As confidentially submitted to the Securities and Exchange Commission on June 18, 2014 as Amendment No. 1 to the confidential submission, dated June 5, 2014

This draft registration statement has not been publicly filed with the Securities and Exchange Commission and all information herein remains strictly confidential

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
Under
The Securities Act of 1933

OTONOMY, INC.

(Exact name of registrant as specified in its charter)

Delaware	**2834**	**26-2590070**
(State or other jurisdiction of incorporation or organization)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification Number)**

6275 Nancy Ridge Drive, Suite 100
San Diego, California 92121
(858) 242-5200
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

David A. Weber, Ph.D.
President and Chief Executive Officer
Otonomy, Inc.
6275 Nancy Ridge Drive, Suite 100
San Diego, California 92121
(858) 242-5200
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Kenneth A. Clark **Tony Jeffries** **Daniel R. Koeppen** **Wilson Sonsini Goodrich & Rosati, P.C.** **650 Page Mill Road** **Palo Alto, California 94304** **(650) 493-9300**	**Paul E. Cayer** **Chief Financial and Business Officer** **Otonomy, Inc.** **6275 Nancy Ridge Drive, Suite 100** **San Diego, California 92121** **(858) 242-5200**	**Charles S. Kim** **Andrew S. Williamson** **David G. Peinsipp** **Cooley LLP** **4401 Eastgate Mall** **San Diego, California 92121** **(858) 550-6000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☒ (do not check if a smaller reporting company)	Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Proposed Maximum Aggregate Offering Price[(1)(2)]**	**Amount of Registration Fee[(3)]**
Common Stock, par value $0.001 per share	$	$

(1) Includes offering price of any additional shares of common stock that the underwriters have the option to purchase.
(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.
(3) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, as amended, based on an estimate of the proposed maximum aggregate offering price.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 1 (Amendment No. 1) to the Draft Registration Statement on Form S-1 of Otonomy, Inc. (Draft Registration Statement) is being submitted solely for the purpose of submitting certain exhibits as indicated in Part II of this Amendment No. 1. This Amendment No. 1 does not modify any provision of the prospectus that forms a part of the Draft Registration Statement or Items 13, 14, 15 or 17 of Part II of the Draft Registration Statement. Accordingly, a preliminary prospectus has been omitted.

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

Estimated expenses, other than underwriting discounts and commissions, payable by the Registrant in connection with the sale of the common stock being registered under this registration statement are as follows:

	Amount to Be Paid
SEC registration fee	$ *
FINRA filing fee	*
listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue Sky fees and expenses (including legal fees)	*
Transfer agent and registrar fees and expenses	*
Miscellaneous expenses	*
Total	$ *

* To be filed by amendment.

Item 14. Indemnification of Directors and Officers.

On completion of this offering, the Registrant's amended and restated certificate of incorporation will contain provisions that eliminate, to the maximum extent permitted by the General Corporation Law of the State of Delaware, the personal liability of the Registrant's directors and executive officers for monetary damages for breach of their fiduciary duties as directors or officers. The Registrant's amended and restated certificate of incorporation and bylaws will provide that the Registrant must indemnify its directors and executive officers and may indemnify its employees and other agents to the fullest extent permitted by the General Corporation Law of the State of Delaware.

Sections 145 and 102(b)(7) of the General Corporation Law of the State of Delaware provide that a corporation may indemnify any person made a party to an action by reason of the fact that he or she was a director, executive officer, employee or agent of the corporation or is or was serving at the request of a corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of an action by or in right of the corporation, no indemnification may generally be made in respect of any claim as to which such person is adjudged to be liable to the corporation.

The Registrant has entered into indemnification agreements with its directors and executive officers, in addition to the indemnification provided for in its amended and restated certificate of incorporation and bylaws, and intends to enter into indemnification agreements with any new directors and executive officers in the future.

The Registrant has purchased and currently intends to maintain insurance on behalf of each and any person who is or was a director or officer of the Registrant against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

The Underwriting Agreement (Exhibit 1.1 hereto) provides for indemnification by the underwriters of the Registrant and its executive officers and directors, and by the Registrant of the underwriters, for certain liabilities, including liabilities arising under the Securities Act.

See also the undertakings set out in response to Item 17 herein.

Item 15. Recent Sales of Unregistered Securities.

Since January 1, 2011, the Registrant has issued and sold the following securities:

(1) On April 23, 2014, the Registrant issued and sold 145,073,529 shares of its series D convertible preferred stock in a private placement to accredited investors at a purchase price per share of $0.34 for gross proceeds of approximately $49.3 million.

(2) Between August 26, 2013 and December 17, 2013, the Registrant issued and sold an aggregate of 247,527,782 shares of its series C convertible preferred stock in a private placement to accredited investors at a purchase price per share of $0.25, for aggregate consideration of approximately $61.9 million. Of this amount, $16.0 million was paid for by cancellation of principal and accrued interest under the secured convertible promissory notes described in paragraph (5) below.

(3) In July 31, 2013, the Registrant issued and sold a warrant to purchase up to a maximum of 840,000 shares of series C convertible preferred stock with an exercise price per share of $0.25 to Square 1 Bank in connection with a credit facility.

(4) Between August 23, 2012 and January 22, 2013, the Registrant issued and sold warrants to purchase an aggregate of 12,003,999 shares of its series C convertible preferred stock at an exercise price per share of $0.25 to certain of its series C investors. These warrants were issued in connection with the sale and issuance of the secured convertible promissory notes described in paragraph (5) below.

(5) Between August 23, 2012 and January 22, 2013, the Registrant issued secured convertible promissory notes in the aggregate principal amount of $15.0 million. These notes converted into 63,927,783 shares of the Registrant's series C convertible preferred stock in August 26, 2013 as described in paragraph (2) above.

(6) Between January 1, 2011 and June 3, 2014, the Registrant granted to its directors, employees, consultants and other service providers options to purchase an aggregate of 67,599,671 shares of common stock under the Registrant's 2010 Stock Plan (2010 Plan) at exercise prices per share ranging from $0.03 to $0.18, for an aggregate exercise price of approximately $6.7 million.

(7) Between January 1, 2011 and June 3, 2014, the Registrant issued and sold to its directors, employees, consultants and other service providers an aggregate of 1,835,025 shares of common stock upon the exercise of options under the 2010 Plan at exercise prices per share ranging from $0.03 to $0.09, for an aggregate exercise price of approximately $0.1 million.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. The Registrant believes these transactions were exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D, Regulation S or Rule 701 promulgated under the Securities Act as transactions by an issuer not involving any public offering, outside the United States, or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with us or otherwise, to information about the Registrant.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits:

See the Exhibit Index immediately following the Signature Pages.

(b) Financial Statement Schedules.

All other schedules have been omitted because the information required to be presented in them is not applicable or is shown in the financials statements or related notes.

Item 17. Undertakings.

The Registrant hereby undertakes to provide to the underwriters at the closing as specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue.

The Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this amendment to registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on , 2014.

OTONOMY, INC.

By: _____
David A. Weber, Ph.D.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints David A. Weber, Ph.D. and Paul E. Cayer and each of them acting individually, as his attorneys-in-fact, each with full power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement and any subsequent registration statement relating to the same offering as this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorney to any and all amendments to said Registration Statement or related registration statements.

