
**TEXAS EMERGING TECHNOLOGY FUND
AWARD AND SECURITY AGREEMENT
BETWEEN THE STATE OF TEXAS**

AND

_____.

THIS TEXAS EMERGING TECHNOLOGY FUND AWARD AND SECURITY AGREEMENT (this “Agreement”) shall be effective as of the last date of execution hereof by the parties hereto, as reflected on the signature page hereto (the “Effective Date”), and is by and between the State of Texas, acting by and through the Office of the Governor (the “OOG”) and _____, a _____ corporation (the “Company”).

RECITALS

A. Pursuant to Texas Government Code Chapter 490, the State of Texas has allocated funds to be used with the express written approval of the Governor, Lieutenant Governor, and Speaker of the House of Representatives to develop and diversify the economy of the State of Texas by expediting innovation and commercialization of research; attracting, creating, or expanding private sector entities that will promote a substantial increase in high-quality jobs; and increasing higher education applied technology research capabilities.

B. Article III, Section 52-a of the Texas Constitution expressly authorizes the State of Texas to use public funds for the public purposes of development and diversification of the economy of the State of Texas, the elimination of unemployment or underemployment in the State of Texas, or the development of commerce in the State of Texas.

C. The Governor, Lieutenant Governor, and Speaker of the House of Representatives have each approved the Award (as defined below) from the Texas Emerging Technology Fund to the Company, as evidenced in the letter attached as Exhibit A hereto.

D. In consideration for the benefits that the OOG agrees to provide under this Agreement and to ensure that such benefits are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution and other applicable laws, the Company agrees to comply with certain conditions and to deliver certain performance as provided in this Agreement.

E. The Company and the OOG desire to set forth herein the provisions relating to the awarding of such money and the disbursement thereof to the Company.

IN CONSIDERATION of the Award and the premises, covenants, agreements, and provisions contained in this Agreement, the parties to this Agreement, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

- (A) “Additional Amount” – has the meaning set forth in Section 3.03.
- (B) “Agreement” – has the meaning set forth in the preamble.
- (C) “Application” – means the application previously submitted by the Company to the OOG for review and consideration of a potential Award.
- (D) “Award” – means an award of money from the OOG to the Company in an amount equal to the sum of the Initial Amount plus any Additional Amounts that may be disbursed pursuant to the terms and conditions of this Agreement.
- (E) “Collateral” – has the meaning set forth in Section 4.01.
- (F) “Company” – has the meaning set forth in the preamble.
- (G) “Company Affiliate” means a Person who or that directly, or indirectly through one or more intermediaries, controls the Company or is controlled by, or is under common control with, such a Person.
- (H) “Company Associate” means, as of any particular date, a current shareholder of the Company (including a holder of common stock, preferred stock, or other capital stock of the Company), a current debtholder of the Company, or a current holder of convertible securities or holder of any right to purchase or acquire any capital stock of the Company.
- (I) “Compliance Verification Report” – has the meaning set forth in Section 6.08.
- (J) “Conversion” – has the meaning set forth in the Note.
- (K) “Conversion Right” – has the meaning set forth in Section 2.02.

- (L) “Effective Date” – has the meaning set forth in the preamble.
- (M) “Event of Default” – has the meaning set forth in Section 7.01.
- (N) “GAAP” – means United States generally accepted accounting principles applied on a consistent basis.
- (O) “Initial Amount” – has the meaning set forth in Section 3.02.
- (P) “Lien” – means, with respect to any asset, any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement relating to such asset and any other preference, priority, or preferential arrangement of any kind or nature whatsoever relating to such asset.
- (Q) “Note” – has the meaning set forth in Section 2.02.
- (R) “Note Conversion Price” has the meaning set forth in the Note.
- (S) “Office of the Governor” – means the Office of the Governor, and any designated representatives thereof.
- (T) “OOG” – has the meaning set forth in the preamble.
- (U) “OOG Shares” has the meaning set forth in the Note.
- (V) “Opinion Letter” – has the meaning set forth in Section 3.04(C).
- (W) “Permitted Liens” – means, with respect to any Person, any of the following:

(i) Liens (1) with respect to the payment of taxes, assessments, or other governmental charges; or (2) of suppliers, carriers, materialmen, warehousemen, workmen, or mechanics and other similar Liens, in each case imposed by law or arising in the ordinary course of business, and, for each of the Liens in clauses (1) and (2) above for amounts that are not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves or other appropriate provisions are maintained on the books of such Person;

(ii) Liens of a collection bank on items in the course of collection arising under Section 4.208 of the Texas UCC or any similar section under the Uniform Commercial Code of any other applicable state;

(iii) Liens, pledges, or cash deposits made in the ordinary course of business, either (1) in connection with workers’ compensation, unemployment insurance, or other types of social security benefits (other than any Lien imposed by ERISA), (2) to secure the performance of bids, tenders, leases, sales, or other trade contracts (other than

for the repayment of borrowed money), or (3) made in lieu of, or to secure the performance of, surety, customs, reclamation, or performance bonds (in each case not related to judgments or litigation);

(iv) Judgment liens (not including those for the payment of taxes, assessments, or other governmental charges covered in (i) above) securing judgments and other proceedings not greater than \$25,000 and pledges or cash deposits made in lieu of, or to secure the performance of, judgment or appeal bonds in respect of such judgments and proceedings;

(v) Liens (1) arising by reason of zoning restrictions, easements, licenses, reservations, restrictions, covenants, rights-of-way, encroachments, minor defects or irregularities in title (including leasehold title), and other similar encumbrances, restrictions, or limitations on the use of real property; or (2) consisting of leases, licenses, or subleases granted by a lessor, licensor, sublessor, or sublicensor on its property (in each case other than capital leases) otherwise permitted hereunder that, for each of the Liens in clauses (1) and (2) above, do not, in the aggregate, materially (x) impair the value or marketability of such real property or (y) interfere with the ordinary conduct of the business conducted and proposed to be conducted at such real property;

(vi) Liens of landlords and mortgagees of landlords (1) arising by statute or under any lease or related contractual obligation entered into in the ordinary course of business, (2) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, (3) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted, or (4) for which adequate reserves or other appropriate provisions are maintained on the books of such Person to the extent required by GAAP;

(vii) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights, and remedies as to deposit accounts or other funds maintained with a depository or financial institution; and

(viii) The title and interest of a lessor, sublessor, licensor, or sublicensor in and to personal property leased, subleased, licensed, or sublicensed, in each case extending only to such personal property and any Liens arising from UCC Financing Statements filed in connection therewith.

(X) "Person" – means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental agency or body.

(Y) "Protective Covenants" has the meaning set forth in Section 3.04(F).

(Z) "Qualified Financing" – has the meaning set forth in the Note.

(AA) “Qualifying Liquidation Event” – means (a) the sale, conveyance, or other disposition of all or substantially all of the assets of the Company and its subsidiaries (taken as a whole) to Persons who are not then Company Associates or Company Affiliates, or (b) the sale of the Company’s then-outstanding equity securities by the Company’s stockholders, or the Company’s merger into or consolidation with any other entity, in each such case, in which more than fifty percent (50%) of the voting power of the Company is transferred to Persons who are not then Company Associates or Company Affiliates.

(BB) “SEC” – means the United States Securities and Exchange Commission.

(CC) “Secured Obligations” – means all obligations of the Company and its successors and assigns now or hereafter existing under this Agreement and the Note, whether (i) for the prompt payment when due, whether at stated maturity or otherwise, of principal, interest, costs, fees, expenses, or otherwise (including the payment of amounts which would become due but for the operation of the automatic stay under Section 362 of the United States Bankruptcy Code, 11 U.S.C. § 362), and/or (ii) for the prompt performance or payment when due of any other obligation of the Company and its successors and assigns to the OOG, now or hereafter owing, whether direct or indirect, primary or secondary, fixed or contingent, joint or several, regardless of how created, evidenced, or arising.

