

**Template Letter Agreement: Epilepsy Foundation Award Agreement for Companies
[Commercialization Grants]**

xxx, 20xx (“Agreement Effective Date”)

[Addressee]

Development Program:

Amount of Award:

Name of Awardee: (“Company”)

Dear xx:

We are pleased to inform you that the Epilepsy Foundation (“EF”) is hereby issuing a [Award Amount] Commercialization Grant Award for the Development Program described in Exhibit A and disbursed in accordance with Exhibit B up to the amount indicated above (the “Award”). Company shall be responsible for the payment of all of the remaining costs required to complete the Development Program outlined in Exhibit A and for costs associated with the continuing Commercially Reasonable Efforts necessary to further develop and commercialize the Product as outlined in Exhibit A. Each party’s obligations hereunder will commence and apply upon the execution of this Agreement. The Award is in furtherance of EF’s charitable mission to lead the fight to overcome the challenges of living with epilepsy and to accelerate therapies to stop seizures, find cures, and save lives. EF has determined that without the Award, the Development Program will likely not occur or be substantially delayed. The Award is subject to the following terms, conditions and policies of this Letter Agreement (“Agreement”):

1. Disbursement of Award; EF Know-How; Reports.

(a) The Award will be disbursed by EF to Company as outlined in Exhibit B upon acceptance of this award agreement.

(b) To the extent EF provides or makes available any information, expertise, know-how or other intellectual property related to epilepsy or the treatment, prevention, or cure thereof (“EF Know-How”) to Company, EF hereby grants to Company a non-exclusive, transferable, sublicensable (through multiple tiers), worldwide right and license under all of EF’s rights in such EF Know-How to assist Company to research, develop, commercialize, make, have made, use, sell, have sold, offer for sale, import, export and otherwise exploit the Product.

(c) The Company agrees to provide EF with progress reports as set forth in Exhibit C. Post-award, the Company shall continue to annually report to EF on the progress of its development activities regarding the Product until the earlier of the first commercial sale of the Product or such research efforts are abandoned by Company, its Affiliates and its sublicensees, solely as a result of scientific failure. Company shall also provide EF with prompt notice of the closing of any material adverse event affecting Company.

2. Royalties. In consideration of EF's Award under this Agreement and EF's license and transfer of intellectual property and EF Know-How pursuant to this Agreement, Company agrees to pay to EF royalties as follows:

(a) Company shall pay a one-time royalty cap (defined as two (2) times the Actual Award) to EF within sixty (60) days after which aggregate Net Sales by the company exceed \$10 million.

(b) In addition to the royalty payable pursuant to Section 2(a) above, Company shall pay to EF a one-time royalty equal to the Actual Award within sixty (60) days after which aggregate Net Sales of the company exceed \$100 million

3. Indemnification.

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

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

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

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

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

(iv) any tort claims of personal injury (including death) relating to or arising out of any such injury sustained as the result of, or in connection with, the conduct of the Development Program by or on behalf of Company or its Affiliates, or Company's or its Affiliates' third party licensees' or sublicensees' (other than EF or any of EF's licensees or sublicensees) development, manufacture, or commercialization of the Product developed in whole or in part as a result of the Development Program.

(b) EF Indemnitee will promptly notify the Company of any claims, suits, demands, losses, liabilities, damages costs, penalties, fines, or expenses subject to indemnification under this Section 3 of which it is made aware. EF Indemnitee will cooperate, and exert efforts to cause other EF Indemnitees to cooperate, in assisting the Company in presenting a defense, if requested to do so. The Company shall have sole control to select defense counsel, direct the defense of any such complaint or claim, and the right to settle claims at the Company's sole expense, provided that any such settlement does not incur non-indemnified liability for or admit fault by any EF Indemnitee. In the event a claim or action is or may be asserted, the EF Indemnitee shall have the right to select and to obtain representation by separate legal counsel. If the EF Indemnitee exercises such right, all costs and expenses incurred for such separate counsel shall be borne by the EF Indemnitee. No EF Indemnitee shall settle or enter into any voluntary disposition of any matter subject to indemnification under this Section 3 without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld.

4. Insurance. Company shall maintain at its own expense, with a reputable insurance carrier, coverage for Company, its Affiliates, and their respective employees written on a per occurrence basis commensurate with a reasonable assessment of the risks associated with the development efforts being conducted by Company, the following policies: Commercial general liability insurance, including contractual liability as respects this Agreement for bodily injury and property damage and, no later than the first use administration of the Product to a human subject, product liability insurance and clinical trials liability insurance.

Maintenance of such insurance coverage will not relieve Company of any responsibility under this Agreement for damage in excess of insurance limits or otherwise. On or prior to the effective date of this Agreement Company shall provide EF with an insurance certificate from the insurer(s), broker(s) or agent(s) (hereinafter collectively the "Insurance Providers") evidencing the applicable insurance coverage. At its request, EF may review Company's insurance coverage with relevant Company personnel no more than one time per year.