Pursuant to the requirements of the Securities Act of 1933, this amendment to registration statement has been signed by the following persons in the capacities indicated below:

Signature	Title	Date
David A. Weber, Ph.D.	President, Chief Executive Officer and Director *(Principal Executive Officer)*	, 2014
Paul E. Cayer	Chief Financial and Business Officer, and Secretary *(Principal Financial and Accounting Officer)*	, 2014
Peter Bisgaard	Chairman of the Board of Directors	, 2014
Vickie Capps	Director	, 2014
Brian Dovey	Director	, 2014
Chau Q. Khuong	Director	, 2014

Signature	Title	Date
Jay Lichter, Ph.D.	Director	, 2014
John P. McKearn, Ph.D.	Director	, 2014
Heather Preston, M.D.	Director	, 2014

EXHIBIT INDEX

Exhibit Number	Description
1.1*	Form of Underwriting Agreement, including Form of Lock-up Agreement.
2.1#	Asset Transfer Agreement between the Registrant and IncuMed, LLC, dated April 30, 2013.
3.1+	Amended and Restated Certificate of Incorporation of the Registrant, as currently in effect.
3.2*	Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon the completion of this offering.
3.3+	Bylaws of the Registrant, as currently in effect.
3.4*	Form of Amended and Restated Bylaws of the Registrant, to be in effect upon the completion of this offering.
4.1+	Third Amended and Restated Investors' Rights Agreement among the Registrant and certain of its stockholders, dated April 23, 2014.
4.2*	Specimen common stock certificate of the Registrant.
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation.
10.1*	Form of Indemnification Agreement between the Registrant and each of its directors and executive officers.
10.2+	2010 Equity Incentive Plan, as amended, and forms of agreement thereunder.
10.3*	2014 Equity Incentive Plan and forms of agreements thereunder, to be in effect upon the completion of this offering.
10.4*	2014 Employee Stock Purchase Plan and form of agreement thereunder, to be in effect upon the completion of this offering.
10.5*	Employment Agreement between the Registrant and David A. Weber, Ph.D., dated November 21, 2010, as amended on March 1, 2011 and July 13, 2011.
10.6*	Employment Agreement between the Registrant and Paul E. Cayer, dated October 12, 2008, as amended on March 1, 2011.
10.7*	Employment Agreement between the Registrant and Carl LeBel, Ph.D., dated April 1, 2009, as amended on March 1, 2011.
10.8*	Employment Agreement between the Registrant and Robert Michael Savel, II, dated January 6, 2014.
10.9+	Lease Agreement between the Registrant and ARE-SD Region No. 25, LLC, dated September 23, 2011, as amended on May 28, 2014.
10.10+	Loan and Security Agreement between the Registrant and Square 1 Bank, dated July 31, 2013.
10.11#	License and Commercialization Agreement between the Registrant and DURECT Corporation, dated April 30, 2013.
10.12#	License Agreement between the Registrant and The Regents of the University of California, dated November 5, 2008, as amended on January 27, 2010, June 9, 2010 and November 7, 2012.
10.13+	Form of Warrant to Purchase Series A Convertible Preferred Stock issued pursuant to the Registrant's Note and Warrant Purchase Agreement, dated December 8, 2008.

Exhibit Number	Description
10.14+	Form of Warrant to Purchase Shares of Preferred Stock issued pursuant to the Registrant's Note and Warrant Purchase Agreement, dated August 23, 2012.
10.15+	Warrant to Purchase Stock issued pursuant to Loan and Security Agreement between the Registrant and Square 1 Bank, dated July 31, 2013.
23.1*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
23.2*	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in Exhibit 5.1).
24.1	Power of Attorney (see page II-4 to this Form S-1).

+ Previously submitted.
* To be filed by amendment.
# Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

Exhibit 2.1

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED AS TO CERTAIN PORTIONS OF THIS DOCUMENT. EACH SUCH PORTION, WHICH HAS BEEN OMITTED HEREIN AND REPLACED WITH AN ASTERISK [***], HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

ASSET TRANSFER AGREEMENT

This Asset Transfer Agreement is made as of April 30, 2013 between Otonomy, Inc., a Delaware corporation ("**Otonomy**"), and IncuMed, LLC, a Nevada LLC ("**IncuMed**"). Otonomy and IncuMed are each referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Otonomy desires to purchase from IncuMed, and IncuMed desires to sell to Otonomy, the Transferred Assets (as defined below) in exchange for the payment obligations set forth in Section 2.3, all as consideration for such purchase.

Now, therefore, in consideration of the foregoing premises, the mutual representations, warranties covenants and other agreements set forth herein and the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.1 Definitions. Terms capitalized but not defined in this Agreement are defined on Exhibit A. Exhibit A also contains references to terms defined in the body of this Agreement and other Exhibits to this Agreement.

ARTICLE II

TRANSFER OF ASSETS; ASSUMPTION OF LIABILITIES; CONSIDERATION; CLOSING

SECTION 2.1 Transfer of Assets. Upon the terms and subject to the conditions set forth in this Agreement:

(a) IncuMed hereby sells, conveys, assigns and transfers to Otonomy, and Otonomy hereby acquires from IncuMed all of IncuMed's right, title and interest in and to the following assets (collectively, the "**Transferred Assets**"):

(i) the Transferred Patent Rights;

(ii) the Durect License Agreement;

(iii) the Transferred Books and Records; and

(iv) all rights, claims, causes of action and credits, including all guarantees, warranties, indemnities, rights of setoff and similar rights, in favor of IncuMed to the extent relating to any of the foregoing Transferred Assets, including, without limitation, all causes of action for past

misappropriation or infringement of any Transferred Patent Rights and rights to damages and other remedies for past misappropriation or infringement of any Transferred Patent Rights.

The transfer of the Transferred Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Transferred Assets.

SECTION 2.2 Liabilities. All Liabilities of IncuMed (the "**Retained Liabilities**") shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by IncuMed. For the avoidance of doubt, the Retained Liabilities shall include, without limitation:

(i) Any Liability of IncuMed under the Durect License Agreement that arises after the Effective Time but that arises out of or relates to any breach thereof that occurred prior to the Effective Time;

(ii) (A) any Tax Liabilities for any Tax period of IncuMed, or any member of any consolidated, affiliated, combined or unitary group of corporations of which IncuMed or any of its Subsidiaries is or has been a member and (B) Taxes attributable to the Transferred Assets for any Pre-Closing Tax Period;

(iii) any Liabilities of IncuMed arising out of any product liability, patent infringement, breach of warranty, government seizure, recall or similar claim for injury to person or property or any other claim related to the Transferred Assets arising prior to the Effective Time (including all proceedings relating to any such Liabilities);

(iv) any Liabilities of IncuMed with respect to any litigation or other claims related to the Transferred Assets arising from any event, circumstance or condition prior to the Effective Time;

(v) any Liability of IncuMed related to any product or service of IncuMed not related to the Transferred Assets;

(vi) any Liability of IncuMed arising out of (A) any suit, action or proceeding pending or threatened as of the Effective Time, with respect to claims based upon facts, events or circumstances occurring prior to the Effective Time, or (B) any actual or alleged violation by IncuMed or any of its Affiliates of any Law applicable to IncuMed or any of its Affiliates;

(vii) any Liability of IncuMed or any ERISA Affiliate under or relating to (A) any employee benefit plan, or relating to wages, bonuses, payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits, phantom stock, deferred compensation or other similar plan or arrangement, or any other employee plans or benefits of any kind, in each case, which IncuMed or any ERISA Affiliate has entered into, maintains or administers or has maintained or administered, to which IncuMed or any ERISA Affiliate contributes or has contributed or is or has been required to contribute, or under or with respect to which IncuMed or any ERISA Affiliate has or may have any

Liability and (B) any actual or alleged violation by IncuMed or any of its Affiliates of any equal employment or employment discrimination laws;

(viii) any Liability (including all costs and disbursements) incurred in connection with the termination of employment of any IncuMed employee prior to or in connection with the Closing;

(ix) any Liability under Environmental Laws arising out of or relating to the use or ownership of the Transferred Assets, in each case before the Effective Time;

(x) any Liability of IncuMed to any of its Affiliates; and

(xi) any other Liability of IncuMed resulting from IncuMed's ownership, use, operation or maintenance of the Transferred Assets prior to the Effective Time.

For the avoidance of any doubt, the Parties agree that Otonomy is not assuming any Liability of IncuMed or of any of IncuMed's Affiliates (including without limitation NeuroSystec). Nothing in this Agreement shall be construed as IncuMed acknowledging or agreeing that IncuMed has assumed any liabilities of NeuroSystec.

SECTION 2.3 Consideration.

(a) As consideration for the Transferred Assets and rights granted to Otonomy hereunder, Otonomy shall:

(i) Pay to IncuMed at the Closing, a payment of $225,000 ("**Purchase Payment**"), less the Escrow Amount;

(ii) Deliver the Escrow Amount to the Escrow Agent, in accordance with the Escrow Agreement The Escrow Fund will be held, administered and distributed by the Escrow Agent in accordance with the terms of the Escrow Agreement and Article VII of this Agreement; and

(iii) Pay to IncuMed, subject to setoff as provided in Section 7.6 of this Agreement, the following one-time milestone payments upon the first achievement of the following milestones by Otonomy, its Affiliates or licensees:

(1) [***]

(2) [***]

(3) [***] and

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

(4) [***] (payments under subsections (1) through (4) are collectively referred to as "**Milestone Payments**").