(DD) “Security Term” – means the period commencing on the date of the disbursement of the Initial Amount and ending on the earliest of the date on which (i) the Company has paid all principal, interest and any other amounts due under the Note pursuant to the terms of this Agreement and the Note; or (ii) the OOG has exercised the Conversion Right under the Note. For purposes of clarification, the Security Term shall end at the closing of a partial Conversion of the Note pursuant to a Qualified Financing where Additional Amounts may be disbursed by the OOG following such Conversion.

(EE) “Texas Emerging Technology Fund” – means the “fund” as defined under the Chapter 490 of the Texas Government Code.

(FF) “Texas UCC” – means the Uniform Commercial Code as from time to time in effect in the State of Texas.

(GG) The following terms have the meanings given to them in the Texas UCC and terms used herein without definition that are defined in the Texas UCC have the meanings given to them in the Texas UCC (such meanings to be equally applicable to both the singular and plural forms of the terms defined): “account,” “account debtor,” “as-extracted collateral,” “certificated security,” “chattel paper,” “commercial tort claim,” “commodity contract,” “deposit account,” “electronic chattel paper,” “equipment,” “farm products,” “fixture,” “general intangible,” “goods,” “health-care-insurance receivable,” “instruments,” “inventory,” “investment property,” “letter-of-credit right,” “proceeds,” “record,” “securities account,” “security,” “supporting obligation,” and “tangible chattel paper.”

ARTICLE II AWARD

Section 2.01 **Award of Monies.** The OOG shall issue the Award to the Company in accordance with the terms and conditions, both precedent and subsequent, set forth within the provisions of this Agreement.

Section 2.02 **Secured Indebtedness.** The Award shall be the first priority secured indebtedness of the Company and shall be evidenced by the Secured Convertible Promissory Note attached hereto as Exhibit B (the “Note”), providing the OOG with (i) a promissory note pursuant to which the Company promises to repay the OOG, in accordance with the terms of this Agreement and the Note, all amounts of the Award disbursed hereunder with interest and (ii) a right to convert (the “Conversion Right”) amounts outstanding under the Note into shares of the Company’s capital stock as shall be determined pursuant to the terms of the Note. The Conversion Right shall be automatic upon the closing of a Qualified Financing.

Section 2.03 **Use of Award Proceeds.** The Company shall use the Award to expedite commercialization that is intended to lead to an increase in high-quality jobs in the State of Texas by adding the Award to its working capital and using the Award in the development of its business, through acquisition of capital assets and/or the payment of reasonable and appropriate business expenses; provided the Award shall only be used in furtherance of the commercialization of _____. Notwithstanding the foregoing, the Award may only be used for lawful purposes as described herein and shall not be used for repayment of debt, in any form, existing prior to the Effective Date, including but not limited to expenses incurred prior to the Effective Date whether invoiced prior to or after the Effective Date. The Award may not be used to make payment, regular occurring or otherwise, on any notes outstanding or other long term debt that existed prior to the Effective Date. The Award may not be used for (i) repayment on a debt obligation to any members of the Company’s board of directors, its officers, its investors, its shareholders, or any other affiliates of the Company, (ii) any restructuring of any debt existing prior to the Effective Date (, or (iii) payment on any capital leases.

ARTICLE III DISBURSEMENT OF AWARD PROCEEDS

Section 3.01 **Disbursement of Award.** The OOG shall disburse the Award to the Company in accordance with Section 3.02 and Section 3.03 below, and only after all conditions precedent set forth in Section 3.04 below have been complied with to the satisfaction of the OOG. Under no circumstance shall the OOG be required to disburse funds in excess of the amount requested by the Company pursuant to Section 3.02 and Section 3.03 below, and the Company may not request less than the full amount of each disbursement outlined in Section 3.02 and Section 3.03 below.

Section 3.02 **Initial Disbursement.** The OOG shall disburse to the Company an initial disbursement of a portion of the Award in the amount of _____ Dollars (\$_____) (the “Initial Amount”), as soon as practicable following the Effective Date, provided that all other

requirements prior to receiving any disbursements pursuant to this Agreement have been satisfied.

Section 3.03 Additional Disbursements. At any time after the disbursement of the Initial Amount until the thirtieth (30th) month after the Effective Date, the Company may request additional disbursements of portions of the Award in accordance with the disbursement dates, disbursement amounts, and completion, or substantial completion, of the milestones as set forth in Exhibit C hereto. The OOG, in its sole discretion, shall decide if any such additional disbursements (each, an “Additional Amount”) shall be disbursed to the Company and on what terms. After the OOG’s review of the Company’s performance under this Agreement, the OOG may decide to disburse Additional Amounts or may decide to allow the Agreement to continue under the terms and conditions herein without any disbursement of any Additional Amounts. The OOG shall notify the Company in writing of its decision as soon as practicable. No Additional Amount may be disbursed until the Company has furnished the OOG with the related information and officer’s certificate required pursuant to Section 3.04(E). The parties hereto agree to execute additional documents as needed to effectuate the terms of this Section 3.03.

Section 3.04 Conditions Precedent to Disbursement of Award. All of the following conditions precedent shall be met to the satisfaction of the OOG prior to any disbursement of the Award:

(A) Prior to the Company receiving a disbursement outlined in Section 3.02 or Section 3.03 above, the OOG shall have received a written request from the Company for the disbursement.

(B) Prior to receiving the disbursement of the Initial Amount, the Company shall have issued and delivered to the OOG the original Note.

(C) Prior to the disbursement of the Initial Amount, the OOG shall have received an opinion letter provided by the Company’s counsel (the “Opinion Letter”). The Opinion Letter shall confirm that the Company is in compliance with the following:

(i) The Company is a “C” corporation validly existing and in good standing under the laws of its state of incorporation.

(ii) The Company has the requisite corporate power and authority to own, operate, and lease its properties and to carry on its business as presently conducted.

(iii) The Company is duly qualified to transact business (as either a domestic corporation or a foreign corporation) in the State of Texas.

(iv) The Company has the corporate power to enter into this Agreement and to issue the Note and the securities issuable upon exercise of the Conversion Right under the Note.

(v) All issued and outstanding equity securities of the Company have been duly authorized and validly issued and are fully-paid and non-assessable.

(vi) The execution and delivery of this Agreement and the Note does not violate the Company's certificate of formation or bylaws (or other similar governing documents) or any of the material agreements of the Company, which shall be specifically identified in the opinion as "Reviewed Agreements."

(vii) Assuming timely filing of all relevant federal and state securities filings necessary to perfect any relevant registration exemptions, the issuance of the Note and the equity securities issuable upon exercise of the Conversion Right under the Note do not require registration under applicable state and federal securities laws and regulations.

(viii) The Company is a corporation incorporated under the laws of the State of _____ and maintains its principal place of business and its principal executive offices in the State of Texas. The Company is authorized to conduct business in the State of Texas.

(ix) The Company's authorized capital consists of (a) _____ shares of common stock \$___ par value and (b) _____ shares of preferred stock \$__ par value. On the Effective Date, there are (i) _____ shares of common stock issued and outstanding, (ii) _____ shares of preferred stock designated as Series __ Preferred Stock of which __ shares are issued and outstanding. The Company has reserved __ shares of common stock for issuance under its 201_ Stock Option Plan of which _____ shares of common stock are subject to outstanding option grants. The Company has not reserved any shares of capital stock for issuance under any warrants, phantom stock plans or similar arrangements.

(D) No Event of Default, or occurrence or event that would constitute an Event of Default following any opportunity to cure, shall have occurred and be continuing.

(E) Prior to receiving each disbursement, the Company has furnished to the OOG a certificate executed by the Chief Executive Officer or Chief Financial Officer of the Company on behalf of the Company certifying that the representations and warranties made by the Company in ARTICLE V (as modified by the disclosure in any schedule or exhibit hereto) are true and correct as of the date of such certificate.

(F) Prior to the disbursement of the Initial Amount, the Company shall have amended its Certificate of Formation to incorporate the covenants contained in Section 6.02 and Section 6.03 hereof (the "Protective Covenants").

(G) Prior to receipt of each disbursement, for each employee and independent contractor, the Company has provided the OOG with (i) a copy of each individual's driver's license, (ii) the OOG's form of Declaration of Residency in the form attached hereto as Exhibit D duly executed by each individual, (iii) salary/income and benefits information for each individual, and (iv) a copy of each individual's Form W-2 or Form 1099 for the prior year, as applicable.

