7% royalty will be payable on \$10,000, and if the gross revenue shall increase to \$120,000 in the third year, the 7% royalty will be payable on \$20,000 and so forth.

If there shall be no increase in the gross revenue in any one or more fiscal year(s), or there shall be a reduction in the gross revenue, but the gross revenue is still above the Baseline, the 7% royalty shall be payable on the increase over the revenue recorded in the Baseline for such year(s). *Continuing the above illustration, if, in the third year, the gross revenue shall decrease to \$115,000, the 7% royalty will be payable on \$15,000.*

- a) Subject to subsection c) below, the first payment will be due on the First Payment Due Date. Said first payment and subsequent payments (except for the last Repayment) will be based on the SCT Participant's written declaration to the Foundation of its internal calculation of the annual revenue for the relevant fiscal year or, alternatively, based on the SCT Participant's unaudited financials. To the extent, there will be a difference in the figure for the gross revenue in the audited financials, this will be reflected in an adjustment in the following year's Repayment.

The last Repayment upon the expiry of the first 5 years after the first actual payment by the SCT Participant will be made within 6 months of the end of the relevant fiscal year and shall be based solely on the audited financials of the SCT Participant.

- b) The SCT Participant shall have the option to postpone the commencement of Repayments by up to 2 years following the First Payment Due Date.
- c) The Repayment obligations of the SCT Participant (but, for the avoidance of doubt, not the non-SCT Participant to the extent there has not been a Full

Repayment) will cease upon the expiry of the first 5 consecutive years after the actual first payment by the SCT Participant of the Repayments to the Foundation even if Full Repayment as set forth in Section F.3.1 above has not been achieved, subject to, and unless there will be at any time in the future, a Repayment Event as set forth in Section G.

- d) At any time within the first 5 years after the First Payment Due Date and so long as less than 50% of the Conditional Grant (as linked to the Grant Base Index) has been repaid, either or both Participants may, at its/their discretion, opt to either separately or jointly make a one-time payment to repay the grant. In such a case, 80% of the Conditional Grant (as linked to the Grant Base Index) will also be considered as an alternative way of Full Repayment.
- e) The Participants shall not be entitled to switch from one track to the other (i.e. from Gross Sales to the Small Companies Track, and vice-versa) and the commitment of the Participants made herein in this Section F.3. shall be binding and irreversible.

F.4. The monies given as a Conditional Grant shall be linked in value to the Index, until Full Repayment. Each increment of the grant is fixed and shall be linked to the Grant Base Index. Upon Repayment of any portion of Proposer's obligations under Section F.3, or Section G, such Repayment shall be linked to the Grant 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.

F.5. All Repayments based on Gross Sales and due to the Foundation shall be calculated on a semi-annual calendar basis. All Repayments based on the Small Companies Track and due to the Foundation shall be calculated on an annual calendar basis within 2 months of the end of the fiscal year of the SCT Participant.

F.6. The following are the requirements for the Commercialization Reports and Revenue Reports:

F.6.1. "Commercialization Reports" shall only be required from the non-SCT Participant. The Commercialization Reports shall reflect the actual sales for each semi-annual calendar period as well as a sales forecast for the next two (2) years which shall be submitted by the non-SCT Participant and certified by said non-SCT Participant's chief executive officer or, in the case of a publicly traded corporation, either the chief executive officer or the chief financial officer. Such Commercialization Reports shall be submitted even if there have been no sales for such semi-annual calendar period. These reports shall accurately represent the amount receivable by the non-SCT Participant from Gross Sales of the Commercial Product, and, to the extent applicable, the Product.

F.6.2. "Revenue Reports" relate to the Small Companies Track and shall contain the unaudited annual revenue figure of the SCT Participant for the fiscal year-end, the previous year's audited revenue number and adjustment to the royalties paid, as applicable, and, except for the last year, shall further include the company's three-year forecast for overall gross revenues. The Revenue Reports shall be certified by the SCT Participant's chief executive officer or chief financial officer.

F.6.3. Any, and all, material misrepresentation or inaccuracy in said reports (Commercial Reports and Revenue 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.

F.6.4. The Commercialization Reports together with any payment that may be due for Repayments based on Gross Sales shall be submitted within ninety (90) calendar days following the end of each semi-annual period. Repayments to the Foundation based on Gross Sales shall commence at the end of the semi-annual period during which the first sale was made.

