

PATENT AND TECHNOLOGY LICENSE AGREEMENT

This AGREEMENT ("AGREEMENT") is made on this 27th day of August, 2009, by and between THE BOARD OF REGENTS ("BOARD") of THE UNIVERSITY OF TEXAS SYSTEM ("SYSTEM"), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, on behalf of THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER ("UTMDACC"), a member institution of SYSTEM, and Bio-Path Holdings, Inc. a Utah corporation having a principal place of business located at 3293 Harrison Blvd., Ste. 230, Ogden, Utah 84403 ("LICENSEE").

RECITALS

- A. BOARD owns certain PATENT RIGHTS and TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER developed at UTMDACC.
- B. BOARD, through UTMDACC, desires to have the LICENSED SUBJECT MATTER developed in the LICENSED FIELD and used for the benefit of LICENSEE, BOARD, SYSTEM, UTMDACC, the inventor(s), and the public as outlined in BOARD's Intellectual Property Policy.
- C. LICENSEE wishes to obtain a license from BOARD to practice LICENSED SUBJECT MATTER.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:



I. EFFECTIVE DATE

- 1.1 This AGREEMENT is effective as of the date written above ("EFFECTIVE DATE"), which is the date fully executed by all parties.

II. DEFINITIONS

As used in this AGREEMENT, the following terms have the meanings indicated:

- 2.1 **AFFILIATE** means any business entity more than fifty percent (50%) owned by LICENSEE, any business entity which owns more than fifty percent (50%) of LICENSEE, or any business entity that is more than fifty percent (50%) owned by a business entity that owns more than fifty percent (50%) of LICENSEE.
- 2.2 **LICENSED FIELD** means all neutral lipid-based liposome delivery of antisense technologies and FAK siRNA.
- 2.3 **LICENSED PRODUCTS** means any product or service sold by LICENSEE or its AFFILIATES comprising LICENSED SUBJECT MATTER pursuant to this AGREEMENT.
- 2.4 **LICENSED SUBJECT MATTER** means inventions and discoveries covered by PATENT RIGHTS or TECHNOLOGY RIGHTS within LICENSED FIELD.
- 2.5 **LICENSED TERRITORY** means worldwide.
- 2.6 **MARKET APPROVAL** means the regulatory approval necessary to market and sell a LICENSED PRODUCT in the United States or another national jurisdiction.
- 2.7 **NET SALES** means the gross revenues received by LICENSEE or its AFFILIATES from a SALE less sales discounts actually granted, sales and/or use taxes actually paid, import and/or export duties actually paid, outbound



transportation actually prepaid or allowed, and amounts actually allowed or credited due to returns (not exceeding the original billing or invoice amount), all as recorded by LICENSEE or its AFFILIATES in their official books and records in accordance with generally accepted accounting practices and consistent with their published financial statements and/or regulatory filings with the United States Securities and Exchange Commission.

- 2.8 **PATENT RIGHTS** means BOARD's rights in the information or discoveries described in invention disclosures, or claimed in any patents and/or patent applications, whether domestic or foreign, as identified in Exhibit I attached hereto, and all divisionals, continuations, continuations-in-part (to the extent the claims of such continuations-in-part are entitled to claim priority to the aforesaid patents and/or patent applications identified in Exhibit I), reissues, reexaminations or extensions of the patents and/or patent applications identified in Exhibit I, and any letters patent, domestic or foreign that issue thereon.
- 2.9 **PHASE I STUDY** means: (a) that portion of the FDA submission and approval process which provides for the first introduction into humans of a product with the purpose of determining human toxicity, metabolism, absorption, elimination and other pharmacological action as more fully defined in 21 C.F.R. § 312.21(a) or equivalent in a foreign country; or (b) a similar clinical study in any national jurisdiction other than the United States.
- 2.10 **PHASE II STUDY** means: (a) that portion of the FDA submission and approval process which provides for early controlled clinical studies conducted to obtain preliminary data on the effectiveness of a product for a particular indication, as



more specifically defined by the rules and regulations of the FDA, including 21 C.F.R. § 312.21 or any future revisions or substitutes thereof; or (b) a similar clinical study in any national jurisdiction other than the United States.

2.11 **PHASE III STUDY** means: (a) that portion of the FDA submission and approval process in which expanded clinical trials are conducted to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of a product, as more specifically defined by the rules and regulations of the FDA, including 21 C.F.R. § 312.21 or any future revisions or substitutes thereof; or (b) a similar clinical trial in any national jurisdiction other than the United States.

2.12 **SALE or SOLD** means the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or an AFFILIATE or a ROYALTY-FREE PRACTITIONER. As used herein, "ROYALTY-FREE PRACTITIONER" means UTMDACC and the following individuals: Bulent Ozpolat, M.D., Ph.D., Ugur Akar, M.D., Ph.D., Gabriel Lopez-Berestein, M.D., and Anil K. Sood, M.D. ("PHYSICIAN INVESTIGATORS"), and any partner or associate who practices medicine with one or more of the PHYSICIAN INVESTIGATORS, but with respect to such partner or associate, only for such time as he/she is engaged in a bona fide medical practice with one or more of the PHYSICIAN INVESTIGATORS.