(H) The Company has supplied to the OOG all other documentation that the OOG may require.

(I) If a Qualified Financing has occurred prior to the disbursement of an Additional Amount, then prior to the disbursement of such Additional Amount, the Company shall:

(i) Furnish the OOG with a statement, as of the date of the disbursement of the Additional Amount, of the amount of OOG Shares that will be issued to the OOG as consideration for the Additional Amount, based on the Note Conversion Price; and

(ii) Furnish the OOG with a certificate executed by the Chief Executive Officer or Chief Financial Officer of the Company on behalf of the Company certifying, as of the date of the disbursement of an Additional Amount, that (1) the calculation set forth in the statement provided pursuant to Section 3.04(I)(i) above is true and correct, and (2) the representations and warranties made by the Company in ARTICLE V (as modified by the disclosure in any schedule or exhibit hereto) are true and correct in all material respects as of the date of such certificate.

Prior to any disbursement of an Additional Amount, the Company agrees to execute and deliver such further instruments and take such further actions as the OOG may require in order to carry out the intent of this Section 3.04(I).

Section 3.05 Modification of Award. If the Company does not request in writing disbursement of the full amount of the Award by the date that is thirty (30) months after the Effective Date, then the OOG's obligation to disburse any portion of an Additional Amount shall terminate as of such date and the OOG shall have no further obligations to provide any additional funding of the Award and this Agreement shall remain in full force and effect.

ARTICLE IV SECURITY INTEREST IN COLLATERAL

Section 4.01 Grant of Security Interest. As collateral security to secure the prompt payment and performance to the OOG of the Secured Obligations during the Security Term, the Company hereby assigns, pledges, and grants to the OOG for its benefit a continuing first and prior security interest and Lien in and to all assets of the Company now owned or hereafter acquired, including, without limitation, (A) all of the Company's present and future accounts, accounts receivable, contract rights, general intangibles, letter of credit rights, payment intangibles, patents, trademarks, trademark rights, copyrights, intellectual property, chattel paper, documents, instruments, raw materials, work in process, materials used or consumed in the Company's business, equipment, furniture, fixtures, vehicles and inventory, wherever located and whether in the possession of the Company or any other Person, now owned or hereafter acquired by the Company; (B) all present and future increases, profits, combinations, reclassifications, improvements and products of, assessments, attachments and other additions to, tools, parts and equipment used in connection with, and substitutes and replacements for, all or

part of the foregoing assets of the Company; (C) all cash and non-cash proceeds and other rights arising from or by virtue of, or from the voluntary or involuntary sale, lease or other disposition of, or collections with respect to, or insurance proceeds payable with respect to, or proceeds payable by virtue of warranty or other claims against manufacturers of, or claims against any other Person with respect to, all or any part of the foregoing assets of the Company; (D) all present and future security for the payment to the Company of any of the foregoing assets of the Company; (E) all goods that gave or will give rise to any of the foregoing assets of the Company or are evidenced, identified, or represented therein or thereby; and (F) all certificates of title, manufacturer's statements of origin, other documents, accounts, and chattel paper arising from or related to any of the foregoing assets of the Company (collectively, the "Collateral"). The Company shall mark its books and records as may be necessary or appropriate to evidence, protect, and perfect the OOG's security interest and shall cause its financial statements to reflect such security interest. During the Security Term, the Company shall promptly provide the OOG with written notice of all commercial tort claims in which it is the plaintiff, such notice to contain the style of the case, the cause number, the court in which it is filed, and a brief description of the claim(s). Upon delivery of each such notice, the Company shall be deemed to hereby grant to the OOG a security interest and Lien in and to such commercial tort claims and all proceeds thereof.

Section 4.02 Exculpation of Liability With Respect to Collateral. Nothing herein contained shall be construed to constitute the OOG as the Company's agent for any purpose whatsoever, nor shall the OOG be responsible or liable for any shortage, discrepancy, damage, loss, or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof. The OOG, whether by anything herein or in any assignment or otherwise, does not assume any of the Company's obligations under any contract or agreement assigned to the OOG, and the OOG shall not be responsible in any way for the performance by the Company of any of the terms and conditions thereof. Anything herein to the contrary notwithstanding, (A) the Company shall remain liable under the contracts and agreements included in the Collateral, to the extent set forth therein, and shall perform all of its duties and obligations under such contracts and agreements to the same extent as if this Agreement had not been executed, and (B) the exercise by the OOG of any of its rights hereunder shall not release the Company from any of its duties or obligations under any such contracts or agreements included in the Collateral.

Section 4.03 Expiration of the Security Term. Upon the expiration of the Security Term, this ARTICLE IV shall automatically terminate and be of no further force or effect and the OOG shall, at the Company's request and sole cost and expense, terminate its security interest in the Collateral and all rights therein shall revert to the Company.

ARTICLE V REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to the OOG as of the Effective Date as follows:

Section 5.01 Power and Authority. The Company is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and any other jurisdiction in which it is qualified to transact business as a foreign corporation, and has

provided the OOG sufficient evidence of such, and certifies that it owes no delinquent taxes to any taxing authority as of the Effective Date. The Company has all necessary corporate and legal authority to enter into, execute, and deliver this Agreement, the Note, and all other documents referred to herein, and it has taken all actions necessary to duly execute and deliver all such agreements, instruments, and documents.

Section 5.02 Validity. This Agreement, the Note and all the other documents to which the Company is a party or by which the Company is bound when executed and delivered by the Company constitute the legal, valid, and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

Section 5.03 No False Statements. The Company has made no false statement or misstatement of fact in connection with its Application for or receipt of the Award, and all of the information it previously submitted to the OOG relating to the Award or the disbursement of any of the Award was true and correct as of the date such information was submitted to the OOG.

Section 5.04 No Undocumented Workers. The Company, including any business, branch, division, or department of the Company, does not currently employ any undocumented worker (as defined in Texas Government, Code Section 2264.001(4)).

Section 5.05 Litigation. The Company is not in violation of any provisions of its certificate of formation or bylaws (or other charter documents) or of the laws of the State of Texas or any other federal, state, or local statutes, laws, ordinances, or regulations applicable to the Company and its business, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it, other than those specifically disclosed in the Application, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority that would impair its ability to enter into this Agreement, execute and issue the Note, or perform any of its obligations hereunder or thereunder or as required by the transactions contemplated herein.

Section 5.06 Other Agreements. Neither the execution and delivery of this Agreement, or any document referred to herein, nor compliance with any of the terms, conditions, requirements, or provisions contained in this Agreement or any documents referred to herein is prevented by, constitutes a breach of, or shall result in a breach of, any term, condition, or provision of any agreement or document to which the Company is now a party or by which it is bound.

Section 5.07 Title. Except as set forth on Schedule 5.07, the Company, directly or indirectly, owns and has good title to or, in the case of leased or licensed property and assets, has valid leasehold or license interests in, all property and assets necessary for the conduct of the Company's business, in each case free and clear of all Liens and other encumbrances other than Permitted Liens.

Section 5.08 Financial Statements. The unaudited financial statements of the Company for the fiscal year ended December 31, 20__, and the interim unaudited financial statements of the Company for the interim [three]-month period ended [March 31], 20__, which

have been delivered to OOG, are complete and correct as they relate to the Company, have been prepared in accordance with GAAP, consistently applied, and present fairly the financial condition and results of operations of the Company as of the dates and for the periods stated (subject only to normal year-end adjustments with respect to such unaudited interim statements). During the period from [March 31], 20__ to and including the date hereof, no change has occurred in the condition, financial or otherwise, of the Company taken as a whole, which could reasonably be expected to result in a Material Adverse Effect, and there has been no sale, transfer or other disposition by the Company since [March 31], 20__ of any material part of its business or property and no purchase or other acquisition of any business or property material in relation to the consolidated condition, financial or otherwise, of the Company.

Section 5.09 Insurance. The Company continuously maintains insurance with financially sound and reputable insurance companies licensed by the Texas Department of Insurance in such amounts and against such risks and casualties as the Company deems reasonably necessary and prudent.