Otonomy shall notify IncuMed in writing within thirty (30) days after the achievement of any of the foregoing milestones under clauses (1), (2) or (3) above, and payment of the amount corresponding to such milestone shall be due within thirty (30) days after such achievement. Otonomy shall notify IncuMed in writing within forty five (45) days after the calendar year end in which the milestone under clause (4) above has been achieved by Otonomy, and payment of the amount corresponding to such milestone shall be due within forty five (45) days following such calendar year end. For clarity, each of the above milestone payments shall be payable once only and only for the first occurrence of each such milestone, irrespective of the number of Products that may ultimately achieve such milestone. In no event shall the total amount paid or payable to IncuMed under Section 2.3(a)(iii) exceed $5,250,000. Until receipt by IncuMed of the final payment pursuant to the milestone in clause (4) above, Otonomy will allow an annual review by an independent accountant selected and paid by IncuMed and consented to by Otonomy (which consent shall not be unreasonably withheld) of Otonomy's financial statements and calculations used in determining Net Sales.

(b) ***[Intentionally omitted.]***

(c) Allocation of Purchase Price. The consideration payable hereunder shall be allocated among the Transferred Assets in accordance with this Section 2.3(c). Otonomy shall prepare and deliver to IncuMed, within 45 days following the Closing, a draft schedule setting forth an allocation of such consideration among the Transferred Assets (the "**Allocation**"), which shall be prepared in accordance with Code Section 1060 and the Treasury regulations thereunder (and any similar provision of state, local or foreign law, as appropriate). The Parties will use commercially reasonable efforts to agree on the final Allocation, which shall be conclusive and binding upon Otonomy and IncuMed for all purposes, and the parties agree that all returns and reports (including, without limitation, IRS Form 8594) and all financial statements shall be prepared in a manner consistent with (and the parties shall not otherwise file a Tax Return position inconsistent with) the final Allocation unless required by the IRS or any other applicable Governmental Authority.

(d) Withholding Taxes. Otonomy and its representatives shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement to any Person such Taxes as may be required to be deducted or withheld therefrom under any applicable Law and shall remit such amounts to the applicable Governmental Authority, and shall, if requested by IncuMed, provide a written copy of a tax receipt from such Governmental Authority reflecting the amounts so withheld and remitted. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes as having been paid to the Person to whom such amounts would otherwise have been paid. In the event a Governmental Authority subsequently determines that Taxes should have been withheld and paid over to such Governmental Authority, IncuMed shall fully indemnify Otonomy for such Taxes.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

SECTION 2.4 Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "**Closing**"), including the transfer of the Transferred Assets, shall be held at the offices of Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304 at 10:00 a.m. Pacific Time on the date hereof, contemporaneously with the execution and delivery of this Agreement and other deliverables described in Sections 2.5 and 2.6 of this Agreement, or such later date as the Parties agree upon in writing (the "**Closing Date**").

SECTION 2.5 Closing Deliveries by IncuMed. At the Closing, IncuMed shall:

(a) deliver to Otonomy an original of each Transaction Document to which IncuMed is to be a party, duly executed by IncuMed;

(b) deliver to Otonomy the Transferred Books and Records;

(c) deliver to Otonomy such other bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance, and such copies of the Transferred Patent Rights, as may reasonably be requested by Otonomy, each in form and substance reasonably satisfactory to Otonomy and its legal counsel and duly executed by IncuMed; and

(d) deliver to the Escrow Agent originally executed Reconveyance Documents to which IncuMed is a party, duly executed by IncuMed, which Reconveyance Documents will be delivered to Otonomy only in the event Otonomy exercises the Put Option during the Put Option Period in accordance with Section 6.1 hereof.

SECTION 2.6 Closing Deliveries by Otonomy.

At the Closing, Otonomy shall:

(a) deliver to IncuMed an original of each Transaction Document to which Otonomy is to be a party, duly executed by Otonomy;

(b) deliver to IncuMed the Purchase Payment, less the Escrow Amount, in immediately available funds by wire transfer to an account or accounts designated by IncuMed; and

(c) deliver to the Escrow Agent (x) the Escrow Amount, in immediately available funds by wire transfer to an account or accounts designated by the Escrow Agent, and (y) originally executed Put Option Patent Assignment Agreement, Put Option Bill of Sale and Put Option Assignment and Assumption Agreement (such documents referred to collectively, the "**Reconveyance Documents**"), which Reconveyance Documents will be delivered to IncuMed only in the event Otonomy exercises the Put Option during the Put Option Period and Otonomy receives the full amount of cash to which it is due pursuant to Section 6.1(a)(ii) hereof, all in accordance with Section 6.1.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF INCUMED

Except as set forth in the disclosure schedule delivered by IncuMed to Otonomy on the date hereof (the "**Disclosure Schedule"),** which Disclosure Schedule identifies the Section (or, if applicable, subsection) of this Agreement to which such exception relates (provided, however, that such disclosure shall also apply to particular matters represented or warranted in other Sections and subsections to the extent that it is reasonably apparent from the text of such disclosure), IncuMed hereby represents and warrants to Otonomy, as of the date of this Agreement, as set forth on Exhibit B.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF OTONOMY

Otonomy hereby represents and warrants to IncuMed, as of the date of this Agreement, as set forth on Exhibit C-1.

ARTICLE V

ADDITIONAL AGREEMENTS

SECTION 5.1 Cooperation and Assistance. At Otonomy's sole cost and expense, IncuMed shall cooperate fully with and assist Otonomy as may be necessary or useful in order to allow Otonomy to understand and complete the transfer of the Transferred Assets for the purposes contemplated in this Agreement.

SECTION 5.2 Confidentiality.

(a) Confidential Information. It is understood that upon the Closing all Otonomy Confidential Information is and shall remain the sole property of Otonomy, and IncuMed shall have no interest therein. It is understood that at all times IncuMed Confidential Information is and shall remain the sole property of IncuMed, and Otonomy shall have no interest therein. Notwithstanding the foregoing, the Transferred Books and Records will become Otonomy Confidential Information; provided however, that the Transferred Books and Records will become IncuMed Confidential Information on the Put Date in the event the Put Option is exercised.

(b) Permitted Disclosures. Notwithstanding the provisions of Section 5.2, Confidential Information shall exclude information that (i) the receiving Party can demonstrate was in the public domain at the time it was disclosed or enters the public domain through no act or omission of the receiving Party, and (ii) is received rightfully by the receiving Party from a Third Party and without (A) restriction on use or disclosure and (B) breach of any obligation of confidentiality.

(c) Confidentiality Obligation. Each Party may use the other Party's Confidential Information solely to fulfill its obligations in connection with this Agreement. Each Party shall treat as confidential and not disclose to any third party any of the other Party's Confidential Information and shall not use such other Party's Confidential Information for its own benefit. Without limiting the foregoing, each Party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance, but in no event with less than reasonable care, to prevent the disclosure of the other Party's Confidential Information. Each Party further agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of any Confidential Information.

(d) Confidentiality Agreement. Each Party agrees that the terms and conditions, but not the existence, of this Agreement shall be treated as the Confidential Information of both Parties and that no reference to the terms and conditions of this Agreement or to activities pertaining thereto may be made by either Party in any form of public or commercial advertising without the prior written consent of the other Party; provided, however, that each Party may disclose the terms and conditions of this Agreement: (i) to its legal counsel and accountant or financial advisor, or employees, directors, investors and potential investors who have a need to know such information and either agree to be bound by the confidentiality obligations set forth herein or be under an obligation of confidentiality; (ii) subject to Section 5.2(e), as required by any court or other governmental body; or (iii) as otherwise required by law, subject to the disclosing party complying with procedures equivalent to those of Section 5.2(e) below.

(e) Required Disclosure. In the event that either Party believes that it will be compelled, or is compelled, by a court, administrative agency, or other governmental body to disclose the other Party's Confidential Information, it shall: (i) if legally permissible, provide prompt notice thereof to the other Party so that such other Party may take steps to oppose such disclosure, and (ii) cooperate with the other Party's reasonable attempts to oppose such disclosure, and (iii) use its reasonable efforts to obtain a protective order or otherwise prevent unrestricted or public disclosure of such information.