5. Intellectual Property Rights. All inventions, data, know-how, information, results, analyses, and other intellectual property rights resulting from the Award shall, as between the parties, be owned by

Company and the preparation, filing and maintenance of all patents resulting from the Development Program shall, as between the parties, be the sole responsibility, and under the sole control, of Company. EF hereby assigns and transfers to Company all of EF's right, title, and interest in and to all inventions and other intellectual property resulting from the Award, EF's access to, or knowledge or use of, any Company Development Program Technology, the Product, or confidential or proprietary information of Company, and all intellectual property rights related to any of the foregoing, free and clear of all liens, claims, and encumbrances.

6. Expiration/Termination of Agreement.

(a) The term of this Agreement shall commence on the Agreement Effective Date and expire on the date on which Company has paid EF all of the royalty payments set forth in Section 2.

(b) Either party may terminate this Agreement for cause, without prejudice to any other remedies available to the terminating party with respect thereto, by providing the other party with written notice of such cause and intent to terminate; provided, however, that the other party shall have thirty (30) days following the receipt of written notice to cure such cause. For purposes of this Section 6, "cause" shall mean (i) a party's material breach of its covenants or obligations under this Agreement, (ii) a bankruptcy or similar filing by a party or a proceeding under the applicable bankruptcy laws or under any dissolution or liquidation law or statute now or hereafter in effect and filed against such party or all or substantially all of its assets if such filing is not dismissed within sixty (60) days after the date of its filing, or (iii) Company's material failure to achieve any Milestone within ninety (90) days of its anticipated achievement day.

(c) The following provisions shall survive the termination of this Agreement: Sections 1(b), 2, 3, 4, 5, 6, 7 (within one hundred eighty (180) days of termination) 8 and 9.,.

7. Audits. At the request of EF, from time to time, Company shall permit EF, upon reasonable notice and without unreasonable disruption, to audit and examine such books and records of Company as may be necessary for verifying Company's expenditures of the Award and the payment of royalties, if any, but no more frequently than once every calendar year.

8. Confidentiality.

(a) Except as expressly provided in this Agreement, the parties agree that a party receiving any information furnished to it pursuant to this Agreement (the "Receiving Party") by the other party hereto (the "Disclosing Party") shall not publish or otherwise disclose and shall not use it for any purpose other than provided herein (such information provided by a Disclosing Party, the "Confidential Information"). For the avoidance of doubt, all reports and non-public information provided by Company to EF as required

by Sections 1(c), 7 and 9(l), whether directly or through the PAG, shall be deemed to be the Confidential Information of Company.

(b) Notwithstanding Section 8(a) above, Confidential Information shall not include information that, in each case as demonstrated by written documentation:

(i) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure or was developed by the Receiving Party prior to its disclosure by the Disclosing Party;

(ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

(iii) became generally available to the public or otherwise part of the public domain after its disclosure and such disclosure was made other than through any act or omission of the Receiving Party in breach of this Agreement;

(iv) was subsequently lawfully disclosed to the Receiving Party by a person other than the Disclosing Party, and who did not directly or indirectly receive such information from the Disclosing Party; or

(v) is developed by the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.

(c) Notwithstanding Section 8(a) above, Receiving Party may use and disclose the Disclosing Party's Confidential Information to its Affiliates, licensees, sublicensees, contractors and third parties to the extent such use and/or disclosure is reasonably necessary to exercise the rights granted to it under this Agreement, provided that Receiving Party ensures that any such entities or persons are bound by a written obligation of confidentiality as materially protective of Disclosing Party's Confidential Information as this Section 8.

(d) If a Receiving Party is required to disclose the Disclosing Party's Confidential Information by law or by a court or other tribunal of competent jurisdiction, (i) the Receiving Party shall immediately give as much advance notice as feasible to the Disclosing Party to enable the Disclosing Party to exercise its legal rights to prevent and/or limit such disclosure, and (ii) the Receiving Party shall disclose only that portion of the Disclosing Party's Confidential Information that, in the opinion of the Receiving Party's legal counsel, is legally required to be disclosed and will exercise reasonable efforts to ensure that any such information so disclosed will be accorded confidential treatment.

9. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Maryland, without reference to conflicts of law principles.

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

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

if to EF, at: grants@efa.org (electronic communication)
Shark Tank Awards
8301 Professional Place – West
Suite 200
Landover, MD 20785-2933

with a copy to:
Sonya Dumanis: sdumanis@efa.org

if to Company, at: xxx (electronic communication)

with a copy to:

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

(e) No Avoidance. Company will not, by amendment of its organizational or governing documents, or through reorganization, recapitalization, consolidation, merger, dissolution, sale, transfer or assignment of assets, issuance of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms, provisions, covenants or agreements of this Agreement.