2.13 **TECHNOLOGY RIGHTS** means BOARD's rights in any technical information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings or data created by the



inventor(s) listed in Exhibit I at UTMDACC before the EFFECTIVE DATE, which are not claimed in PATENT RIGHTS but that are necessary for practicing PATENT RIGHTS.

- 2.14 **VALID CLAIM** means an issued claim of any unexpired patent or claim of any pending patent application included among the PATENT RIGHTS, which patent has not been held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, which has not been rendered unenforceable through disclaimer or otherwise, and which has not been lost through an interference proceeding or abandoned.

III. LICENSE

- 3.1 BOARD, through UTMDACC, hereby grants to LICENSEE a royalty-bearing, exclusive license under LICENSED SUBJECT MATTER to manufacture, have manufactured, use, import, offer to sell and/or sell LICENSED PRODUCTS within LICENSED TERRITORY for use within LICENSED FIELD. This grant is subject to Sections 14.2 and 14.3 hereinbelow, the payment by LICENSEE to UTMDACC of all consideration as provided herein, the timely payment of all amounts due under any related sponsored research agreement between UTMDACC and LICENSEE in effect during this AGREEMENT, and is further subject to the following rights retained by BOARD and UTMDACC to:

- (a) Publish the general scientific findings from research related to LICENSED SUBJECT MATTER, subject to the terms of ARTICLE XI—Confidential Information and Publication; and



- (b) Use LICENSED SUBJECT MATTER for research, teaching, patient care, and other academically-related purposes; and
 - (c) Transfer LICENSED SUBJECT MATTER to academic or research institutions for non-commercial research use.
- 3.2 LICENSEE may extend the license granted herein to any AFFILIATE provided that the AFFILIATE consents in writing to be bound by this AGREEMENT to the same extent as LICENSEE. LICENSEE agrees to deliver such contract to UTMDACC within thirty (30) calendar days following execution thereof.
- 3.3 LICENSEE may grant sublicenses under LICENSED SUBJECT MATTER consistent with the terms of this AGREEMENT provided that LICENSEE is responsible for its sublicensees relevant to this AGREEMENT, and for diligently collecting all amounts due LICENSEE from sublicensees. If a sublicensee pursuant hereto becomes bankrupt, insolvent or is placed in the hands of a receiver or trustee, LICENSEE, to the extent allowed under applicable law and in a timely manner, agrees to use its best reasonable efforts to collect all consideration owed to LICENSEE and to have the sublicense agreement confirmed or rejected by a court of proper jurisdiction.
- 3.4 LICENSEE must deliver to UTMDACC a true and correct copy of each sublicense granted by LICENSEE, and any modification or termination thereof, within thirty (30) calendar days after execution, modification, or termination.
- 3.5 If this AGREEMENT is terminated pursuant to ARTICLE XIII-Term and Termination, BOARD and UTMDACC agree to accept as successors to LICENSEE, existing sublicensees in good standing at the date of termination



provided that each such sublicensee consents in writing to be bound by all of the terms and conditions of this AGREEMENT.

IV. CONSIDERATION, PAYMENTS AND REPORTS

4.1 In consideration of rights granted by BOARD to LICENSEE under this AGREEMENT, LICENSEE agrees to pay UTMDACC the following:

- (a) All PATENT EXPENSES, as defined below, incurred by or on behalf of UTMDACC, payable in quarterly installments not to exceed \$25,000.00 each quarter during the term of the AGREEMENT. As used herein, "PATENT EXPENSES" shall mean all out-of-pocket expenses incurred by or on behalf of UTMDACC in filing, prosecuting, enforcing and maintaining PATENT RIGHTS, and shall include all such future expenses incurred by or on behalf of UTMDACC, for so long as, and in such countries as this AGREEMENT remains in effect. In the event that there is an additional licensee(s) of PATENT RIGHTS, LICENSEE shall be obligated to pay only a pro rata share of PATENT EXPENSES. The pro rata share shall be calculated based on the number of licensees of PATENT RIGHTS and shall be adjusted with each additional licensee of PATENT RIGHTS. UTMDACC shall notify LICENSEE of each additional licensee of PATENT RIGHTS. LICENSEE shall be entitled to reduce a subsequent payment due to UTMDACC under this AGREEMENT by an amount that will result in LICENSEE'S share of PATENT EXPENSES being equal to the pro rata share of PATENT EXPENSES to be paid by the subsequent licensee(s). UTMDACC will



invoice LICENSEE thirty (30) days after the AGREEMENT has been fully executed by all parties for PATENT EXPENSES incurred by or on behalf of UTMDACC as of that date, if any. Thereafter, UTMDACC shall invoice LICENSEE for PATENT EXPENSES incurred subsequent thereto on a quarterly basis. LICENSEE shall be obligated to make quarterly payments towards such PATENT EXPENSES (not to exceed \$25,000.00 per quarter) until UTMDACC has been reimbursed in full for all outstanding, unreimbursed PATENT EXPENSES, regardless of the quarter in which they were incurred. All invoiced amounts will be due and payable by LICENSEE within thirty (30) calendar days of invoice. LICENSEE's payments under this Section 4.1(a) will not reduce the amount of any other payment provided for in this ARTICLE IV.