(f) Public Announcements. Neither Party shall make any public announcement relating to this Agreement except upon the other Party's prior written consent, which consent may be granted or withheld by such other Party in its sole discretion.

(g) Prior Agreement. This Agreement supersedes the Mutual Nondisclosure Agreement between Otonomy and NeuroSystec (and its affiliates) dated September 16, 2011 (the "**Prior Agreement**"). All information exchanged between the Parties and their respective Affiliates under the Prior Agreement shall be deemed Confidential Information and shall be subject to the terms of this Section 5.2.

SECTION 5.3 Further Assurance. On and after the Closing Date, each of the Parties hereto shall from time to time, at the reasonable request of the other Party and sole expense of such other Party, use commercially reasonable efforts to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further conveyances, notices and assumptions and such other instruments, and take such other actions, as the other Party may reasonably request in order to

more effectively consummate the transactions contemplated hereby and to carry out the provisions of this Agreement, each of the other Transaction Documents and, if the Put Option is exercised, each of the Reconveyance Documents, including, without limitation, (i) to transfer fully to Otonomy good and marketable title to the Transferred Assets and all of the titles, rights, interests, remedies, powers and privileges intended to be conveyed under Transaction Documents (including assistance in the collection or reduction to possession of any of the Transferred Assets) and (ii) if the Put Option is exercised and the conditions to the transfer of the Transferred Assets to IncuMed as set forth in Section 6.1(a) are satisfied, to transfer fully to IncuMed good and marketable title to the Transferred Assets and all of the titles, rights, interests, remedies, powers and privileges intended to be conveyed under Reconveyance Documents (including assistance in the collection or reduction to possession of any of the Transferred Assets).

SECTION 5.4 ***[This section intentionally left blank]***

SECTION 5.5 **Put Option Covenants**.

(a) Affirmative Covenants. During the period starting at the Effective Time and ending on the earlier of (i) the Put Expiration Time, if the Put Option is not exercised, (ii) the Put Cancellation Time, if the Put Option is cancelled, and (iii) the Put Date, if the Put Option is exercised, Otonomy shall, except to the extent expressly provided otherwise in this Agreement or as consented to in writing by IncuMed:

(i) comply with its obligations contained in this Agreement and other Transaction Documents;

(ii) maintain its records and hold the Transferred Assets in material compliance with all applicable Laws;

(iii) Otonomy shall be responsible for filing, prosecuting and maintaining all pending and issued Patent Rights within the Transferred Patent Rights, including payment of all routine government fees and annuities and filing all documents necessary to maintain such Transferred Patent Rights and shall keep IncuMed reasonably informed of any material changes, occurrences and events relating to the filing, prosecution or maintenance of the Transferred Patent Rights. Otonomy shall provide IncuMed a reasonable opportunity to review and comment on filing, prosecution and maintenance of the Transferred Patent Rights, including providing IncuMed with copies of all relevant communications to or from any patent authority regarding the Transferred Patent Rights and providing drafts of any material filings or responses to be made to such patent authorities reasonably in advance of the submission of such filings or responses. Otonomy shall confer from time to time as reasonably requested by IncuMed with one or more representatives of IncuMed to discuss any material action, changes or developments concerning or affecting the Transferred Patent Rights and shall reasonably consider all requests by IncuMed in connection with the filing, prosecuting and maintaining of the Transferred Patent Rights;

(iv) promptly notify IncuMed of any change, occurrence or event which, individually or in the aggregate with any other changes, occurrences and events, would reasonably be expected to be materially adverse to the Transferred Assets; and

(v) keep IncuMed reasonably informed of any material notices or events under the Durect License Agreement (including any notices related to Otonomy's breach of the Durect License Agreement).

(b) Negative Covenants. During the period starting at the Effective Time and ending on the earlier of (i) the Put Expiration Time, if the Put Option is not exercised, (ii) the Put Cancellation Time, if the Put Option is cancelled, and (iii) the Put Date, if the Put Option is exercised, Otonomy shall not do, cause, or permit any of the following, except to the extent expressly provided otherwise in this Agreement or as consented to in writing by IncuMed:

(i) Outbound IP Licenses. Grant to any Person a license under any Transferred Asset, other than limited, revocable, non-exclusive licenses granted to contract research organizations in the ordinary course of business as necessary for such organizations to perform services for Otonomy with respect to the development of Products; provided that Otonomy shall be obligated to revoke any such license(s) prior to exercising the Put Option;

(ii) Exclusive Rights and Most Favored Party Provisions. Enter into or amend any agreement pursuant to which any other party is granted rights that purport to or would have the effect of limiting or restricting IncuMed's use of the Transferred Assets or IncuMed's business activities upon a reversion of the Transferred Assets to IncuMed following Otonomy's exercise of the Put Option;

(iii) Dispositions. Sell, lease, or otherwise transfer any of the Transferred Assets other than transfers to Affiliates, which may be made so long as the Affiliate executes and delivers to Otonomy and IncuMed a written agreement to be bound by the terms of this Agreement in form and substance reasonably satisfactory to IncuMed;

(iv) Encumbrances. Place or allow the creation of any Encumbrance on any of the Transferred Assets (other than revocable, non-exclusive licenses permitted under Section 5.5(b)(i) above);

(v) License Agreement. (i) Modify, amend or fail to perform under the License Agreement, without IncuMed's prior written consent, or (ii) terminate the License Agreement, in whole or in part; or

(vi) Other. Agree to take any of the actions described above.

ARTICLE VI

PUT OPTION

SECTION 6.1 Put Option.

(a) At any time during the Put Option Period, Otonomy may deliver a written notice (a "**Put Notice**") to IncuMed stating that it exercises it rights under this Article VI to transfer back to IncuMed all of the Transferred Assets (the "**Put Option**"). In the event Otonomy delivers a Put Notice to IncuMed during the Put Option Period (the date of such delivery, the "**Put Date**"):

(i) Otonomy shall assign to IncuMed, and hereby does assign to IncuMed, contingent upon Otonomy's delivery of the Put Notice to IncuMed during the Put Option Period and Otonomy's receipt of funds pursuant to Section 6.1(a)(ii), all of Otonomy's right, title and interest in and to the Transferred Assets;

(ii) The Escrow Agent shall release to Otonomy the full amount of the Escrow Fund, and to the extent the Escrow Fund contains less than the Escrow Amount, IncuMed shall pay to Otonomy either (a) the difference between the Escrow Amount and the amount actually in the Escrow Fund or (b) $[***] whichever is less;

(iii) The Escrow Agent shall release to IncuMed all Reconveyance Documents signed by Otonomy upon Otonomy's receipt of funds pursuant to Section 6.1(a)(ii);

(iv) The Escrow Agent shall, simultaneously with the release of the Reconveyance Documents to IncuMed pursuant to subsection (iii) above, release to Otonomy all Reconveyance Documents signed by IncuMed; and

(v) Otonomy's obligation to make any further payments pursuant to Section 2.3(a)(iii) shall cease.

(b) By delivering a Put Notice, Otonomy represents and warrants to IncuMed effective as of the Put Date as provided on Exhibit C-2.

(c) In the event the Put Option is exercised, Otonomy shall, at IncuMed's sole cost and expense, afford IncuMed reasonable access during business hours to the employees of Otonomy with knowledge of the Transferred Assets so that they can describe to IncuMed the work Otonomy has performed related to the Transferred Assets (it being understood that Otonomy's employees will possess all material knowledge of the work Otonomy has performed related to the Transferred Assets).

(d) In the event Otonomy does not deliver a Put Notice to IncuMed during the Put Option Period pursuant to Section 6.1(a) or delivers a Put Cancellation Notice, then on the Put Expiration Time or the Put Cancellation Time, as applicable, (x) the amounts remaining in the Escrow Fund, if any, shall be released to IncuMed, subject to Section 7.6(b), (y) the Reconveyance

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Documents signed by Otonomy shall be released to Otonomy, and (z) the Reconveyance Documents signed by IncuMed shall be released to IncuMed.