(f) Assignment. This Agreement may not be assigned by any party without the prior written consent of the other party, except that either party may assign this Agreement without such consent to an Affiliate of such party or in connection with the transfer, whether by sale of assets, merger or otherwise, of all or substantially all of the assets or business of such party to which this Agreement relates. Any assignment that is not in accordance with this Section 9(g) will be null and void *ab initio*.

(g) No Joint Venture. Nothing herein contained shall be deemed to create an agency, joint venture, amalgamation, partnership or similar relationship between EF and Company. Notwithstanding any of the provisions of this Agreement, neither party to this Agreement shall at any time enter into, incur, or hold itself out to third parties as having authority to enter into or incur, on behalf of the other party, any commitment, expense, or liability whatsoever, and all contracts, expenses and liabilities in connection with or relating to the obligations of each party under this Agreement shall be made, paid, and undertaken exclusively by such party on its own behalf and not as an agent or representative of the other.

(h) Press Releases. Each party shall submit any proposed press release or other public announcement, other than an academic, scholarly, or scientific publication, concerning the terms of this Agreement or this Award to the other party prior to its public release, except to the extent any such release or announcement is required by law, rule, or regulation or the rules of any securities exchange. EF's support for the Development Program shall be acknowledged in any publications by Company related to the Development Program.

(i) Publications. The parties agree that they intend to advance the body of general scientific knowledge of epilepsy and its potential therapies and cures and the parties acknowledge that Company intends to, as commercially and scientifically reasonable based on the results of the Development Program, publish the results of the Development Program in a scientific peer-reviewed publication on a timely basis and provide EF with copies of at least one public forum presentation annually.

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

(k) Other Support. Company shall provide EF on the Agreement Effective Date with a description of its other sources of support and update that description from time to time during the Development Program.

(l) Public Filings. Company shall provide EF with a copy of its public filings, such as annual reports, with governmental units from time to time during the Development Program.

(m) Waiver. Except as otherwise expressly provided in this Agreement, any term of this Agreement may be waived only by a written instrument executed by a duly authorized representative of the party waiving compliance. The delay or failure of a party at any time to require performance of any provision of this Agreement shall in no matter affect such party's rights at a later time to enforce the same. No waiver by either party of any condition or term in any one or more instances shall be construed as a further or continuing waiver of such condition or term or of another condition or term.

(n) Amendments. No amendment or modification of any provision of this Agreement shall be effective unless in writing signed by a duly authorized representative of each party. No provision of this Agreement shall be varied, contradicted or explained by any oral agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by a duly authorized representative of each party.

(o) Severability. In the event any provision of this Agreement should be held invalid, illegal or unenforceable in any jurisdiction, the parties shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the parties and all other provisions of this Agreement shall remain in full force and effect in such jurisdiction. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in another jurisdiction.

(p) Entire Agreement. This Agreement (including the Exhibits attached hereto) constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings or representations, either oral or written, between the parties with respect to such subject matter.

10. Definitions.

- (a) Unless otherwise defined in this letter, the following shall apply:
- "Actual Award" means the total amount of the Award actually paid to Company.
 - "Affiliate" shall mean, with respect to a party, any entity, which directly or indirectly controls, is controlled by, or is under common control with, such party. For these purposes, "control" shall refer to (a) the ownership, directly or indirectly, of at least fifty percent (50%) of the voting securities or other ownership interest of an entity; or (b) the possession, directly or indirectly, of the power to direct the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

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

- “Company Development Program Technology” shall mean all technology, in whole or in part, either discovered, developed, or controlled, by Company or its Affiliates, during the course of the Development Program under this Agreement or reasonably related to technology covered by the foregoing, in the Field, including, without limitation, technology owned or controlled by Company prior to Company’s performance of the Development Program under this Agreement to the extent necessary in the performance of the Development Program under this Agreement. Without limitation, Company Development Program Technology shall include data, technical information, source codes, know-how, inventions (whether or not patented), trade secrets, laboratory notebooks, and processes and methods.

- “Field” shall mean the treatment of epilepsy.

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

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

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

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

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

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

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

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

documented custom duties actually paid by the Selling Person; and

other commercially reasonable and customary deductions.

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

- “Product” shall mean xxx as outlined in exhibit A.
- “Royalty Cap” shall mean two (2) times the Actual Award.

[signature page follows]

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

Sincerely,

Epilepsy Foundation

By: _____

Name: _____

Title: _____

Date: _____

Agreed:

[Company Name _____]

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A (Development Plant)

Exhibit B (Disbursement Schedule)

Exhibit C (Progress Report Schedule)