

Attachment 6

SPECIFIC DUE DILIGENCE OBLIGATIONS

MILESTONE	
Licensee shall develop a research and development plan for the Licensed Patents and use commercially reasonable efforts to adhere to such plan and provide Licensor with reports as to its progress on at least an annual basis.	
Licensee to demonstrate commercially reasonable efforts in development of Licensed Products, in accordance with a mutually agreed timetable for events as set forth below, with dates for achievement of such milestones to be adjusted by mutual agreement of the parties:	
Recruit key members (to be defined) of the management team.	On a schedule consistent with the schedule required in the Licensee's venture capital financing, as such schedule may be amended from time to time.
Complete at least one joint venture or definitive agreement with a major pharmaceutical firm for the development of a therapeutic Licensed Product.	At such time as the Licensee's Board of Directors deems it strategically appropriate to do so.
Commence sales of diagnostic Licensed Product.	December 31, 2003
Find IND on therapeutic Licensed Product.	December 31, 2005

Licensor shall have the right to terminate Licensee's rights of diagnostic Licensed Products under this License Agreement if Licensee fails to comply with the milestone for commencement of sales of diagnostic Licensed Product or to terminate Licensee's rights for therapeutic Licensed Products under this License Agreement if Licensee fails to comply with the milestone for filing of the IND for a Therapeutic Licensed Product and, in either case, cannot otherwise show evidence of commercially reasonable efforts to expeditiously develop and commercialize Licensed Products.

Attachment 5 (continued)

Event	Date
Recruit key members of the License Agreement management team	Within ninety (90) days of execution
Develop Research and Development of the License Agreement Plan acceptable to Licensor for:	Within ninety (90) days of execution
Isolation of murine cardiomyocytes	
Isolation of human cardiomyocytes	
Optimization of isolation technique	
Scale-up and production of cardiomyocytes	
Isolate precursor heart muscle cells from bone marrow of mice.	09/01/2002
Isolate precursor heart muscle cells from human bone marrow	09/01/2003
Optimization of isolation technique and production of high yield of beating heart muscle	09/01/2004
IND Filing	01/01/2006
Commitment to second round Agreement of financing of no less than (\$____) million (to be defined)	Within 27 months of execution of the License

Uniform Indemnification and Insurance Provision Revised

Clinical Trials Only

1. Indemnification

- a. Sponsor shall indemnify, defend and hold harmless Institution and its trustees, officers, medical and professional staff, employees, and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any liability, damage, loss or expense (including reasonable attorney's fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgments: (i) arising out of any side effect, adverse reaction, illness, or injury occurring to any person as a result of his or her involvement in the Clinical Study.]*
- b. Sponsor's indemnification under (a) above shall not apply to any liability, damage, loss or expense to the extent that it is directly attributable to: (i) the negligent activities, reckless misconduct or intentional misconduct of the Indemnitees; or (ii) failure of the Indemnitees to adhere to the terms of the protocol for the Clinical Study.
- c. Sponsor agrees, at its own expense, to provide attorneys reasonably acceptable to the Institution to defend against any actions brought or filed against any party indemnified hereunder with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought.
- d. This Section 1 shall survive expiration or termination of this agreement.

2. Insurance

- a. Sponsor shall, at its sole cost and expense, procure and maintain commercial general liability insurance or equivalent self-insurance in amounts not less than \$2,000,000 per incident and \$2,000,000 annual aggregate. Such commercial general liability insurance or equivalent self-insurance shall provide contractual liability coverage for Sponsor's indemnification under Section 1 of this Agreement.
- b. Sponsor shall provide Institution with written evidence of such insurance prior to the commencement of the Clinical Study. Sponsor shall provide Institution with written notice at least fifteen (15) days prior to the cancellation, non-renewal or material change, in such insurance; if Sponsor does not obtain

replacement insurance providing comparable coverage within such fifteen (15) day period, Institution shall have the right to terminate this Agreement effective at the end of such fifteen (15) day period without notice of any additional waiting periods.

- c. This Section 2 shall survive expiration or termination of this Agreement.

Uniform Indemnification and Insurance Provision

License Agreements Only

1. Indemnification

- (a) Licensee shall indemnify, defend and hold harmless Institution and its trustees, officers, medical and professional staff, employees, and agents and their respective successors, heirs and assigns (the "Indemnitees"), against any liability, damage, loss or expense (including reasonable attorney's fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgments arising out of any theory of product liability (including, but not limited to, actions in the form of tort, warranty, or strict liability) concerning any product, process or service made, used or sold pursuant to any right or license granted under this Agreement.
- (b) [Optional: Licensees indemnification under (a) above shall not apply to any liability, damage, loss or expense to the extent that it is directly attributable to the negligent activities, reckless misconduct or intentional misconduct of the Indemnitees.]
- (c) Licensee agrees, at its own expense, to provide attorneys reasonably acceptable to the Institution to defend against any actions brought or filed against any party indemnified hereunder with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought.
- (d) This Section 1 shall survive expiration or termination of this Agreement.

2. Insurance

- (a) Beginning at the time as any such product, process or service is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by Licensee or by a sublicensee, affiliate or agent of Licensee, 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 naming the Indemnitees as additional insureds. Such commercial general liability insurance shall provide (i) product liability coverage and (ii) contractual liability coverage for Licensee's indemnification under Section 1 of this Agreement. If Licensee elects to self-insure all or part of the limits described above (including

deductibles or retentions which are in excess of \$250,000 annual aggregate) such self-insurance program must be acceptable to the Institution and the Risk Management Foundation of the Harvard Medical Institutions, inc. The minimum amount of insurance coverage required under this Section 2 shall not be construed to create a limit of Licensee's liability with respect to its indemnification under Section 1 of this Agreement.

- (b) Licensee shall provide Institution with written evidence of such insurance upon request of Institution. Licensee shall provide Institution with written notice at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance; if Licensee does not obtain replacement insurance providing comparable coverage within such fifteen (15) day period, Institution shall have the right to terminate this Agreement effective at the end of such fifteen (15) day period without notice of any additional waiting periods.
- (c) Licensee shall maintain such commercial general liability insurance during (i) the period that any such product, process or service is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by Licensee or by a sublicensee, affiliate or agent of licensee and (ii) a reasonable period after the period referred to in (c)(i) above which in no event shall be less than fifteen (15) years.
- (d) This Section 2 shall survive expiration or termination of this Agreement.