Section 5.10 Intellectual Property. The Company owns, or is licensed to use, all permits, know-how, processes, technology, franchises, patents, patent rights, trade names, trademarks, trademark rights, copyrights, and other intellectual property rights which are necessary or required for the ownership or operation of its properties and the conduct of its business. The Company is not aware of any fact or condition that might cause any of such rights not to be renewed in due course. The Company has not been charged with, nor has it had any claims or demands made or threatened against it or notices received with respect to any alleged infringement of, interference with, misappropriation of or other conflict with the intellectual property rights, patent, invention, trademark, service mark, trademark, trade name, brand name, domain name or copyright of any other Person.

Section 5.11 Related Party Transactions. Except as set forth on Schedule 5.11, there are no existing or contemplated transactions of a material nature involving the Company by and between the members of the Company's board of directors, its officers, and/or its investors, shareholders, or Company Affiliates.

Section 5.12 Subsidiaries. Except as set forth on Schedule 6.15, the Company has no subsidiaries as of the Effective Date, and the Company is not the direct or indirect subsidiary of another operating company and is not reasonably susceptible, and shall not in the future be reasonably susceptible, of being substantively consolidated with another Person in the context of bankruptcy or insolvency proceedings.

Section 5.13 Organizational Information. The Company's jurisdiction of formation, legal name and organizational identification number, if any, and the location of the Company's chief executive office and principal place of business, in each case as of the Effective Date, are specified on Schedule 5.13, and such Schedule 5.13 also lists any jurisdictions of incorporation, legal names and locations of the Company's chief executive office and principal place of business for the five (5) years preceding the Effective Date.

Section 5.14 **Financing Statements.** Except for the financing statements filed by the OOG and the financing statements described on Schedule 5.14 hereto, no financing statement covering any of the Collateral or any proceeds thereof is on file in any public office.

Section 5.15 **Commercialization Requirements.** Except as set forth on Schedule 6.02 hereto, the Company currently conducts all of its commercialization including, but not limited to, employment, capital expenditures, intellectual property development, manufacturing, production, business expansion, development of supplier relationships, university collaboration, and similar commercialization efforts at locations within the State of Texas.

ARTICLE VI COVENANTS

The Company makes the following covenants:

Section 6.01 **Commercialization Milestones.** The Company commits to completing the commercialization milestones attached as Exhibit C hereto by the dates listed therein, if any, or, if no such dates are listed, then as promptly as practicable under the circumstances. Promptly following the attainment of any such milestone, the Company shall provide the OOG with sufficient evidence, to the satisfaction of the OOG, that the milestone has been met and the date on which it was met.

Section 6.02 **Guarantee of Commercialization in Texas.**

(A) Except as set forth on Schedule 6.02 attached hereto and approved in writing by the OOG, the Company agrees that any new or expanded commercialization or manufacturing of any real or intellectual product resulting from the Award shall be established in the State of Texas. New or expanded commercialization may include, but shall not be limited to, the occurrence of the following in the State of Texas: employment, capital expenditures, intellectual property development, manufacturing production, business expansion, development of supplier relationships, and university collaboration. In addition to the foregoing, at least eighty-five percent (85%) of the Company's employees and eighty-five percent (85%) of the Company's independent contractors shall be individuals whose principal place of residence is located in the State of Texas. Each calculation shall be made based on dollars spent on salary, bonuses, benefits and other amounts paid to, or on behalf of, employees or independent contractors, as the case may be. In addition, each determination shall be made on a per annum basis using an August 31st fiscal year end.

(B) Further, the Company agrees that it shall maintain its principal place of business and its principal executive offices headquartered in the State of Texas throughout the term of this Agreement and, following termination of this Agreement, as long as the OOG owns any shares of Company capital stock.

Section 6.03 **Use and Retention of Texas Suppliers.** Except as set forth on Schedule 6.02 attached hereto and approved in writing by the OOG, at least eighty-five percent (85%)

(measured by dollars spent by the Company on a per annum basis) of the Company's suppliers and contractors shall be Persons whose principal place of business is in Texas.

Section 6.04 No Undocumented Workers. The Company, including any business, branch, division, or department of the Company, shall not knowingly employ any undocumented worker (as defined in Texas Government Code, Section 2264.001(4)).

Section 6.05 Certain Negative Covenants. Until the conclusion of the Security Term and the performance of all other Company obligations hereunder, the Company will not, without the prior written consent of the OOG:

(A) From and after the date hereof, knowingly grant, suffer, or permit liens on or security interests in Company's assets, or fail to promptly pay all lawful claims, whether for labor, materials, or otherwise, except for purchase money security interests arising in the ordinary course of business.

(B) Make any loans, advances or investments to or in any joint venture, corporation or other entity.

(C) Except as reflected herein and except with respect to open accounts payable to unaffiliated third parties in the ordinary course of Company's business; create, incur, assume, or become liable in any manner for any indebtedness (for borrowed money, deferred payment for the purchase of assets, lease payments, as surety or guarantor of the debt of another, or otherwise).

(D) Declare any dividends (other than dividends payable in capital stock of the Company) on any shares of any class of its capital stock, or apply any of its property or assets to the purchase, redemption or other retirement of any shares of any class of capital stock of the Company or in any way amend its capital structure.

(E) Enter into any transaction (including, but not limited to, the sale, lease or exchange of property or the rendering of services) with any of its Company Affiliates, other than in the ordinary course of business and upon terms that are fair and reasonable to the Company and approved by at least a majority of the Board of Directors including all disinterested directors.

The OOG will provide consent or non-consent within thirty (30) days of receiving full notice and information regarding the Company's request to engage in the above activities. If the OOG has not responded to the Company by the end of thirty (30) days from full notice and information, then the Company may proceed with the requested activity.

Section 6.06 Observer Rights. As long as either (a) the Note remains outstanding or (b) the OOG owns any shares of Company capital stock, during the term of the Agreement, the Company shall invite a representative of the OOG to attend all meetings of its Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that such

representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel. These rights shall not affect or otherwise limit the OOG's rights (including voting rights) as a Company shareholder. The above required invitation must be provided to the OOG in accordance with Section 9.16 of this Agreement and may also be provided to the OOG via the following electronic mail address: emergingtechnologyfund@gov.texas.gov

Section 6.07 Record Keeping and Reporting. The Company shall maintain or cause to be maintained books, records, documents, and other evidence pertaining to compliance with the requirements contained in this Agreement, and upon request shall allow the OOG, or auditors for the OOG, including the State Auditor for the State of Texas, to inspect, audit, copy, or abstract, all of its books, records, papers, or other documents relevant to the Award. The Company shall use GAAP in the maintenance of such books and records, and shall retain or cause to be retained all of such books, records, documents, and other evidence for a period of seven (7) years from and after the later of (A) the date that this Agreement is terminated or this Agreement's term expires, or (B) the date on which the OOG fully divested all rights and ownership of all OOG Shares (including any common stock issuable upon conversion of such OOG Shares) that was issued upon the OOG's exercise of its Conversion Right under the Note.

Section 6.08 Compliance Verification Reporting. Each year throughout the term of this Agreement, on or within one month before each anniversary of the Effective Date, the Company shall deliver to the OOG a compliance verification report in the form set forth in Exhibit E hereto (a "Compliance Verification Report"). The Compliance Verification Report shall include a certification signed by a duly authorized representative of the Company, which shall verify the Company's compliance with each of the Company's agreements, covenants, and obligations under this Agreement and the Note. In addition to each annual Compliance Verification Report, the Company shall also provide the OOG a Compliance Verification Report on the date on which the Company makes a request to the OOG for disbursement of an Additional Amount. Each Compliance Verification Report that has become due shall be submitted prior to the disbursement of any Additional Amount. All Compliance Verification Reports shall be in a form satisfactory to the OOG and shall include appropriate back-up and supporting data and related documentation. The Compliance Verification Reports must include at least the materials required by Exhibit E and any further or additional materials requested by the OOG in its sole discretion.