- (b) A nonrefundable license documentation fee in the amount of \$10,000. This fee will not reduce the amount of any other payment provided for in this ARTICLE IV, and is due and payable within thirty (30) calendar days after the AGREEMENT has been fully executed by all parties and LICENSEE has received an invoice for the amount from UTMDACC; and
- (c) A nonrefundable annual maintenance fee ("Annual Maintenance Fee"), due and payable (without invoice) within thirty (30) calendar days of each anniversary of the EFFECTIVE DATE until the first SALE as follows:
 - (i) \$10,000.00 shall be due and payable (without invoice) within thirty (30) calendar days of the first, second and third anniversaries of the EFFECTIVE DATE; and



- (ii) \$20,000.00 shall be due and payable (without invoice) within thirty (30) calendar days of the fourth, fifth, sixth and seventh anniversaries of the EFFECTIVE DATE; and
 - (iii) \$50,000.00 shall be due and payable within thirty (30) calendar days of the eighth anniversary of the EFFECTIVE DATE and every anniversary occurring thereafter until the first SALE. The Annual Maintenance Fee will not reduce the amount of any other payment provided for in this ARTICLE IV; and
- (d) A running royalty for SALES of LICENSED PRODUCTS, whether by LICENSEE or its AFFILIATES, calculated as follows:
- (i) three percent (3%) of NET SALES, less any ROYALTY OFFSET, as defined below, of LICENSED PRODUCTS covered at the time of SALE by a VALID CLAIM in any jurisdiction where such LICENSED PRODUCT is made, used, or sold; and
 - (ii) one and one-half percent (1.5%) of NET SALES, less any ROYALTY OFFSET, as defined below, of LICENSED PRODUCTS not covered at the time of SALE by a VALID CLAIM in any jurisdiction where such LICENSED PRODUCT is made, used, or sold;

As used herein, "ROYALTY OFFSET" shall mean the running royalty actually paid by LICENSEE to UTMDACC under Section 4.1(d) of either of the two November 2, 2007, license agreements between the PARTIES, if any; and



- (e) After the first SALE, minimum annual royalties ("Minimum Annual Royalties") as follows:
- (i) during the term of either of the November 2, 2007, license agreements between the PARTIES, \$50,000, due and payable (without invoice) within thirty (30) calendar days of each anniversary of the EFFECTIVE DATE which follows the first SALE;
 - (ii) after termination of both of the November 2, 2007, license agreements between the PARTIES, \$100,000, due and payable (without invoice) within thirty (30) calendar days of each anniversary of the EFFECTIVE DATE which follows the first SALE;

In the event that there is less than a twelve (12) month period between the first SALE, and the first anniversary of the EFFECTIVE DATE which follows the first SALE, then LICENSEE shall pay the following: (1) the Annual Maintenance Fee due for that year multiplied by the fraction, A/C , where A is the number of months between the anniversary of the EFFECTIVE DATE preceding the first SALE, and the first SALE, and C is twelve (12); and (2) the Minimum Annual Royalty as proscribed in this Section 4.1(e) multiplied by the fraction, B/C , where B is the number of months between the first SALE, and the first anniversary of the EFFECTIVE DATE which follows the first SALE, C is twelve (12), and $A + B = \text{twelve (12)}$. Additionally, running royalties accrued under



Section 4.1(d) and paid to UTMDACC during the one year period preceding an anniversary of the EFFECTIVE DATE shall be credited against the Minimum Annual Royalties due on that anniversary date; and

- (f) The following one-time milestone payments, regardless of whether the milestone is achieved by LICENSEE, a sublicensee or AFFILIATE:
- (1) Commencement of a PHASE I STUDY in any national jurisdiction for the first LICENSED PRODUCT: \$100,000;
 - (2) Commencement of a PHASE II STUDY in any national jurisdiction for the first LICENSED PRODUCT: \$300,000;
 - (3) Commencement of a PHASE III STUDY in any national jurisdiction for a first LICENSED PRODUCT: \$500,000;
 - (4) Receipt of MARKET APPROVAL in any national jurisdiction for a first LICENSED PRODUCT: \$1,000,000;

Each of the foregoing milestone payments shall be made by LICENSEE to UTMDACC (without invoice) within thirty (30) calendar days of achieving the milestone event and shall not reduce the amount of any other payment provided for in this ARTICLE IV. For purposes of this Section 4.1(f), "commencement" of a PHASE I STUDY, PHASE II STUDY or PHASE III STUDY shall be deemed to occur upon the administration of a LICENSED PRODUCT or placebo to the first patient enrolled in the PHASE I STUDY, PHASE II STUDY or PHASE III STUDY; and