ARTICLE VII

INDEMNIFICATION

SECTION 7.1 **Indemnification by IncuMed.** IncuMed shall indemnify and hold harmless Otonomy, its Affiliates and their respective officers, directors, agents and employees (collectively, the "**Otonomy Indemnified Parties")** from and against any and all claims, demands, damages, losses, costs, liabilities and expenses (including reasonable attorneys', expert witnesses' and consultants' fees) (collectively, "**Losses**") arising out of or related to any (a) breach by IncuMed of any representation or warranty set forth in this Agreement, (b) breach by IncuMed of any covenant set forth in this Agreement, except in the case of this clause (b) for (i) claims arising due to the negligence, intentional misconduct, or breach of this Agreement by Otonomy or its Affiliates and (ii) claims for which Otonomy is obligated to indemnify IncuMed Indemnified Parties pursuant to Section 7.2, (c) Retained Liabilities, or (d) fraud committed by IncuMed or its officers, directors or employees in connection with this Agreement ("**IncuMed Fraud")**.

SECTION 7.2 **Indemnification by Otonomy.** Otonomy shall indemnify and hold harmless IncuMed, its Affiliates and their respective officers, directors, agents, and employees (collectively, the "**IncuMed Indemnified Parties")** from and against any and all Losses arising out of or related to any (a) breach by Otonomy of any representation or warranty set forth in this Agreement, (b) breach by Otonomy of any covenant set forth in this Agreement (for the avoidance of any doubt, this includes but is not limited to any breach of any of the Put Covenants stated in Section 5.5), (c) claim brought against an IncuMed Indemnified Party by a third party arising from the use (including use in clinical trials), manufacture, marketing, promotion, sale, advertising, transportation, handling, storage, or distribution of an Active Agent or products containing an Active Agent by or on behalf of Otonomy, including any claims with respect to a defect or alleged defect in the labeling of a Product or any defect or alleged defect in the design or formulation of a Product, except in each case of clause (b) or this clause (c), for (i) claims arising due to the negligence, intentional misconduct, or breach of this Agreement by IncuMed or its Affiliates, and (ii) claims for which IncuMed is obligated to indemnify Otonomy Indemnified Parties pursuant to Section 7.1, (d) in the event Otonomy exercises the Put Option, all liabilities and obligations incurred by Otonomy in its use of the Transferred Assets between the Effective Time and the Put Date, or (e) fraud committed by Otonomy or its officers, directors or employees in connection with this Agreement ("**Otonomy Fraud")**.

SECTION 7.3 **Third Party Claims Indemnification Procedures**

(a) In the event that a party entitled to indemnification under this Agreement ("**Indemnified Party")** incurs any Loss related to a third party ("**Third Party Claim")** for which an indemnifying party under this Agreement (an "**Indemnifying Party")** may have liability to any Indemnified Party hereunder, such Indemnified Party shall promptly notify the Indemnifying Party in writing of such Third Party Claim, the amount or the estimated amount of damages sought

thereunder to the extent then ascertainable (which estimate shall not be conclusive of the final amount of such Third Party Claim), any other remedy sought thereunder, any relevant time constraints relating thereto and, to the extent practicable, any other material details pertaining thereto (a "**Claim Notice**"); provided, however, that the failure timely to give a Claim Notice shall not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that such failure has a material prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such Third Party Claim. The Indemnifying Party shall have 30 days (or such lesser number of days set forth in the Claim Notice as may be required by court proceeding in the event of a litigated matter) after receipt of the Claim Notice (the "**Notice Period**") to notify the Indemnified Party that it desires to defend the Indemnified Party against such Third Party Claim; it being understood that by assuming the defense of a Third Party Claim the Indemnifying Party shall conclusively acknowledge its obligation to indemnify the Indemnified Party with respect to such Third Party Claim.

(b) In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against a Third Party Claim and diligently begins such defense, the Indemnifying Party shall, at its sole expense, have the right to defend the Indemnified Party by appropriate proceedings and shall have the sole power to direct and control such defense with counsel reasonably satisfactory to the Indemnified Party. Once the Indemnifying Party has duly assumed the defense of a Third Party Claim, the Indemnified Party shall have the right, but not the obligation, to participate in any such defense and to employ separate counsel of its choosing. The Indemnified Party shall participate in any such defense at its expense unless the Indemnifying Party and the Indemnified Party are both named parties to the proceedings and the Indemnified Party shall have reasonably concluded that representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any Third Party Claim on a basis that would result in (i) the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party or any of its Affiliates, or adversely affect the value of the Transferred Assets, (ii) a finding or admission of a violation of Law or violation of the rights of any Person by the Indemnified Party or any of its Affiliates, (iii) a finding or admission that would have an adverse effect on other claims made or threatened against the Indemnified Party or any of its Affiliates, or (iv) any monetary liability of the Indemnified Party that will not be promptly paid or reimbursed by the Indemnifying Party.

(c) If the Indemnifying Party (i) elects not to defend the Indemnified Party against a Third Party Claim, whether by not giving the Indemnified Party timely notice of its desire to so defend or otherwise after assuming the defense of a Third Party Claim, or (ii) fails to take reasonable steps necessary to defend diligently such Third Party Claim, the Indemnified Party shall have the right but not the obligation to assume its own defense; it being understood that the Indemnified Party's right to indemnification for a Third Party Claim shall not be adversely affected by the defense.

(d) The Indemnified Party and the Indemnifying Party shall cooperate in order to ensure the proper and adequate defense of a Third Party Claim, including by keeping the other Party fully informed of the status of such Third Party Claim and any related proceedings at all stages thereof where such Party is not represented by its own counsel, and by providing access to each other's relevant business records and other documents, and employees; it being understood that the reasonable costs and expenses of the Indemnified Party relating thereto shall be Losses.

(e) The Indemnified Party and the Indemnifying Party shall use their commercially reasonable efforts to avoid production of Confidential Information (consistent with applicable Law), and to cause all communications among employees, counsel and others representing any Party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges.

SECTION 7.4 **Survival**. The representations and warranties of IncuMed in Exhibit B to this Agreement shall survive until the earlier of (i) the Put Expiration Time, if the Put Option is not exercised, and (ii) the Put Date, if the Put Option is exercised, except the representations and warranties in Section 1 (Organization) and Section 2 (Authority) of Exhibit B hereof will not terminate. All representations and warranties of Otonomy in Exhibit C-1 to this Agreement shall survive until the earlier of (i) the Put Expiration Time, if the Put Option is not exercised, and (ii) the Put Date, if the Put Option is exercised, except the representations and warranties in Section 1 (Organization) and Section 2 (Authority) of Exhibit C-1 will not terminate. If Otonomy exercises the Put Option, all representations and warranties of Otonomy in Exhibit C-2 to this Agreement shall survive for 12 months from the Put Date, except the representations and warranties in Section 1 (Organization) and Section 2 (Authority) of Exhibit C-2 will not terminate. In the event a Party asserts any claim for indemnification of Losses based on a breach by the other Party of any representation or warranty prior to termination as set forth in the preceding sentence, such claim shall survive until such time as such claim is fully and finally resolved. All covenants and agreements of the Parties contained in this Agreement, or in any instrument, certificate, opinion, or other writing provided for in it, which by their terms contemplate actions or impose obligations following the Closing will survive the Closing and remain in full force and effect in accordance with their terms.

SECTION 7.5 **Limitations**.

(a) Notwithstanding anything to the contrary contained in this Agreement, no Person shall be liable under this Article VII for any consequential, punitive, special, incidental or indirect damages, including lost profits, except to the extent awarded by a court of competent jurisdiction in connection with a Third Party Claim.

(b) No claim for Losses by a Party for indemnification based on a breach by the other Party of a representation or warranty may be made until the amount of all such Losses exceeds $10,000 for a single claim or $25,000 in the aggregate (the "**Deductible**"), in which event the Indemnifying Party shall only be liable for Losses in excess of the Deductible.

(c) The maximum aggregate amount that the Otonomy Indemnified Parties may recover from IncuMed with respect to claims under Section 7.1(a) shall be 20% of the Aggregate Purchase Price; *provided*, *however*, that such cap on indemnification shall not apply to claims under Section 7.1(a) due to breach of any representation or warranty contained in Section 1 (Organization), Section 2 (Authority) or Section 7 (Intellectual Property) of Exhibit B.