Section 6.09 Financial Statements. The Company will furnish to the OOG:

(A) Annual Financial Statements. As soon as available, but in any event not later than 120 days after the end of each fiscal year of the Company, its consolidated balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year. Such consolidated financial statements shall present fairly, in all material respects, the financial condition and results of operations of the Company in accordance with GAAP

consistently applied. The Company's financial statements shall be audited upon the OOG's request at the Company's sole expense.

(B) Quarterly Financial Statements. As soon as available, but in any event not later than 70 days after the end of each of the first three fiscal quarters of each fiscal year of the Company, its consolidated balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by its Chief Financial Officer, or if not Chief Financial Officer exists, then its Chief Executive Officer or President, as presenting fairly in all material respects the financial condition and results of operations of the Company in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(C) Quarterly Milestone Updates. As soon as available, but in any event in not later than 70 days after the end of each fiscal quarter of each fiscal year of the Company, quarterly updates on the Company's progress and/or attainment of each of the Milestones set forth on Exhibit C.

Section 6.10 OOG Reporting Requirements. The Company will cooperate with the OOG and provide all requested assistance to the OOG in connection with the preparation of any reports required from time to time to be made by the OOG to the Texas Legislature or any relevant governmental entity regarding the Company, the Award, this Agreement, the Application, or the Note.

Section 6.11 Notice of Material Events. The Company will furnish to the OOG prompt written notice upon becoming aware or having knowledge of the occurrence of any event or development that has, or would reasonably be expected to have, a material adverse effect on the operations of the Company. Under no circumstances shall this notice occur more than fifteen (15) days following the time that any Company officer became aware of such event or development.

Section 6.12 Note Records/Information. If at any point following the execution and issuance of the Note the OOG becomes obligated to file disclosure reports with the SEC pursuant to Section 13 or Section 16 of the Securities Exchange Act of 1934, as amended, by virtue of the OOG holding the Note or securities issuable upon exercise of the Conversion Right under the Note, the Company agrees to provide any and all information necessary to assist the OOG in making any such timely filings with the SEC.

Section 6.13 No False Statements. The Company will provide accurate and truthful statements of fact and will not misstate or omit any fact in connection with its receipt of the Award and its obligations under this Agreement and the Note. All of the information it previously submitted to the OOG relating to the Award or the disbursement of any of the Award will remain true and correct or will be supplemented by the Company to the extent it is determined to be false, incorrect, or omits any facts.

Section 6.14 **Legal Identity, Location and Type of Entity.** The Company hereby covenants and agrees that it shall not change its jurisdiction of formation, legal name, organizational identification number (if any) or the location of the Company's chief executive office or principal place of business without first providing the OOG with thirty (30) days prior written notice of the same, and then only in accordance with the other terms and conditions of this Agreement. In addition, the Company covenants that it shall remain incorporated as a "C" corporation and shall not, through merger (except as meets the definition of a Qualifying Liquidation Event in accordance with the Note), conversion, restructuring or otherwise, change its type or form of entity.

Section 6.15 **No Subsidiaries.** The Company hereby covenants and agrees that it shall not, without the prior written consent of the OOG (such consent to be granted or withheld in the sole discretion of the OOG), create or acquire any subsidiary during the Security Term. If the OOG (in its sole discretion) consents to the formation or acquisition of a subsidiary, the Company shall provide the OOG with a written supplement on Schedule 6.15 to this Agreement providing in reasonable detail the following information regarding such subsidiary: (i) its name, (ii) its jurisdiction of formation, and (iii) the shares of capital stock (number of shares and percentage) of such subsidiary that are beneficially owned, directly or indirectly, by the Company. The Company shall promptly provide the OOG with an amended Schedule 6.15 to reflect any change with respect to any such permitted subsidiary that occurs during the Security Term. Without limiting the foregoing, to secure the Secured Obligations and the prompt payment and performance to the OOG under the Note, if at any time during the Security Term the OOG (in its sole discretion) consents to permit the Company to create or acquire any subsidiaries (in each case in accordance with Schedule 6.15), the Company hereby assigns, pledges, and grants to the OOG for its benefit a continuing security interest in and to all the issued and outstanding equity interests of each such subsidiary and shall cause each such subsidiary to promptly execute and deliver a security agreement in form and substance satisfactory to the OOG granting to the OOG a security interest and Lien in all of such subsidiary's assets.

Section 6.16 **Perfection of Security Interest.** The Company shall take all actions during the Security Term that may be necessary or desirable, or that the OOG may request, so as to maintain the validity, perfection, enforceability, and priority of the OOG's first and prior security interest in the Collateral and to enable the OOG to protect, exercise, and enforce its rights hereunder and in the Collateral, including without limitation (A) the preparation and filing of all financing statements (including any continuation or amendment statements), (B) delivering to the OOG (or its designee) any and all instruments, tangible chattel paper, certificated securities or other Collateral in which a security interest may be perfected by possession as set forth in the Texas UCC or the Uniform Commercial Code of any other applicable jurisdiction, (C) granting the OOG (or its designee) "control" (as defined in the Texas UCC) over any and all investment property, deposit accounts, securities accounts, (D) filing security agreements and other notices with the United States Patent and Trademark Office and any other government agency in connection with the perfection of security interests in intellectual property Collateral, and (E) using commercial best efforts to obtain any and all consents or approvals from any applicable third parties. The OOG (or its designee) is hereby authorized to file financing statements without signature in accordance with the Texas UCC or

the Uniform Commercial Code of any other applicable jurisdiction from time to time and by its signature hereto, the Company hereby authorizes the OOG to file against the Company one or more financing statements (including any continuation or amendment statements) pursuant to the Texas UCC or the Uniform Commercial Code of any other relevant jurisdiction from time to time in form and substance satisfactory to the OOG (which statements may have a description of collateral which is broader than that set forth herein provided that, in the event of conflict, the description of the Collateral set forth herein shall be controlling as to the property or assets in which the OOG has been granted a security interest and Lien).

Section 6.17 Disposition of Collateral. During the Security Term, the Company hereby covenants and agrees to safeguard and protect all Collateral, to maintain all Collateral in good working order (subject to ordinary wear and tear), and to make no disposition thereof except for goods or inventory sold in the ordinary course of business.

Section 6.18 Defense of OOG's Interests. Until the expiration of the Security Term, the OOG's interests in the Collateral shall continue in full force and effect. The Company shall defend the OOG's first and prior security interest and its other interests in the Collateral against any and all Persons whatsoever.

Section 6.19 Notice of Additional Collateral. In addition to any other notices required hereunder, during the Security Term, the Company shall promptly notify the OOG in writing of its acquisition, on or after the Effective Date, of any interest in property that is of a type where (A) perfection can be determined or effected by control or possession (each as defined in the Texas UCC), or (B) a security interest or Lien must be or may be registered, recorded, or filed under, or notice thereof given under, any federal statute or regulation.

Section 6.20 Right to Notice of Intellectual Property and/or Business Status. At least twenty (20) days prior to any business dissolution, sale, merger, liquidation of assets, or bankruptcy of the Company, or the occurrence of any materially adverse effect regarding the Company or its business (or the existence of facts that would reasonably be expected to result in a materially adverse effect regarding the Company or its business), the Company shall provide the OOG with full business information as necessary to fully inform the OOG of each such event, and shall provide to the OOG an opportunity to participate in assisting the Company in finding other avenues for fully developing and using the Company's intellectual property if appropriate.

Section 6.21 Amendment of Charter. At any time on or after the Effective Date, the Company will not amend its Certificate of Formation, Bylaws, or any similar or other charter documents in any way that effects the requirements of Sections 3.04(F), 6.02, and 6.03 without the prior written consent of the OOG except as may be required for the Company to comply with the terms and conditions of the Note and this Agreement.

Section 6.22 Insurance. The Company shall continuously maintain insurance with responsible insurance companies licensed by the Texas Department of Insurance on such of its properties, in such amounts and against such risks as is customarily maintained by similar

businesses operating in the same vicinity, specifically to include a policy of fire and extended coverage insurance covering all assets and liability insurance.

Section 6.23 **Taxes.** The Company shall pay all taxes as they become due.