- (g) The following percentages of all consideration, other than payments to reimburse LICENSEE for past and future research and development



money for the LICENSED SUBJECT MATTER received by LICENSEE from any sublicensee pursuant to Sections 3.3 and 3.4 hereinabove, including but not limited to, up-front payments, royalties, marketing, distribution, franchise, option, license, or documentation fees, bonus and milestone payments (less any amount paid to UTMDACC under Section 4.1(f)) and equity securities:

- (i) Thirty percent (30%) if the sublicense is executed before the second anniversary of the EFFECTIVE DATE; and
- (ii) Twenty percent (20%) if the sublicense is executed on or after the second anniversary of the EFFECTIVE DATE;

provided, however, in no circumstance shall royalties owed to UTMDACC be less than two percent (2%) of the NET SALES of the sublicensee; and

- (h) A one-time fee of \$50,000 upon assignment of the company's assets which includes the LICENSED SUBJECT MATTER to another entity pursuant to Article XII.

4.2 Unless otherwise provided, all such payments are payable within thirty (30) calendar days after March 31, June 30, September 30, and December 31 of each year during the term of this AGREEMENT, at which time LICENSEE will also deliver to UTMDACC a true and accurate report, giving such particulars of the business conducted by LICENSEE, its AFFILIATES and its sublicensees, if any exist, during the preceding three (3) calendar months under this AGREEMENT as



necessary for UTMDACC to account for LICENSEE's payments hereunder. This report will include pertinent data, including, but not limited to:

- (a) the accounting methodologies used to account for and calculate the items included in the report and any differences in such accounting methodologies used by LICENSEE since the previous report; and
- (b) a list of LICENSED PRODUCTS produced for the three (3) preceding calendar months; and
- (c) the total quantities of LICENSED PRODUCTS produced; and
- (d) the total SALES; and
- (e) the calculation of NET SALES; and
- (f) the royalties so computed and due UTMDACC by the category listed in Section 4.2(b) and/or minimum royalties; and
- (g) all consideration received from each sublicensee or assignee and payments due UTMDACC; and
- (h) all other amounts due UTMDACC herein.

Simultaneously with the delivery of each such report, LICENSEE agrees to pay UTMDACC the amount due, if any, for the period of such report. These reports are required even if no payments are due.

- 4.3 During the term of this AGREEMENT and for one (1) year thereafter, LICENSEE agrees to keep complete and accurate records of its, its AFFILIATES' and its sublicensees' SALES and NET SALES in sufficient detail to enable the royalties and other payments due hereunder to be determined. LICENSEE agrees to permit UTMDACC or its representatives, at UTMDACC's expense, to



periodically examine LICENSEE's books, ledgers, and records during regular business hours for the purpose of and to the extent necessary to verify any report required under this AGREEMENT. If any amounts due UTMDACC are determined to have been underpaid in an amount equal to or greater than five percent (5%) of the total amount due during the period so examined, then LICENSEE will pay the cost of the examination plus accrued interest at the highest allowable rate.

4.4 Within thirty (30) calendar days following each anniversary of the EFFECTIVE DATE, LICENSEE will deliver to UTMDACC a written progress report as to LICENSEE's (and any sublicensee's) efforts and accomplishments during the preceding year in diligently commercializing LICENSED SUBJECT MATTER in the LICENSED TERRITORY and LICENSEE's (and sublicensees') commercialization plans for the upcoming year.

4.5 All amounts payable hereunder by LICENSEE will be paid in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks are to be made payable to The University of Texas M. D. Anderson Cancer Center, and sent by United States mail to Box 4390, Houston, Texas 77210-4390, or by wire transfer to:

JPMorgan Chase Bank, N.A.
910 Travis
Houston, Texas 77002
SWIFT: CHASUS33 (for international wires only)
ABA ROUTING NO: 021000021
ACCOUNT NAME: Univ. of Texas M. D. Anderson Cancer Center
ACCOUNT NO.: 1586838979
REFERENCE: include title and EFFECTIVE DATE of AGREEMENT and type of payment (e.g., license documentation fee, milestone payment, royalty



[including applicable patent/application identified by MDA reference number and patent number or application serial number], or maintenance fee, etc.).

- 4.6 No payments due or royalty rates owed under this AGREEMENT will be reduced as the result of co-ownership of LICENSED SUBJECT MATTER by BOARD and another party, including, but not limited to, LICENSEE.

V. SPONSORED RESEARCH

- 5.1 LICENSEE agrees to sponsor research for projects approved by LICENSEE in the laboratory(s) of the PHYSICIAN INVESTIGATORS according to the following schedule:

- (i) If LICENSEE raises at least \$2.5 million but less than \$5 million in funding during the first year after the EFFECTIVE DATE, LICENSEE agrees to sponsor research in the amount of at least \$200,000/year for three years;
- (ii) If LICENSEE raises at least \$5 million but less than \$10 million in funding during the first year after the EFFECTIVE DATE, LICENSEE agrees to sponsor research in the amount of at least \$300,000/year for three years; and
- (iii) If LICENSEE raises \$10 million or more in funding during the first year after the EFFECTIVE DATE, LICENSEE agrees to sponsor research in the amount of at least \$400,000/year for four years.