F.6.5. The Revenue Reports shall be submitted annually to the Foundation by the SCT Participant within two months of the end of the fiscal year of the SCT Participant commencing with the fiscal year after Completion of Project occurs. As and when applicable, Repayments to the Foundation based on the Small Companies Track shall be made by the SCT Participant within 3 months after the end of the applicable fiscal year of the SCT Participant.

F.7. All late Repayments, whether based on Gross Sales or the Small Companies Track, shall bear interest at the Late Payment Interest Rate.

G. Repayment Event

For the non-SCT Participant:

G.1. The non-SCT Participant shall not commit to an Outright Sale prior to Full Repayment without a prior written notice from the non-SCT Participant to the Foundation and without the prior written consent of the Foundation, in its sole discretion.

G.2. Any failure to provide prior written notice of an Outright Sale shall constitute a fundamental breach of this Agreement pursuant to Section I 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 to such Participant.

G.3. An Outright Sale prior to Full Repayment, with prior written notice received by the Foundation pursuant to Section G.1 above, shall be deemed to be a Repayment Event and one-half of all proceeds of the Outright Sale shall be applied as a lump sum to be

received by the Foundation and treated as a Full Repayment unless or except where there may/will be Gross Sales of any Commercial Product that has not been acquired by the acquiror, and in such case, Repayments shall be made until there has been Full Repayment, as per Section F.3.1, on the balance of the Conditional Grant not received from the aforesaid lump sum. If any such Outright 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 non-SCT Participant 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 by a partner of one of the eight leading accountancy firms in Israel who shall be selected by the Foundation, and whose decision shall be final and binding on the parties. 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 G.3. shall be deemed payments against non-SCT Participant's obligations under Section F.3. and, for the avoidance of doubt, the payments in this Section G.3., together with any other Repayments, shall not exceed the maximum percentages set out in Section F.3.1.1.(b).

- G.4. At any time prior to Repayment of the entire amount of the Conditional Grant (as linked to the Grant Base Index), the non-SCT Participant shall provide written notice to the Foundation, either prior to, or no later than thirty (30) calendar days after any Change of Control of non-SCT Participant. Any failure to provide the written notice within the time specified, as set forth in this Section G.1., shall constitute a fundamental breach of this Agreement pursuant to Section I 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 to the non-SCT Participant.
- G.5. A Change of Control of non-SCT Participant will be deemed to be a Repayment Event triggering an immediate Repayment of the 80% of the Conditional Grant received by the Proposer (linked to the Grant Base Index) by said Participant less any Repayments received by the Foundation pursuant to Section F.3.2., that shall be deemed a Full Repayment.
- G.6. Notwithstanding the provisions of Section G.5., if, prior to the date of the closing of a Change of Control, the identity of the acquiror is disclosed to the Foundation, and the Foundation is satisfied, acting in its sole discretion (i) on both the identity and financial ability of the acquiror, (ii) that the Project will not be adversely prejudiced by the Change of Control, and (iii) on the acquiror's commitment to continue the Project, the Foundation may agree, in its sole discretion (with discretion to reject for any reason), with the acquiror company and the non-SCT Participant undergoing the Change of Control one the following alternative arrangements instead of Section G.5:
 - G.6.1 before the Completion of the Project, the acquiror company, and the non-SCT Participant undergoing the Change of Control, undertake and agree in writing to the Foundation, to carry out the Program Plan and continue and complete the

Project with not less than the same said efforts as before and be bound by the terms and obligations of this Agreement and demonstrate such commitment to the Foundation's entire satisfaction; or

G.6.2 if after the Completion of the Project, the acquiror company, and said relevant Participant undertake and agree in writing to the Foundation, to continue with the commercialization and marketing/sales of the Product and/or Commercial Product, as the case may be, with not less than the same said efforts as before and be bound by the terms and obligations of this Agreement and to commit to, and actually implement, minimum sales of the Product and/or Commercial Product, as the case may be, at levels that the Foundation shall determine in its sole discretion.

Then, subject to the said acquiror company and the non-SCT Participant agreeing and signing, within two (2) months from receiving the first draft of the Addendum from the Foundation, an Addendum to this Agreement in the form of a document approved by the Foundation that references and refers to the obligations that will apply from this Agreement, the said acquiror company and the non-SCT Participant shall act as per the relevant commitments stated above and this arrangement shall be instead of the provisions in Section G.5.