Section 6.24 **Further Assurances.** The Company, at its sole expense, will promptly execute and deliver to the OOG all such other documents, agreements and instruments requested by the OOG to comply with, cure any defects or accomplish the conditions precedent, covenants, and agreements of the Company, in this Agreement, the Application, or the Note, or to further evidence and more fully describe the collateral intended as security for the Secured Obligations, or to correct any omissions in this Agreement or the Note, or to state more fully the obligations secured therein, or to perfect, protect or preserve any Liens created pursuant to this Agreement or the priority thereof, or to make any recordings, file any notices, or obtain any consents, all as may be necessary or appropriate, in the sole discretion of the OOG, in connection therewith.

ARTICLE VII EVENTS OF DEFAULT

Section 7.01 **Event(s) of Default.** Each of the following events shall constitute an “Event of Default” under this Agreement:

(A) The Company fails to pay when due any principal or accrued interest under the Note.

(B) The Company fails, for any reason, to commercialize _____, including but not limited to (i) an inability to continue business operations for any reason or (ii) a failure to meet the commercialization milestones attached as Exhibit C hereto by the dates listed therein, and such failure continues unremedied for a period of thirty (30) days.

(C) The Company fails to maintain its principal place of business and its principal executive offices headquartered in the State of Texas throughout the term of this Agreement, or, except as listed in Schedule 6.02 or as otherwise approved in writing by the OOG, the Company fails to maintain at least eighty-five percent (85%) of the Company’s employees and eighty-five percent (85%) of the Company’s independent contractors as consisting of individuals whose principal place of residence is located in the State of Texas and, in either case, such failure continues unremedied for a period of thirty (30) days.

(D) Except as listed in Schedule 6.02 or as otherwise approved in writing by the OOG, the Company fails to use qualified Texas-based suppliers and contractors as required pursuant to Section 6.03 and such failure continues unremedied for a period of thirty (30) days.

(E) The Company or any business, branch, division, or department of the Company is convicted of a violation under Section 1324a(f) of the Immigrant and Nationality Act, 8 U.S.C. § 1324a(f).

(F) The Company (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) is unable, or admits in writing its inability, to pay its debts generally as they mature, (iii) makes a general assignment for the benefit of any of its creditors, (iv) is dissolved or liquidated in full or in part, (v) becomes insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vii) takes any action for the purpose of effecting any of the foregoing.

(G) Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law or hereafter in effect is commenced and an order for relief entered or such proceeding is not dismissed or discharged within 30 days of commencement.

(H) The Company fails to fully comply with any provision, term, condition, or covenant contained in this Agreement, the Note, the Application, or any other document referred to herein, provided, however, if it is possible for such failure to be cured within thirty (30) days, such failure has continued unremedied for a period of thirty (30) days.

(I) If any representation, covenant, or warranty made by the Company in this Agreement, the Note, the Application, or any other document referred to herein, or in order to induce the OOG to disburse any of the Award, proves to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

Section 7.02 Notification of Event of Default. The Company shall notify the OOG in writing, as soon as possible and in any event within five (5) days after its executive officers have obtained knowledge of the occurrence or existence of any condition, occurrence, or event that would constitute an Event of Default. The Company shall include a statement setting forth details of each such condition, occurrence, or event and the actions that the Company has taken or proposes to take with respect thereto. Any applicable cure period shall commence at the beginning of the existence of an Event of Default and shall not be extended or otherwise affected by any notice provided by the Company or the OOG.

Section 7.03 Remedies Generally. Upon the occurrence or existence of any Event of Default and at any time thereafter during the continuance of such Event of Default, OOG may declare all outstanding principal, together with the balance of unpaid accrued interest, expenses and other amounts payable pursuant to the Note or this Agreement, to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived. If the Company fails to repay all amounts due under the Note within thirty (30) days of demand by the OOG, then such amount may, unless precluded by law, be taken from or off-set against any aids or other money that the Company is otherwise

entitled to receive from the State of Texas. In the alternative, the OOG may elect to make a Voluntary Conversion, as defined in the Note. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, OOG may exercise any other right, power or remedy granted to it or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

Section 7.04 Remedies with Respect to the Collateral. If the OOG shall proceed to realize its benefits under this Agreement or any other documents granting the OOG a Lien upon any Collateral, either by judicial foreclosure or by non-judicial sale or enforcement, the OOG may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of its other rights and remedies under this Agreement. If, in the exercise of any of its rights and remedies, the OOG shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against the Company or any other Person, whether because of any applicable laws pertaining to “election of remedies” or the like, the Company hereby consents to such action by the OOG and waives any claim based upon such action, even if such action by the OOG shall result in a full or partial loss of any rights of subrogation that the Company might otherwise have had but for such action by the OOG. In addition to any other rights or remedies hereunder or under applicable law, the Company hereby agrees that the OOG and its successors and assigns shall have all of the following rights and remedies with respect to the Collateral.

(A) UCC Remedies. Following the occurrence of an Event of Default, the OOG may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing, or relating to any Secured Obligation, all rights and remedies of a secured party under the Texas UCC or any other applicable law.

(B) Preservation of Collateral. Following the occurrence, and during the continuance, of an Event of Default during the Security Term, and in addition to other rights and remedies available to the OOG, the OOG may take such steps as the OOG deems necessary to protect the OOG’s interest in and to preserve the Collateral. The Company shall cooperate fully with all of the OOG’s efforts to preserve the Collateral and shall take such actions to preserve the Collateral as the OOG may direct.

(C) Possession of Collateral. Following the occurrence of an Event of Default during the Security Term, the OOG shall have the right to take possession of the indicia of the Collateral and the Collateral in whatever physical form contained. Further, the OOG, at its option, may instruct all suppliers, customers, carriers, forwarders, warehousemen or others receiving or holding cash, checks, inventory, documents, or instruments in which the OOG holds a security interest to deliver same to the OOG.

(D) Notification of Assignment of Receivables; Cash and Cash Equivalents. At any time following the occurrence and during the continuance of an Event of Default during the Security Term, the OOG may send notice of the assignment of, and the OOG’s security interest in and Lien on, the Company’s account receivables to any and all customers or any third party holding or otherwise concerned with any of the Collateral. Thereafter, the OOG shall have the sole right to collect the accounts receivables, take possession of the Collateral, or both, to the

extent necessary to secure the obligations of the Company under the Note, and all proceeds of any Collateral received by the Company in cash or cash equivalents shall be held by the Company in trust for the OOG, segregated from other funds of the Company, and shall, promptly upon receipt by the Company of such proceeds, be turned over to the OOG in the exact form received (with any necessary endorsement).

(E) Disposition of Collateral. Without limiting the generality of the foregoing, the OOG, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind (except any notice required by law referred to below) to or upon the Company or any other Person (all and each of which demands, defenses, advertisements, and notices are hereby waived), following the occurrence of any Event of Default, may (personally or through its agents or attorneys), (i) enter upon the premises where any Collateral is located, without any obligation to pay rent, through self-help, without judicial process, without first obtaining a final judgment or giving the Company or any other Person notice or opportunity for a hearing on the OOG's claim or action, (ii) collect, receive, appropriate, and realize upon any Collateral, and (iii) sell, grant option or options to purchase and deliver any Collateral, in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the OOG or its designee or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The OOG shall have the right, upon any such public sale or sales and, to the extent permitted by the Texas UCC and other applicable requirements of law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption of the Company, which right or equity is hereby waived and released.

(F) Management of the Collateral. The Company further agrees, that, following the occurrence of any Event of Default, (i) at the OOG's request, it shall assemble the Collateral and make it available to the OOG at places that the OOG shall select, whether at the Company's premises or elsewhere, (ii) without limiting the foregoing, the OOG also has the right to require that the Company store and keep any Collateral pending further action by the OOG and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain such Collateral in good condition, (iii) until the OOG is able to sell any Collateral, the OOG shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the OOG, and (iv) the OOG may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the OOG's remedies, with respect to such appointment without prior notice or hearing as to such appointment. The OOG shall not have any obligation to the Company to maintain or preserve the rights of the Company as against third parties with respect to any Collateral while such Collateral is in the possession of the OOG.