VI. PATENTS AND INVENTIONS

- 6.1 If after consultation with LICENSEE both parties agree that a new patent application should be filed for LICENSED SUBJECT MATTER, UTMDACC will prepare and file appropriate patent applications, and LICENSEE will pay the

cost of searching, preparing, filing, prosecuting and maintaining same. If LICENSEE notifies UTMDACC that it does not intend to pay the cost of an application, or if LICENSEE does not respond or make an effort to agree with UTMDACC on the disposition of rights of the subject invention, then UTMDACC may file such application at its own expense and LICENSEE's rights to such invention under this AGREEMENT shall terminate in their entirety. UTMDACC will provide LICENSEE with a copy of the application for which LICENSEE has paid the cost of filing, as well as copies of any documents received or filed during prosecution thereof. The parties agree that they share a common legal interest to get valid enforceable patents and that LICENSEE will keep all privileged information received pursuant to this Section confidential.

VII. INFRINGEMENT BY THIRD PARTIES

- 7.1 LICENSEE, at its expense, must enforce any patent exclusively licensed hereunder against infringement by third parties and is entitled to retain recovery from such enforcement. After reimbursement of LICENSEE's reasonable legal costs and expenses related to such recovery, LICENSEE agrees to pay UTMDACC either: (a) three percent (3%) of any monetary recovery that is for sales of LICENSED PRODUCTS lost due to the infringement and fifty percent (50%) of related punitive damages; or (b) thirty percent (30%) of reasonable royalties awarded and fifty percent (50%) of related punitive damages in any monetary recovery in which the award is for reasonable royalties. LICENSEE must notify UTMDACC in writing of any potential infringement within thirty (30) calendar days of knowledge thereof. If LICENSEE does not file suit against



- a substantial infringer within six (6) months of knowledge thereof, then BOARD or UTMDACC may, at its sole discretion, enforce any patent licensed hereunder on behalf of itself and LICENSEE, with UTMDACC retaining all recoveries from such enforcement, and/or reduce the license granted hereunder to non-exclusive.
- 7.2 In any suit or dispute involving an infringer, the parties agree to cooperate fully with each other. At the request and expense of the party bringing suit, the other party will permit access during regular business hours, to all relevant personnel, records, papers, information, samples, specimens, and the like in its possession.

VIII. PATENT MARKING

- 8.1 LICENSEE agrees that all packaging containing individual LICENSED PRODUCT(S), documentation therefor, and, when possible, actual LICENSED PRODUCT(S) sold by LICENSEE, AFFILIATES, and/or sublicensees of LICENSEE will be permanently and legibly marked with the number of any applicable patent(s) licensed hereunder in accordance with each country's patent laws, including Title 35, United States Code, to the extent such marking is necessary or required to fully preserve PATENT RIGHTS in each such country.

IX. INDEMNIFICATION AND INSURANCE

- 9.1 LICENSEE agrees to hold harmless and indemnify BOARD, SYSTEM, UTMDACC, their Regents, officers, employees, students and agents from and against any claims, demands, or causes of action whatsoever, costs of suit and reasonable attorney's fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the exercise or practice of the rights granted



hereunder by LICENSEE, its officers, its AFFILIATES or their officers, employees, agents or representatives.

- 9.2 In no event shall BOARD, SYSTEM or UTMDACC be liable for any indirect, special, consequential or punitive damages (including, without limitation, damages for loss of profits or expected savings or other economic losses, or for injury to persons or property) arising out of, or in connection with, this AGREEMENT or its subject matter, regardless of whether BOARD, SYSTEM or UTMDACC knows or should know of the possibility of such damages.
- 9.3 Beginning at the time when any LICENSED SUBJECT MATTER is being distributed or sold (including for the purpose of obtaining regulatory approvals) by LICENSEE, an AFFILIATE, or by a sublicensee, LICENSEE shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than \$2,000,000 per incident and \$2,000,000 annual aggregate, and LICENSEE shall use reasonable efforts to have the BOARD, SYSTEM, UTMDACC, their Regents, officers, employees, students and agents named as additional insureds. Such commercial general liability insurance shall provide: (i) product liability coverage; (ii) broad form contractual liability coverage for LICENSEE's indemnification under this AGREEMENT; and (iii) coverage for litigation costs. The minimum amounts of insurance coverage required herein shall not be construed to create a limit of LICENSEE's liability with respect to its indemnification under this AGREEMENT.
- 9.4 LICENSEE shall provide UTMDACC with written evidence of such insurance within thirty (30) calendar days of its procurement. Additionally, LICENSEE



shall provide UTMDACC with written notice of at least fifteen (15) calendar days prior to the cancellation, non-renewal or material change in such insurance.