(d) The maximum aggregate amount that IncuMed Indemnified Parties may recover from Otonomy with respect to claims under Section 7.2(a) shall be 20% of the Aggregate Purchase Price; *provided*, *however*, that (i) such cap on indemnification shall not apply to claims under Section 7.2(a) due to breach of any representation or warranty contained in Section 1 (Organization) or Section 2 (Authority) of each of Exhibit C-1 and Exhibit C-2.

SECTION 7.6 Obligation to Recover Exclusively from Escrow or Setoff Losses.

(a) If an Otonomy Indemnified Party has made a claim for indemnification for a specified amount with respect to any Loss in accordance with this Article VII, and (i) IncuMed shall have agreed to the amount claimed by the Otonomy Indemnified Party for indemnification with respect to such Loss in accordance with the procedures set forth in this Article VII or (ii) IncuMed shall have delivered notice of its disagreement as to the amount of any indemnification requested by the Otonomy Indemnified Party and either (A) IncuMed and the Otonomy Indemnified Party shall have, subsequent to the giving of such notice, mutually agreed that IncuMed is obligated to indemnify the Otonomy Indemnified Party for a specified amount or (B) a final nonappealable judgment shall have been rendered in the Otonomy Indemnified Party's favor for a specified amount by the court or arbitrator having jurisdiction over the matters relating to such claim by the Otonomy Indemnified Party for indemnification from IncuMed, then each such specified amount shall constitute an "**Off-Setting Amount**."

(b) During the period starting at the Effective Time and ending on the earlier of (i) the Put Expiration Time, if the Put Option is not exercised, (ii) the Put Cancellation Time, if the Put Option is cancelled, and (iii) the Put Date, if the Put Option is exercised, Otonomy shall recover any Off-Setting Amount from the Escrow Fund, it being understood that if Otonomy does not exercise the Put Option before the Put Expiration Time, then, subject to the following sentence, the Escrow Fund shall promptly be paid by the Escrow Agent to IncuMed. Notwithstanding anything herein to the contrary, if at the time the Escrow Fund would otherwise be released to IncuMed, Otonomy has made a good-faith claim for indemnification that has not yet been resolved, then such portion of the Escrow Fund as may be necessary, in the reasonable good faith judgment of Otonomy, to satisfy any then unresolved or unsatisfied claim for indemnification shall remain in the Escrow Fund until such claim for indemnification has been resolved or satisfied.

(c) If, at the time of any Milestone Payment pursuant to Section 2.3, there are any Off-Setting Amounts that have not been paid to Otonomy from the Escrow Fund, then, such Off-Setting Amounts shall be deducted from the portion of the Milestone Payment otherwise payable to IncuMed under Section 2.3 of this Agreement. If at the time a Milestone Payment is due, Otonomy has made a good-faith claim for indemnification that has not yet been resolved, then Otonomy shall (a) pay a portion of such Milestone Payment equal to the amount Otonomy claims in good faith is

necessary to satisfy such indemnification claim into an escrow account administered by a mutually agreeable nationally recognized, third party escrow company, with the fees of such escrow to be split evenly by Otonomy and IncuMed and (b) pay the remainder of such Milestone Payment, if any, to IncuMed.

(d) Notwithstanding anything herein to the contrary, the Parties agree that, except in cases of IncuMed Fraud, the right to recover from the Escrow Fund, the right to make a deduction from a Milestone Payment, and the right to seek specific performance and other injunctive relief shall be the exclusive remedies available to any Otonomy Indemnified Party under this Agreement (for the avoidance of doubt, the Parties agree that any specific performance or other injunctive relief shall exclude in all respects any payment of money damages). For the avoidance of doubt, except in the case of IncuMed Fraud, IncuMed shall have no liability whatsoever to Otonomy or any Otonomy Indemnified Party other than claims that Otonomy or any Otonomy Indemnified Party may make for an Off-Setting Amount against the Escrow Fund or against a Milestone Payment. Each Party acknowledges and agrees that, in the absence of fraud, its sole and exclusive remedy with respect to any and all claims relating to arising out of any representation, warranty, covenant or agreement made by the other Party pursuant to this Agreement shall be pursuant to the indemnification provisions of this Article VII. The Parties acknowledge that in the event of a breach of this Agreement, money damages may be inadequate and the non-breaching Party may have no adequate remedy at law. Accordingly, the Parties agree that the non-breaching Party shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and the breaching Party's obligations hereunder not only by an action or actions for damages pursuant to the indemnification provisions of this Article VII, but also by an action or actions for specific performance or other injunctive relief, and nothing set forth in this Agreement shall be deemed to prohibit or limit either Party's right at any time to seek such relief for any failure of the other Party to perform any covenant or agreement contained herein.

SECTION 7.7 **Tax Treatment**. Any payment under this Article VII of this Agreement shall be treated by the Parties for U.S. federal, state, local and non-U.S. income tax purposes as a purchase price adjustment unless otherwise required by applicable law.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1 **Notices**. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, via email, or by commercial delivery service to the Parties hereto at the following address (or at such other address for a Party as shall be specified by like notice):

(i) if to Otonomy, to:

6275 Nancy Ridge Drive, Suite 100
San Diego, CA 92121
Attention: Chief Business Officer
Telephone No.: (858) 242-5200
Email: [***]

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attention: Ken Clark
Telephone No.: (650) 493-9300
Email: [***]

(ii) if to IncuMed, to:

12744 San Fernando Rd.
Sylmar, CA 91342
Attention: Controller
Telephone No.: (818) 833-5309
Email: [***]

with a copy (which shall not constitute notice) to:

IncuMed LLC
3201 Barhite Street
Pasadena, CA 91107
Attention: President
Telephone: (626) 221-0390
Email: [***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

SECTION 8.2 Interpretation. When a reference is made in this Agreement to Articles, Sections or Exhibits, such reference shall be to an Article or Section of, or an Exhibit to this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The phrases "provided to," "furnished to," and phrases of similar import when used herein, unless the context otherwise requires, shall mean that a true, correct and complete paper copy of the information or material referred to has been provided to the party to whom such information or material is to be provided. Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; and (iii) the terms "hereof," "herein," "hereunder" and derivative or similar words refer to this entire Agreement.

SECTION 8.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties hereto and delivered to the other Parties hereto; it being understood that all Parties hereto need not sign the same counterpart.

SECTION 8.4 Entire Agreement; Nonassignability; Parties in Interest. This Agreement, including all the Exhibits attached hereto, and the other Transaction Documents, (a) constitute the entire agreement among the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Parties hereto with respect to the subject matter hereof, (b) are not intended to confer, and shall not be construed as conferring, upon any Person other than the Parties hereto any rights or remedies hereunder, and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided herein.

SECTION 8.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the Parties hereto without the prior written consent of the other Parties hereto, and any such assignment without such prior written consent shall be null and void, except that (i) a Party may assign this Agreement in connection with a change in control of such Party without the prior consent of the other Party as long as the acquiring party executes and delivers to the other Party a written agreement to be bound by the terms of this Agreement and (ii) a Party may assign this Agreement to any Affiliate without the prior consent of the other Party, so long as such assignee executes and delivers to the other party a written agreement to be bound by the terms of this Agreement. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties hereto and their permitted successors and assigns. Without limiting in any manner whatsoever Otonomy's obligation to pay to IncuMed any Milestone Payments accruing as a result of its own activities or the activities of any of its licensees, Otonomy agrees that it will not grant any party (other than a contract research organization or contract manufacturing organization) any license or other rights that include the right to make, use, or sell any Product unless the party receiving such license or rights expressly agrees in writing to pay to IncuMed any of the Milestone

Payments, in each case to the extent that such Milestone Payments become due as a result of such party's activities and have not been previously paid by Otonomy. For the avoidance of doubt, nothing in this Section 8.5 shall be deemed to allow IncuMed to collect the same Milestone Payment twice (i.e., from both Otonomy and from Otonomy's licensee).

SECTION 8.6 **Severability**. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably to effect the intent of the Parties hereto. The Parties hereto shall use all reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

SECTION 8.7 **Remedies Cumulative**. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party hereto of any one remedy shall not preclude the exercise of any other remedy and nothing in this Agreement shall be deemed a waiver by any Party of any right to specific performance or injunctive relief.

SECTION 8.8 **Delays or Omissions**. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any Party hereto upon any breach or default of another Party shall impair any such right, power or remedy of such non-defaulting Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

SECTION 8.9 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to such state's principles of conflicts of law.