(G) Application of Proceeds. The OOG shall apply the cash proceeds of any action taken by it pursuant to this Section 7.04, after deducting all costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any Collateral or in any way relating to the Collateral or the rights of the OOG hereunder, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations

and, only after such application and after the payment by the OOG of any other amount required by applicable law, the surplus, if any, to the Company.

(H) Direct Obligation. The OOG shall not be required to make any demand upon, or pursue or exhaust any right or remedy against, the Company or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of the OOG hereunder and under the Note shall be cumulative, may be exercised individually or concurrently, and are not exclusive of any other rights or remedies provided by any requirement of law. To the extent it may lawfully do so, the Company absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the OOG, any valuation, stay, appraisal, extension, redemption, or similar laws, and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

(I) Commercially Reasonable. To the extent that applicable requirements of law impose duties on the OOG to exercise remedies in a commercially reasonable manner, the Company acknowledges and agrees that it is not commercially unreasonable for the OOG to do any of the following:

(i) incur significant costs, expenses, or other liabilities deemed as such by the OOG to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

(ii) fail to obtain permits, or other consents, for access to any Collateral to sell or for the collection or sale of any Collateral, or, if not required by other requirements of law, fail to obtain permits or other consents for the collection or disposition of any Collateral;

(iii) fail to exercise remedies against account debtors or other Persons obligated on any Collateral or to remove Liens on any Collateral or to remove any adverse claims against any Collateral;

(iv) advertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature or to contact other Persons, whether or not in the same business as the Company, for expressions of interest in acquiring any such Collateral;

(v) exercise collection remedies against account debtors and other Persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such Collateral is of a specialized nature or obtain the services of other brokers, investment bankers, consultants, and other professionals to assist the OOG in the collection or disposition of any Collateral, or

utilize internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

(vi) dispose of assets in wholesale rather than retail markets;

(vii) disclaim disposition warranties, such as title, possession, or quiet enjoyment; or

(viii) purchase insurance or credit enhancements to insure the OOG against risks of loss, collection, or disposition of any Collateral or to provide to the OOG a guaranteed return from the collection or disposition of any Collateral.

The Company acknowledges that the purpose of this Section 7.04 is to provide a non-exhaustive list of actions or omissions that are commercially reasonable (or are not commercially unreasonable) when exercising remedies against any Collateral, and that other actions or omissions by the OOG shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7.04. Without limitation upon the foregoing, nothing contained in this Section 7.04 shall be construed to grant any rights to the Company or to impose any duties on the OOG that would not have been granted or imposed by this Agreement or by applicable requirements of law in the absence of this Section 7.04.

(J) IP Licenses and Real Property Licenses. For the purpose of enabling the OOG to exercise rights and remedies under this Section 7.04 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, or grant options to purchase any Collateral) at such time as the OOG shall be lawfully entitled to exercise such rights and remedies, the Company hereby grants to the OOG, effective only upon the occurrence of an Event of Default and during the continuation thereof, (i) an irrevocable, transferable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to the Company), including in such license the right to sublicense, use, and practice any intellectual property now owned or hereafter acquired by the Company and access to all media in which any of the licensed items may be recorded or stored and to all software and programs used for the compilation or printout thereof; and (ii) an irrevocable license (without payment of rent or other compensation to the Company) to use, operate, and occupy all real property owned, operated, leased, subleased, or otherwise occupied by the Company.

Section 7.05 Remedies Cumulative. Unless otherwise limited herein, the rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the OOG may otherwise possess.

ARTICLE VIII TERM AND TERMINATION

Section 8.01 Term of Agreement. Unless terminated earlier pursuant to the terms of this Agreement, and subject to Section 9.13 hereof, this Agreement shall terminate on

the earlier of (A) the repayment in full of the Note, (B) the date that the OOG fully divests itself of all rights and ownership of the OOG Shares (including any common stock issuable upon conversion of such OOG Shares) acquired through the exercise of the Conversion Right and/or in connection with the disbursement of the Additional Amount hereunder, or (C) the fifth (5th) anniversary of the Effective Date.

Section 8.02 **Termination Upon Failure to Fund.** If the Company does not meet all conditions precedent in Section 3.04 to the satisfaction of the OOG, or does not request in writing disbursement of the Initial Amount by the date that is three (3) months after the Effective Date, then the OOG's obligation to disburse any of the Award shall terminate as of such date, and this Agreement shall become null and void.

Section 8.03 **Termination Upon Prepayment of Note.** The Company may at any time terminate this Agreement and be released from its obligations hereunder by paying the OOG an amount equal to the full amount of the principal and interest (and any other amounts) due under the Note subject to the terms of the Note.

Section 8.04 **Termination Upon Event of Default.** If an Event of Default occurs and the Company is required to and does repay the amount specified in Section 7.03 to the OOG under the Note, then this Agreement shall automatically terminate as of the date full repayment of the Note (including principal, interest and any other amounts due) is received by the OOG. Further, in any event, the OOG may terminate this Agreement at any time following an Event of Default.

ARTICLE IX MISCELLANEOUS

Section 9.01 **Liability.** In no event shall either party be liable to the other party for any indirect, special, punitive, exemplary, incidental, or consequential damages. This limitation shall apply regardless of whether or not the other party has been advised of the possibility of such damages.

Section 9.02 **Indemnification by the Company and Hold Harmless.** The Company agrees to indemnify and hold the OOG, the maker of the Award, and its agents, officers, employees, and assigns harmless for any and all losses, claims, suits, actions, or liability, including any litigation costs, that arise from or are based on (in whole or in part) any act or omission of the Company or any of its officers, employees, agents, contractors, assignees, or affiliates relating to the project for which the Award is made, regardless of whether the act or omission is related to job creation or another stated purpose of the Award.

Section 9.03 **EXPRESS NEGLIGENCE. THE INDEMNITY SET FORTH IN THIS AGREEMENT IS INTENDED TO BE ENFORCEABLE AGAINST THE COMPANY AND ITS SUCCESSORS AND ASSIGNS IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE HEREOF NOTWITHSTANDING TEXAS' EXPRESS NEGLIGENCE RULE OR ANY SIMILAR DIRECTIVE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNIFICATION BECAUSE OF THE NEGLIGENCE**

(WHETHER SOLE, CONCURRENT, ACTIVE, OR PASSIVE) OR OTHER FAULT OR STRICT LIABILITY OF THE OOG AND/OR ITS AGENTS, OFFICERS, EMPLOYEES AND ASSIGNS.

Section 9.04 **Relationship of the Parties.** The parties shall perform their respective obligations under this Agreement as independent contractors and not as agents, employees, partners, joint venturers, or representatives of the other party. Neither party shall be permitted or empowered to make representations or commitments that bind the other party.

Section 9.05 **Binding Effect and Assignment.** The Company shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the OOG. The OOG may assign this Agreement and any of its rights or obligations hereunder without the consent of the Company. Subject to the foregoing, this Agreement and all terms, provisions, and obligations set forth herein shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations, and other entities that shall be successors to each of the parties or that shall succeed to or become obligated to perform or become bound by any of the covenants, agreements, or obligations hereunder of each of the parties hereto.

Section 9.06 **Waiver.** Neither the failure by the Company or the OOG, in any one or more instances, to insist upon the complete and total observance or performance of any term or provision of this Agreement or the Note, nor the failure of the Company or the OOG to exercise any right, privilege, or remedy conferred under this Agreement or the Note or afforded by law, shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Company or the OOG in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 9.07 **Entire Agreement.** This Agreement, the Note, and the other documents referred to and incorporated herein by reference embody the entire agreement between the Company and the OOG, and there are no other agreements, either oral or written, between the Company and the OOG on the subject matter hereof. This Agreement may be amended, modified, and supplemented only by written agreement signed by the parties hereto.