- 9.5 LICENSEE shall maintain such commercial general liability insurance beyond the expiration or termination of this AGREEMENT during: (i) the period that any LICENSED SUBJECT MATTER developed pursuant to this AGREEMENT is being commercially distributed or sold by LICENSEE, an AFFILIATE or by a sublicensee or agent of LICENSEE; and (ii) the five (5) year period immediately after such period.

X. USE OF BOARD AND UTMDACC'S NAME

- 10.1 LICENSEE will not use the name of (or the name of any employee of) UTMDACC, SYSTEM or BOARD in any advertising, promotional or sales literature, on its Web site, or for the purpose of raising capital without the advance express written consent of BOARD secured through:

The University of Texas
M. D. Anderson Cancer Center
Legal Services, Unit 0537
P.O. Box 301439
Houston, TX 77230-1439
ATTENTION: Lori D. Stiffler
Email: ldstiffl@mdanderson.org

Notwithstanding the above, LICENSEE may use the name of (or name of employee of) UTMDACC, SYSTEM or BOARD in routine business correspondence, or as needed in appropriate regulatory submissions without express written consent.



XI. CONFIDENTIAL INFORMATION AND PUBLICATION

11.1 UTMDACC and LICENSEE each agree that all information contained in documents marked "confidential" and forwarded to one by the other (i) are to be received in strict confidence, (ii) are to be used only for the purposes of this AGREEMENT, and (iii) will not be disclosed by the recipient party (except as required by law or court order), its agents or employees without the prior written consent of the disclosing party, except to the extent that the recipient party can establish by competent written proof that such information:

- (a) was in the public domain at the time of disclosure; or
- (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns; or
- (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it; or
- (d) was already known by the recipient party at the time of disclosure; or
- (e) was independently developed by the recipient party without use of the disclosing party's confidential information; or
- (f) is required by law or regulation to be disclosed.

11.2 Each party's obligation of confidence hereunder will be fulfilled by using at least the same degree of care with the disclosing party's confidential information as it uses to protect its own confidential information, but always at least a reasonable degree of care. This obligation will exist while this AGREEMENT is in force and for a period of three (3) years thereafter.



11.3 UTMDACC reserves the right to publish the general scientific findings from research related to LICENSED SUBJECT MATTER, with due regard to the protection of LICENSEE's confidential information. UTMDACC will submit the manuscript of any proposed publication to LICENSEE at least thirty (30) calendar days before publication, and LICENSEE shall have the right to review and comment upon the publication in order to protect LICENSEE's confidential information. Upon LICENSEE's request, publication may be delayed up to sixty (60) additional calendar days to enable LICENSEE to secure adequate intellectual property protection of LICENSEE's confidential information that would otherwise be affected by the publication.

XII. ASSIGNMENT

12.1 Except in connection with the sale of all of LICENSEE's assets to a third party, this AGREEMENT may not be assigned by LICENSEE without the prior written consent of UTMDACC, which will not be unreasonably withheld.

XIII. TERM AND TERMINATION

13.1 Subject to Sections 13.3 and 13.4 hereinbelow, the term of this AGREEMENT is from the EFFECTIVE DATE to the full end of the term or terms for which PATENT RIGHTS have not expired, or if only TECHNOLOGY RIGHTS are licensed and no PATENT RIGHTS are applicable, for a term of fifteen (15) years.

13.2 (a) Any time after two (2) years from the EFFECTIVE DATE, BOARD or UTMDACC have the right to terminate this license in any national political jurisdiction within the LICENSED TERRITORY if LICENSEE, within ninety (90) calendar days after receiving written notice from UTMDACC of the intended



termination, fails to provide written evidence satisfactory to UTMDACC that LICENSEE or its sublicensee(s) has commercialized or is actively and effectively attempting to commercialize a licensed invention in such jurisdiction(s). The following definitions apply to Section 13.2(a): (i) "commercialized" means having SALES in such jurisdiction; and (ii) "actively and effectively attempting to commercialize" means having an effective, ongoing and active research including any sponsored research pursuant to ARTICLE V of this License to develop the Licensed Field, development, manufacturing, marketing or sales program as appropriate, directed toward obtaining regulatory approval, and/or production and/or SALES in any jurisdiction, and has provided plans acceptable to UTMDACC, in its sole discretion, to commercialize licensed inventions in the jurisdiction(s) that UTMDACC intends to terminate.

(b) In addition, upon thirty (30) calendar days written notice, BOARD or UTMDACC have the right to terminate this AGREEMENT in its entirety if LICENSEE does not raise at least \$2.5 million in funding and provide evidence of same to UTMDACC during the first year after the EFFECTIVE DATE.