In the event that the said acquiror company and the non-SCT Participant either (i) do not sign said Addendum within two (2) months from receiving from the Foundation the first draft of the Addendum, for whatever reason, or (ii) do not act in accordance with either G.6.1 or G.6.2, as the case may be, and/or said Addendum to this Agreement, whether in the present or future, the relevant arrangement set forth herein in this Section G.6 shall no longer apply and shall be automatically withdrawn, and Section G.5 shall apply in all respects, namely that the non-SCT Participant shall make an immediate Repayment of the entire amount of the Conditional Grant received by the Proposer (linked to the Grant Base Index) on the lapse of the two months. Any failure to make such immediate Repayment, shall constitute a fundamental breach of this Agreement pursuant to Section I 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 to the non-SCT Participant.

G.7. For the SCT Participant:

G.7.1. In the case of a Change of Control of the SCT Participant for which the Foundation has received a written notice from the SCT Participant as set forth in Section G.4 *mutatis mutandis*, there will be the following presumptions: (i) that the SCT Participant will no longer remain as an independent standalone entity carrying on its operations with no change and (ii) that it will no longer be possible to track the revenue growth of the SCT Participant as intended herein.

G.7.2. Pursuant to the aforesaid presumptions, the Change of Control of the SCT Participant shall be deemed to be a Repayment Event triggering a one-time payment of 80% of the

Conditional Grant (as linked to the Grant Base Index) less any Repayments received by the Foundation pursuant to Section F.3.2. that will be deemed to be Full Repayment

G.7.3. Notwithstanding Section G.7.1, the SCT Participant shall be entitled to present evidence to the Foundation no later than 30 days from the date of the Change of Control to include (i) the identity of the acquiror and its financial ability (ii) evidence that the Project will not be adversely prejudiced by the Change of Control, and (iii) its evidence to seek to rebut both aforesaid presumptions in Section G.7.1. However, regardless of the above, the Foundation's shall have absolute discretion to approve or reject the evidence, and that can be rejected for whatever reason. Subject to the above, if the Foundation shall approve the evidence and determine in its sole discretion that such evidence is sufficient and convincing and aligns with the intended purposes set forth in this Agreement, the Foundation shall negotiate a settlement arrangement with the SCT Participant to include making payments to the Foundation in the manner as set forth in Section F.3.2. If the Foundation determines, in its sole discretion, that the evidence is insufficient and/or unconvincing, the SCT Participant will be obligated to make an immediate Full Repayment on the terms set forth in Section G.7.2.

G.8` In the event that either (i) the settlement document is not agreed and signed, within two (2) months from receiving the first draft of said settlement document from the Foundation, for whatever reason, or (ii) the SCT Participant does not act in accordance with said settlement arrangement, whether in the present or future, the relevant arrangement set forth herein in Section G.7.3 shall no longer apply and shall be automatically withdrawn, and Section G.7.2 shall apply in all respects, namely that the SCT Participant shall make an immediate Repayment of 80% of the Conditional Grant received by the Proposer (linked to the Grant Base Index).

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

H.1. Notwithstanding the 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.

H.2. Subject to Section H.1 above, 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 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 government(s) concerned.

- H.3. Subject to Section H.1 above, the Foundation reserves for 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.4. In order that the rights of 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 of the Product, 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 Government of Israel and/or the Government of the United States, also at reasonable prices.

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 fundamental breach of the Agreement, 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 fundamental breach hereunder by either Participant; or
 - (iii) any material adverse change in the financial position of either Participant; or
 - (iv) 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
 - (v) any change in the business of either Participant as a result of which such Participant is no longer interested in continuing, and/or able to continue, the Project, and notwithstanding the continued interest of the other Participant.

Notwithstanding anything to the contrary in Section I.1. or I.2., if within six months of the event of default or breach, the Proposer or the relevant Participant may cure the default within thirty (30) calendar days after the date of its receipt of said notice of revocation, but not otherwise.