SECTION 8.10 **Consent to Jurisdiction**. With respect to any matter not required to be arbitrated pursuant to the terms of Section 8.11 below, the Parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of California and the Federal courts of the United States of America located within the County of Orange in the State of California, in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the transactions contemplated hereby and thereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such

courts, and the Parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a California State or Federal court. The Parties hereby consent to and grant any such court jurisdiction over the person of such Parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.1 or in such other manner as may be permitted by applicable Law, shall be valid and sufficient service thereof. With respect to any particular action, suit or proceeding, venue shall lie solely in the County of Orange, California.

SECTION 8.11 **Dispute Resolution**. Except as otherwise provided in this Agreement, all claims, controversies, differences or disputes between or among any of the Parties hereto arising from or relating to this Agreement or the Transaction Documents, including claims by one Party that another Party or Parties hereto have failed to perform any of their obligations hereunder or thereunder (collectively, "**Agreement Disputes**"), shall be resolved as follows:

(a) The Parties recognize that disputes as to certain matters may from time to time arise which relate to either Party's rights or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of such disputes in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth below if and when such a dispute arises between the Parties.

(b) If any dispute arises between the Parties relating to the interpretation, breach or performance of this Agreement or the grounds for the termination thereof, and the Parties cannot resolve the dispute within thirty (30) days of a written request by either Party to the other Party, the Parties agree to hold a meeting, attended by executive level personnel of each Party, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within sixty (60) days after such written request, the Parties have not succeeded in negotiating a resolution of the dispute, such dispute shall be submitted to final and binding arbitration under the then current Streamlined Arbitration Procedures of JAMS (regardless of value). The arbitration proceedings shall be held in JAMS' Orange California office before a single arbitrator. Each Party shall split equally the costs of the arbitrator and initially bear its own costs and legal fees associated with such arbitration, it being understood that all such costs and legal fees shall be considered Losses of the prevailing party subject to the indemnification provisions of this Agreement. The decision of the arbitrator shall be final and binding on the Parties. The arbitrator shall prepare and deliver to the Parties a written, reasoned opinion conferring its decision. Judgment on the award so rendered may be entered in any court having competent jurisdiction thereof and shall be enforceable under the Federal Arbitration Act.

SECTION 8.12 **Rules of Construction**. The Parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, and each Exhibit attached hereto, the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the Party drafting such agreement or document.

SECTION 8.13 Amendment and Modification. This Agreement may not be modified, amended, altered or supplemented except by the execution and delivery of a written agreement executed by Otonomy and IncuMed.

SECTION 8.14 Specific Performance; Injunctive Relief. It is understood and agreed that, notwithstanding any other provision of this Agreement, there will be no adequate remedy at law for a violation of any of the covenants or agreements set forth herein. Therefore, it is agreed that, in addition to any other remedies that may be available to a Party upon any such violation, such Party shall have the right to enforce such covenants and agreements by specific performance, injunctive relief or by any other means available to such Party at law or in equity and each Party hereby waives any and all defenses which could exist in its favor in connection with such enforcement.

(The remainder of this page is intentionally left blank.)

In witness whereof, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

OTONOMY, INC.

By: /s/ David A. Weber, PhD

David A. Weber, PhD
Name (typed or printed)

President & Chief Executive Officer
Title

INCUMED, LLC

By: /s/ Jeff Goldberg

Jeff Goldberg
Name (typed or printed)

President
Title

EXHIBIT A

Definitions and References

"**Action**" shall mean any claim, action, suit, arbitration, proceeding or investigation by or before any Governmental Authority.

"**Active Agent**" shall mean Gacyclidine, as well as each of the separate diasteriomers comprising Gacyclidine, together with all salt forms, solvates and esters of any of the foregoing.

"**Affiliate**" shall mean, with respect to any specified Person, any corporation or other entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. As used in this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") shall mean: (a) to possess, directly or indirectly, the power to affirmatively direct the management and policies of such corporation or other entity, whether through ownership of voting stock or other ownership interest or by contract relating to voting rights or corporate governance; or (b) direct or indirect beneficial ownership of at least fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign entity in a particular jurisdiction) of the voting stock or other ownership interest in such corporation or other entity.

"**Aggregate Purchase Price**" shall mean $5,475,000.

"**Agreement**" shall mean this Asset Transfer Agreement dated as of April 30, 2013 (including the Exhibits hereto) and all amendments hereto made in accordance with the provisions of Section 8.13.

"**Allocation**" shall have the meaning specified in Section 2.3(c).

"**Assignment and Assumption Agreement**" shall mean the Assignment and Assumption Agreement in the form attached hereto as Exhibit D-1.

"**Bill of Sale**" shall mean the Bill of Sale in the form attached hereto as Exhibit E-1.

"**Books and Records**" shall mean all books, records, files, documents, data, information and correspondence, including: all records with respect to supply sources; all pre-clinical, clinical, research and process development data, results and reports relating to products or of any materials used in the research, development, or manufacture of products, including all raw data relating to clinical trials of products, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof) to analyze clinical data; all research data, statistical programs (if any) used for research or development; all records, including vendor and supplier lists, manufacturing records, sampling records, standard operating procedures and batch records, related to manufacturing processes; all laboratory notebooks relating to products or relating to their biological, physiological, mechanical or other properties or compositions; all adverse

experience reports and files related thereto (including source documentation) and all periodic adverse experience reports and all data contained in electronic databases relating to periodic adverse experience reports; all analytical and quality control data; and all correspondence, minutes or other communications with the FDA or Foreign Regulatory Authorities.

"**Business Day**" shall mean any day other than a Saturday, a Sunday, or any other day on which commercial banks in San Francisco, California are authorized or required to be closed for business.

"**Charter Documents**" shall mean, with respect to a business entity, the certificate of incorporation, bylaws or other similar governing instruments and organizational documents of such entity.

"**Closing**" shall have the meaning specified in Section 2.4.

"**Closing Date"** shall have the meaning specified in Section 2.4.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Confidential Information**" shall mean the IncuMed Confidential Information or the Otonomy Confidential Information, as applicable.

"**Contract**" shall mean any and all legally binding commitments, contracts, purchase orders, sales orders, leases, subleases, licenses, easements, commitments, arrangements, undertakings, evidence of indebtedness, security or pledge agreements or other agreements.

"**Control**" (including any variations such as "**Controlled**" and "**Controlling**"), in the context of intellectual property rights of a Party, shall mean that such Party or its Subsidiary owns or possesses rights to intellectual property sufficient to grant the applicable license under this Agreement, without violating the terms of any agreement with a Third Party pursuant to which such intellectual property was initially acquired or created by such Party or its Subsidiary.

"**Copyrights**" shall mean all works of authorship, copyrights, copyright registrations and applications therefor, including all moral rights and any other rights corresponding thereto anywhere in the world.

"**Deductible Expenses**" shall mean to the extent actually incurred or allowed with respect to any sale of a Product: (i) normal and customary trade, cash or quantity discounts, including any volume discount, paid or credited to a third party; rebates; charge-backs; retroactive price adjustments; and administrative fees (including U.S. Medicaid and Medicare programs or equivalents and other private or government sponsored rebates and administrative fees paid or credited to purchasing groups in relation to Products); (ii) import, export, sales, use, excise and other consumption taxes and custom duties or tariffs, to the extent and up to the amount mentioned in that respect on the invoice, and any other governmental taxes (other than income taxes) or charges imposed upon the importation, use or sale of a Product; (iii) any charges for freight, postage,

shipping, security or special handling or insurance; (iv) returns; and (v) reasonable provisions for allowance for uncollectible amounts.

"**Disclosing Party**" shall have the meaning specified in Section 5.5(a).

"**Disclosure Schedule**" shall have the meaning specified in the first paragraph of Article III.

"**Durect Intellectual Property**" shall mean the Durect Know-How and Durect Patents.

"**Durect Know-How**" shall mean any and all Know-How licensed or sublicensed to IncuMed by Durect under the Durect License Agreement and included in the License Agreement attached hereto as Exhibit H.

"**Durect Patents**" shall mean any and all Patent Rights licensed or sublicensed to IncuMed by Durect under the Durect License Agreement and included in the License Agreement attached hereto as Exhibit H.