13.3 Subject to any rights herein which survive termination, this AGREEMENT will earlier terminate in its entirety:

(a) automatically, if LICENSEE becomes bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of LICENSEE or otherwise;
or



- (b) upon thirty (30) calendar days written notice from UTMDACC, if LICENSEE breaches or defaults on the payment or report obligations of ARTICLE IV, or use of name obligations of ARTICLE X, unless, before the end of the such thirty (30)-calendar day notice period, LICENSEE has cured the default or breach to UTMDACC's satisfaction, and so notifies UTMDACC, stating the manner of the cure; or
- (c) upon ninety (90) calendar days written notice from UTMDACC if LICENSEE breaches or defaults on any other obligation under this AGREEMENT, unless, before the end of the such ninety (90) calendar-day notice period, LICENSEE has cured the default or breach to UTMDACC's satisfaction and so notifies UTMDACC, stating the manner of the cure; or
- (d) at any time by mutual written agreement between LICENSEE and UTMDACC upon one hundred eighty (180) calendar days written notice to all parties and subject to any terms herein which survive termination; or
- (e) if Section 13.2 or 15.9 is invoked; or
- (f) if LICENSEE has defaulted or been late on its payment obligations pursuant to the terms of this AGREEMENT on any two (2) occasions in a twelve (12) month period.

13.4 Upon termination of this AGREEMENT:

- (a) nothing herein will be construed to release either party of any obligation maturing prior to the effective date of the termination; and



- (b) LICENSEE covenants and agrees to be bound by the provisions of ARTICLES IX (Indemnification and Insurance), X (Use of Board and UTMDACC's Name) and XI (Confidential Information and Publication) of this AGREEMENT; and
- (c) LICENSEE may, for a period of one year after the effective date of the termination, sell all LICENSED PRODUCTS and parts therefor that it has on hand at the date of termination, if LICENSEE pays the earned royalty thereon and any other amounts due pursuant to ARTICLE IV of this AGREEMENT; and
- (d) Subject to Section 13.4(c), LICENSEE agrees to cease and desist any use and all SALE of the LICENSED SUBJECT MATTER and LICENSED PRODUCTS upon termination of this AGREEMENT; and
- (e) LICENSEE grants to BOARD and UTMDACC a nonexclusive royalty bearing license with the right to sublicense others with respect to improvements made by LICENSEE (including improvements licensed by LICENSEE from third parties) in the LICENSED SUBJECT MATTER. LICENSEE and UTMDACC agree to negotiate in good faith the royalty rate for the nonexclusive license. BOARD's and UTMDACC's right to sublicense others hereunder is solely for the purpose of permitting others to develop and commercialize the entire technology package.

XIV. WARRANTY: SUPERIOR-RIGHTS

14.1 Except for the rights, if any, of the Government of the United States of America as set forth below, BOARD represents and warrants its belief that (a) it is the



owner of the entire right, title, and interest in and to LICENSED SUBJECT MATTER, (b) it has the sole right to grant licenses thereunder, and (c) it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

14.2 LICENSEE understands that the LICENSED SUBJECT MATTER may have been developed under a funding agreement with the Government of the United States of America ("Government") and, if so, that the Government may have certain rights relative thereto. This AGREEMENT is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation. To the extent that there is a conflict between any such agreement, applicable law or regulation and this AGREEMENT, the terms of such Government agreement, applicable law or regulation shall prevail. LICENSEE agrees that LICENSED PRODUCTS used or SOLD in the United States will be manufactured substantially in the United States, unless a written waiver is obtained in advance from the GOVERNMENT. LICENSEE will promptly advise UTMDACC if such a written waiver is requested and/or obtained.

14.3 LICENSEE understands and agrees that BOARD and UTMDACC, by this AGREEMENT, make no representation as to the operability or fitness for any use, safety, efficacy, approvability by regulatory authorities, time and cost of development, patentability, and/or breadth of the LICENSED SUBJECT MATTER. BOARD and UTMDACC, by this AGREEMENT, also make no representation as to whether any patent covered by PATENT RIGHTS is valid or as to whether there are any patents now held, or which will be held, by others or



by BOARD or UTMDACC in the LICENSED FIELD, nor do BOARD and UTMDACC make any representation that the inventions contained in PATENT RIGHTS do not infringe any other patents now held or that will be held by others or by BOARD.

- 14.4 LICENSEE, by execution hereof, acknowledges, covenants and agrees that LICENSEE has not been induced in any way by BOARD, SYSTEM, UTMDACC or employees thereof to enter into this AGREEMENT, and further warrants and represents that (a) LICENSEE is entering into this AGREEMENT voluntarily; (b) LICENSEE has conducted sufficient due diligence with respect to all items and issues pertaining to this AGREEMENT; and (c) LICENSEE has adequate knowledge and expertise, or has used knowledgeable and expert consultants, to adequately conduct such due diligence, and agrees to accept all risks inherent herein.

XV. GENERAL

- 15.1 This AGREEMENT constitutes the entire and only agreement between the parties for LICENSED SUBJECT MATTER and all other prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof will be made except by a written document signed by both parties.
- 15.2 Any notice required by this AGREEMENT must be given by prepaid, first class, certified mail, return receipt requested, and addressed in the case of UTMDACC to:

The University of Texas M. D. Anderson Cancer Center
Office of Technology Commercialization



7515 S. Main, Suite 490, Unit 0510
Houston, Texas 77030
ATTENTION: Christopher C. Capelli, M.D.

or in the case of LICENSEE to:

Bio-Path Holdings, Inc.
20651 Prince Creek Dr.
Katy, Texas 77450

ATTENTION: Peter Nielsen, President and CEO

or other addresses as may be given from time to time under the terms of this notice provision.