- 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, or this Agreement be terminated or the Project abandoned as set forth in Section I.6 below, 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 the Participant(s) in breach, or to the Participants(s) for which there has been a change or event (including a dispute as referred to in Section 1.2(iv)) 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 prior to Full Repayment, or abandon the Project prior to the Completion of Project, and, without the Proposer having received the prior written consent of the Foundation, in its sole discretion, upon, and subject to, terms and conditions determined by the Foundation, any breach of this obligation will automatically trigger all funds given to the Proposer becoming immediately repayable to the Foundation, without the need for demand. Such funds shall be repaid with interest at the Late Payment Interest Rate from the date of termination of this Agreement or abandonment of the Project, as the case may be.
- I.7. If upon Completion of Project for any reason, the entire budgeted sum has not been expended, the Participants shall forthwith return to the Foundation their *pro rata* shares of such unexpended portion. If not repaid forthwith, such 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., C., D., E., F., G., H., I.3., I.4., I.5., I.7., K., L., M., and N. 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 F, the following provisions only shall survive the Termination of this Agreement: Sections A., D., E., 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.

L. CLAIMS AGAINST THE FOUNDATION

L.1. The relevant Participant(s) shall defend all notices, claims or petitions 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 notices, claims, petitions, 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 (each of the above is hereinafter referred to as a "Claim"). The relevant Participant(s) 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. Each Participant agrees that persons employed by it, or otherwise retained by the Participant, 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. Each Participant 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 G 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.

- 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. Should any legal action or arbitration be instituted to collect money due and owing under this Agreement, the Foundation in such legal action or arbitration shall be entitled to recover all costs of collection incurred therein, including, but not limited to, reasonable attorney's fees and expenses.
- 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

<u>Office Address:</u> Kiryat Atidim, Building 4 Tel Aviv 6158001 Israel	<u>Mailing Address:</u> P.O. Box 58054 Tel Aviv 6158001 Israel
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 - b. Israeli Company

<u>Office Address:</u> Israel	<u>Mailing Address:</u>
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 - c. U.S. Company

<u>Office Address:</u> U.S.A.	<u>Mailing Address:</u>
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Any notice delivered to a party as set forth above shall be deemed to be service of notice on such party.

M.7 Each Participant warrants and represents that the signatory or signatories, as the case may be, signing this Agreement in the name and on its behalf is an, or are, authorized signatory/signatories of the Participant and that his/her/their signature(s) shall be binding upon the Participant.

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 F.3.1.1.(b) or as set forth in Section F.3.2, as applicable, in equivalent US dollars valued at time of repayment as determined in accordance with Section F.4.

O. COOPERATION AND PROJECT FUNDING AGREEMENT OVERRIDES

In so far as it 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 _____, _____ ("Effective Date")
The development work shall commence on the aforementioned date and, unless sooner terminated by the Foundation in accordance with Section I., the Proposer undertakes to complete the development work (_____) _____ months following the Effective Date ("Completion of Project").

Signed the day and date above first given

Printed Name: Jaron Lotan

Signature: _____

Title: Executive Director

(for the BIRD Foundation)

Printed Name: _____

Signature: _____

Title: _____

(for the Israeli Company)

Printed Name: _____

Signature: _____

Title: _____

(for the U.S. Company)

Annex A
Approved Project Budget
Israeli Company

Number of payment segments: _____

STANDARD

Annex A
Approved Project Budget
U.S. Company

Number of payment segments: _____

STANDARD

ANNEX B
PAYMENT OF CONDITIONAL GRANT

To be filled out only by BIRD

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

2. Second [Third, and Fourth] Payment/s –
 After receipt and approval of the [first][each] interim technical and fiscal report[s] [for the first -month period], or after actual expenditures on the Project have equalled or exceeded the required expenditure, whichever is later.

Required Expenditure	Payment [allocated over 2 to 3 payments]
Israeli Company: \$_____	\$_____
U.S. Company: \$_____	\$_____

 However, if at the required time of submission of the technical and fiscal reports, work on the project or expenditures thereon prove to be materially behind in the Program 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 F.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
NEW OWNERSHIP STRUCTURE

STANDARD

ANNEX D
APPROVED PROGRAM PLAN

STANDARD

ANNEX E
SCHEDULE OF PROJECT MILESTONES AND DELIVERABLES

Effective date: (commencement date of the project)

Milestones and Deliverables Form (fill-out only the white cells):

#	<u>Milestone Definition / Description and How Will It be Measured</u>	<u>Milestone Date (MM/YY)</u>
1		
2		
3		
4		
5		
#	<u>Deliverable Definition & Description</u>	<u>Deliverable Date (MM/YY)</u>
1		
2		
3		[end of project]

The total number of milestones & deliverables should be increased or reduced, as planned.

ANNEX F
Definition of Product

STANDARD