Section 9.08 **Applicable Law and Venue.** This Agreement is made and entered into in the State of Texas, and this Agreement and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements. The Company agrees that any action, suit, litigation, or other proceeding (collectively "litigation") arising out of or in any way relating to this Agreement, or the matters referred to therein, shall be commenced exclusively in the Travis County District Court or the United States District Court for the Western District of Texas, Austin Division, and hereby irrevocably and unconditionally consents to the exclusive jurisdiction of those courts for the purpose of prosecuting and/or defending such litigation. The Company hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action, or

proceeding, any claim that (A) the Company is not personally subject to the jurisdiction of the above-named courts, (B) the suit, action, or proceeding is brought in an inconvenient forum; or (C) the venue of the suit, action, or proceeding is improper.

Section 9.09 Dispute Resolution.

(A) Informal Meetings. The parties' representatives shall meet as needed to implement the terms of this Agreement and shall make a good faith attempt to informally resolve any disputes.

(B) Non-binding Mediation. Except to prevent irreparable harm for which there is no adequate remedy at law, neither party shall file suit to enforce this Agreement without first submitting the dispute to confidential, non-binding mediation before a mediator mutually agreed upon by the parties.

Section 9.10 Publicity. Upon request by the OOG, the Company agrees to cooperate fully with OOG to assist in the preparation of any press release or other public disclosure regarding this Agreement. The Company agrees to obtain OOG's approval prior to the Company's issuance of any press release or other public disclosure concerning this Agreement, unless otherwise required by law.

Section 9.11 No Waiver of Sovereign Immunity. Nothing in this Agreement, including but not limited to the Applicable Law and Venue provisions in Section 9.08 and the Dispute Resolution provisions in Section 9.09 above, constitutes or may be construed to be a waiver of the sovereign immunity of the State, the Governor, or the OOG.

Section 9.12 Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of such remaining provision or provisions hereof.

Section 9.13 Survival of Promises. Notwithstanding any expiration, termination, or cancellation of this Agreement, the rights and obligations pertaining to payment or repayment of funds, confidentiality, disclaimers and limitation of liability, indemnification, maintaining the Company's principal place of business and principal executive headquarters in Texas (in accordance with Section 6.02(B)), and any other provision implying survivability shall remain in effect after this Agreement ends.

Section 9.14 Force Majeure. Except for the obligation to make payments under this Agreement and the Note when due, and the indemnification obligations arising hereunder, neither party shall be required to perform any obligation under this Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God.

Section 9.15 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 9.16 **Notices.** All notices, requests, demands, and other communications shall be in writing and shall be deemed given and received (A) on the date of delivery when delivered by hand, (B) on the following business day when sent by confirmed simultaneous telecopy, (C) on the following business day when sent by receipted overnight courier, or (D) three (3) business days after deposit in the United States Mail when mailed by registered or certified mail, return receipt requested, first class postage prepaid. Notice shall conclusively be deemed to have been given when received. The current addresses for notice are as follows:

If to the OOG to:

Compliance and Oversight
ETF Compliance
Office of the Governor
PO Box 12428
Austin, TX 78711-2878

1100 San Jacinto
Austin, TX 78701

Fax: 512-936-0255

with a concurrent copy to:
ATTN: Emerging Technology Fund Award Program
General Counsel
Office of the Governor
P.O Box 12428
Austin, Texas 78711

1100 San Jacinto
Austin, TX 78701

Fax: 512-463-1932

If to the Company to:

[_____]]
[_____]]
[_____]]
[_____]]

provided, however, that if any party shall have designated a different address by written notice to the other party, then to the last address so designated. The Company must provide notices to OOG via one of the above (A) – (D) listed methods. In addition, the OOG may provide written notice to the Company via any of the above (A) – (D) methods or via any Company electronic mail address of the Company’s Chief Executive Officer, President, Chief Financial Officer, any Vice President, or other Company employee with the actual or apparent authority to transact business with the OOG.

Section 9.17 **Construction.** The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning. The parties acknowledge that each party and its counsel have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Whenever used herein, the terms “include,” “includes,” and “including” shall be deemed to be followed by the phrase, “without limitation.”

Section 9.18 **Headings.** The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

Section 9.19 **Schedules and Exhibits.** The schedules and exhibits referred to herein and required to be delivered pursuant to the terms hereof are hereby incorporated fully herein by this reference.

Section 9.20 **Saturdays, Sundays, Holidays, etc.** If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday, a Sunday, or a legal holiday in the State of Texas, then such action may be taken or such right may be exercised on the next succeeding day that is not such a day.

Section 9.21 **Stock Certificate Legend.** Each certificate representing shares of the Company’s capital stock shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND MAY NOT BE OFFERED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNLESS AND UNTIL REGISTERED UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR UNLESS SUCH OFFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, TRANSFER OR OTHER DISPOSITION IS EXEMPT FROM REGISTRATION OR IS OTHERWISE IN COMPLIANCE WITH THE ACT AND SUCH LAWS, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

THE SHARES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS OF AN EMERGING TECHNOLOGY FUND AWARD AND SECURITY AGREEMENT, DATED AS OF _____, _____, BY AND BETWEEN THE COMPANY AND THE STATE OF TEXAS,

ACTING BY AND THROUGH THE OFFICE OF GOVERNOR ECONOMIC DEVELOPMENT AND TOURISM. A COPY OF SUCH AGREEMENT HAS BEEN FILED, AND IS AVAILABLE FOR REVIEW BY THE RECORD HOLDER OF THIS CERTIFICATE, AT THE PRINCIPAL OFFICE OF THE COMPANY.

Section 9.22 **Additional Requirements.** The Company and the OOG agree to comply with the following additional requirements.

(If there are no additional requirements then insert the word “NONE”.)

NONE.

(THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK)

IN TESTIMONY HEREOF, the Company and the OOG have executed this Texas Emerging Technology Fund Award and Security Agreement on the day and date indicated immediately below their respective signatures.

The State of Texas

_____, **Inc.**

Brandy D. Marty
Chief of Staff
Office of the Governor

[Title]

Date

Date

Exhibits and Schedules

Exhibits

- Exhibit A – Approval Letter from Governor, Lieutenant Governor, and Speaker
- Exhibit B – Secured Convertible Promissory Note
- Exhibit C – Additional Disbursements/Milestones
- Exhibit D – Form of Texas Declaration of Residency
- Exhibit E – Compliance Verification Report

Schedules

- Schedule 5.07 – Title to Property and Assets
- Schedule 5.11 – Related Party Transaction
- Schedule 5.13 – Organizational Information
- Schedule 5.14 – Financing Statements
- Schedule 6.02 – Exceptions to Texas Commercialization and Suppliers
- Schedule 6.15 – Subsidiaries

Exhibit A

**Letter from Governor, Lieutenant Governor, and Speaker Approving Award to the
Company from the Texas Emerging Technology Fund**

See attached.

DRAFT

Exhibit B

Secured Convertible Promissory Note

See attached.

DRAFT

Exhibit C

Additional Disbursements/Milestones

<u>Date</u>	<u>Disbursement Amount</u>	<u>Milestones to Be Achieved</u>
__/__/201__	\$ _____	[List]
__/__/201__	\$ _____	[List]
__/__/201__	\$ _____	[List]

DRAFT

Exhibit D

Form of Declaration of Residency

DRAFT

Exhibit E

Compliance Verification Report

DRAFT

Schedule 5.07

Title to Property and Assets

[To be completed by the Company]

DRAFT

Schedule 5.11

Related Party Transactions

[To be completed by the Company.]

DRAFT

Schedule 5.13

Organizational Information

[To be completed by the Company.]

DRAFT

Schedule 5.14

Financing Statements

[To be completed by the Company.]

DRAFT

Schedule 6.02

Exceptions to Texas Commercialization

Describe existing commercialization and/or suppliers outside of the State of Texas:

[OPEN]

Describe the Company's plans for use of Award money for commercialization efforts and/or suppliers outside of the State of Texas:

[OPEN]

I, _____, [Chief Executive Officer] of [_____] hereby certify that this Schedule 6.02 contains a complete and accurate description of the Company's current and future commercialization efforts outside of the State of Texas as of the below date.

[Name], Chief Executive Officer

Agreed and accepted:

Jeffrey S. Boyd,
Chief of Staff
Office of the Governor

Schedule 6.15

Subsidiaries

[If applicable, this schedule shall be added after the Effective Date as a supplemental schedule pursuant to Section 6.15.]

DRAFT