- 15.3 LICENSEE must comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this AGREEMENT. LICENSEE acknowledges that the LICENSED SUBJECT MATTER is subject to U. S. export control jurisdiction. LICENSEE agrees to comply with all applicable international and national laws that apply to the LICENSED SUBJECT MATTER, including U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions applied by the United States.
- 15.4 This AGREEMENT will be construed and enforced in accordance with the laws of the United States of America and of the State of Texas, without regard to its conflict of law provisions. The Texas State Courts of Harris County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of this AGREEMENT, and LICENSEE consents to the jurisdiction and venue of such courts and hereby explicitly waives the rights to any other venue to which it might be entitled by cause of action, domicile or



- otherwise. Nothing in this AGREEMENT shall be deemed as a waiver by BOARD, SYSTEM or UTMDACC of its sovereign immunity.
- 15.5 Any dispute or controversy arising out of or relating to this AGREEMENT, its construction or its actual or alleged breach will be decided by mediation. If the mediation does not result in a resolution of such dispute or controversy, it will be finally decided by an appropriate method of alternate dispute resolution, including without limitation, arbitration, conducted in the city of Houston, Harris County, Texas, in accordance with the applicable, then-current procedures of the American Arbitration Association. The arbitration panel will include members knowledgeable in the evaluation of the LICENSED SUBJECT MATTER. Judgment upon the award rendered may be entered in the highest court or forum having jurisdiction, state or federal. The provisions of this Section 15.5 will not apply to decisions on the validity of patent claims or to any dispute or controversy as to which any treaty or law prohibits such arbitration. The decision of the arbitration must be sanctioned by a court of law having jurisdiction to be binding upon and enforceable by the parties.
- 15.6 Failure of BOARD or UTMDACC to enforce a right under this AGREEMENT will not act as a waiver of right or the ability to later assert that right relative to the particular situation involved.
- 15.7 Headings included herein are for convenience only and will not be used to construe this AGREEMENT.
- 15.8 If any part of this AGREEMENT is for any reason found to be unenforceable, all other parts nevertheless will remain enforceable.



15.9 In the event that LICENSEE brings an action before any court, agency or tribunal seeking to invalidate or otherwise challenge the enforceability of or BOARD's ownership of any patent included in the PATENT RIGHTS, then UTMDACC may immediately terminate this AGREEMENT upon written notice to LICENSEE. Any dispute regarding the validity, enforceability or ownership of any patent included in the PATENT RIGHTS shall be litigated in the courts located in Houston, Texas, and LICENSEE agrees not to challenge personal jurisdiction in that forum. To the extent that LICENSEE unsuccessfully challenges the validity or enforceability of any patent included in the PATENT RIGHTS, LICENSEE agrees to reimburse UTMDACC and BOARD for all costs and fees (including attorney's fees) paid by UTMDACC and BOARD in defending against such challenge. LICENSEE understands and agrees that, in the event LICENSEE successfully challenges the validity or enforceability of any patent included in the PATENT RIGHTS, all payments or other consideration made or otherwise provided by LICENSEE to UTMDACC prior to a final, non-appealable adjudication of invalidity and/or unenforceability shall be non-refundable. The obligations of this Section shall survive the expiration or termination of this AGREEMENT.



IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this AGREEMENT.

BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM

By [Signature]
John Mendelsohn, M.D.
President
The University of Texas
M. D. Anderson Cancer Center

Date: 8/26/09

BIO-PATH HOLDINGS, INC.

By [Signature]

Printed Name: PETER H. NIELSEN

Title: PRESIDENT & CEO

Date: 7/7/09

THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER

By [Signature]
Leon Leach
Executive Vice President
The University of Texas
M. D. Anderson Cancer Center

Date: 8/6/09

Approved as to Content:

By [Signature]
Christopher C. Capelli, M.D.
Vice President, Technology Based Ventures
Office of Technology Commercialization
M. D. Anderson Cancer Center

Date: 7.13.09

Approved as to form
[Signature]
LDS/SSH

Reviewed and Approved by
UTMDACC Legal Services for
UTMDACC Signature: [Signature] 8.3.09

[Signature]

yd bevoqqa bna beovivn
not esovivn? laga: JDAOMTU
an tong: JDAOMTU

Exhibit I

Investigators	UTMDACC IDR Reference No. and Title	U.S. and Foreign Patent Application Nos. and/or Issued Patent Nos.
Bulent Ozpolat, M.D., Ph.D. Ugur Akar, M.D., Ph.D. Gabriel Lopez-Berestein, M.D. Anil K. Sood, M.D.	MDA08-118: Tumor targeting siRNA nanovectors for treatment of cancer	None as of the EFFECTIVE DATE