"**Durect License Agreement**" means that certain License and Commercialization Agreement, between IncuMed (as assignee of NeuroSystec) and Durect Corporation ("**Durect**"), dated May 13, 2004, as amended to the date hereof.

"**Effective Time**" shall mean the time at which the Closing is consummated.

"**EMA**" shall mean the European Medicines Agency.

"**Encumbrance**" shall mean any security interest, pledge, mortgage, lien (including, without limitation, environmental and Tax liens), charge, option, right of first refusal, or encumbrance.

"**Environmental Law**" shall mean any Law and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, judgment, stipulation, injunction, permit, authorization, policy, opinion or agency requirement, in each case having the force and effect of Law, relating to the pollution, protection, investigation or restoration of the environment or health and safety as affected by the environment or natural resources, including those relating to the use, handling, presence, transportation, treatment, storage, disposal, release, threatened release or discharge of Hazardous Materials or noise, odor, wetlands, pollution or contamination.

"**ERISA Affiliate**" shall mean any other Person under common control with IncuMed within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

"**Escrow Agent**" shall mean JP Morgan.

"**Escrow Agreement**" shall mean that certain Escrow Agreement between Otonomy, IncuMed and the Escrow Agent, dated as of the date hereof, in the form attached hereto as Exhibit I.

"**Escrow Amount**" shall mean $[***].

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

"**Escrow Fund**" means the funds held by the Escrow Agent in accordance with this Agreement and the Escrow Agreement.

"**FDA**" shall mean the United States Food and Drug Administration and any successor agency thereto.

"**Foreign Regulatory Authority**" shall mean any agency, commission, official or other instrumentality of any foreign country or other foreign political subdivision that performs a function for such country or political subdivision similar to the function performed by the FDA for the United States.

"**Gacyclidine**" shall mean [***].

"**Governmental Authority**" shall mean any national, federal, state, municipal, local or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

"**Governmental Order**" shall mean any order, writ, judgment, injunction, decree, stipulation, or award entered by or with any Governmental Authority.

"**Hazardous Materials**" shall mean (a) any petroleum, petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls or (b) any chemical, material or other substance defined or regulated as toxic or hazardous or as a pollutant or contaminant or waste under any Environmental Law.

"**IncuMed Confidential Information**" means any proprietary information, technical data, trade secrets or Know-How, including, but not limited to, research, business plans or models, product plans, products, developments, inventions, processes, formulas, technology, designs, marketing, finances or other business information, disclosed by IncuMed to Otonomy either directly or indirectly in writing or orally. Notwithstanding the foregoing, the Transferred Assets shall not be deemed included within the IncuMed Confidential Information unless and until the Put Option is exercised by Otonomy, in which event the Transferred Assets shall be included in the IncuMed Confidential Information effective as of the Put Date.

"**IncuMed**" shall have the meaning specified in the first paragraph of this Agreement.

"**IncuMed Fraud**" shall have the meaning specified in Section 7.1.

"**IncuMed Indemnified Parties**" shall have the meaning specified in Section 7.1.

"**Indemnified Parties**" shall have the meaning specified in Section 7.1.

"**Intellectual Property**" shall mean, collectively, Know-How and Intellectual Property Rights.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

"**Intellectual Property Rights**" shall mean any or all of the following and all statutory or common law rights throughout the world in, arising out of or associated with any or all of the following: (a) Patent Rights, (b) Trademarks, (c) Copyrights, (d) the protection of trade and industrial secrets and confidential information, (e) Internet Properties and (f) any similar, corresponding or equivalent rights to any of the foregoing, including priority rights and the right to enforce and recover remedies for any of the foregoing.

"**Internet Properties**" shall mean all Uniform Resource Locators, world wide web addresses, sites and domain names and applications and registrations therefor anywhere in the world.

"**Know-How**" shall mean any information related to the research, manufacture, preparation, development or commercialization of a product or technology, including, without limitation, product specifications, processes, product designs, plans, trade secrets, ideas, concepts, inventions, formulae, chemical, pharmacological, toxicological, pharmaceutical, physical, analytical, stability, safety, quality assurance, quality control and clinical data, technical information, research information and other confidential or proprietary technical and business information, whether or not embodied in any documentation or other tangible materials. If Know-How is embodied in tangible materials, including biological materials, chemical compounds or the like, such tangible materials shall be deemed included within the Know-How.

"**Knowledge**" shall mean the actual knowledge of Laura Bishop as of the Effective Time without any duty of investigation, it being understood and agreed that (i) Laura Bishop has not reviewed the Transferred Books and Records and (ii) Laura Bishop has performed no research related to the Transferred Patents.

"**Law**" shall mean any national, federal, state, municipal or local or other statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law.

"**Liabilities**" shall mean any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including, without limitation, those arising under any Law (including, without limitation, any Environmental Law), Action or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking.

"**License Agreement**" shall mean the amended and restated Durect License Agreement in the form attached hereto as Exhibit H.

"**Losses**" shall have the meaning specified in Section 7.1.

"**Material Adverse Effect**" shall mean any event, change or effect that, when taken individually or together with all other events, changes and effects, is or is reasonably likely (a) to be materially adverse to the Transferred Assets or (b) to prevent or materially delay or impair the ability of IncuMed to perform its obligation under this Agreement.

"**NDA**" shall mean a New Drug Application, as more fully defined in 21 C.F.R. §314.50 et. seq.

"**Net Sales**" shall mean with respect to a Product the gross amount invoiced, recognized or otherwise charged by Otonomy, its Affiliates, and its sublicensees for the sale of Product, less Deductible Expenses with respect thereto. It is acknowledged that Net Sales shall not include amounts for Product furnished to a Third Party for use in clinical trials conducted to obtain regulatory approval and Product distributed as free goods. Furthermore, Net Sales shall not include amounts from sales or other dispositions of Product between Otonomy and any of its Affiliates or between Otonomy (or any of its Affiliates) and sublicensees, so long as such Affiliates or sublicensees are not the end user of such Product.

"**NeuroSystec**" shall mean NeuroSystec Corporation, a Delaware corporation.

"**Otonomy**" shall have the meaning specified in the first paragraph of this Agreement.

"**Otonomy Confidential Information**" means (i) any proprietary information, technical data, trade secrets or Know-How, including, but not limited to, research, business plans or models, product plans, products, developments, inventions, processes, formulas, technology, designs, marketing, finances or other business information, disclosed by Otonomy to IncuMed or any of its Affiliates either directly or indirectly in writing or orally and (ii) the Transferred Assets; provided however that the Transferred Assets shall cease to be included within the Otonomy Confidential Information effective as of the Put Date, if the Put Option is exercised by Otonomy.

"**Otonomy Fraud**" shall have the meaning specified in Section 7.2.

"**Otonomy Indemnified Parties**" shall have the meaning specified in Section 7.2.

"**Party**" and "**Parties**" shall have the meaning specified in the first paragraph of this Agreement.

"**Patent Assignment Agreement**" shall mean the Patent Assignment Agreement in the form attached hereto as Exhibit F-1.

"**Patent Rights"** shall mean all patents and patent applications (including provisional applications), and all patents issuing thereon (including utility, model and design patents and certificates of invention), together with all reissue patents, patents of addition, divisions, renewals, continuations, continuations-in-part, substitutions, extensions (including supplemental protection certificates), registrations, confirmations, re-examinations and foreign counterparts of any of the foregoing.

"**Person**" shall mean an individual, partnership, corporation, association, joint venture, trust, unincorporated organization or governmental entity (or any department, agency or political subdivision thereof).

"**Phase III Clinical Trial**" means a pivotal, double-blinded human clinical trial of a Product on patients, which trial is designed to: (a) establish that a Product is safe and efficacious for its intended use; (b) define warnings, precautions and adverse reactions that are associated with the Product in the dosage range to be prescribed; (c) satisfy the requirements for approval of an NDA by the FDA authorizing the marketing of the Product for its intended use; and (d) be consistent with 21 CFR § 312.21(c).

"**Pre-Closing Tax Period**" means any Tax period or portion thereof ending on or before the Closing Date.

"**Product**" shall mean any pharmaceutical formulation containing an Active Agent using any of the technology or intellectual property included within the Transferred Assets.

"**PTO**" shall mean the United States Patent and Trademark Office.

"**Put Option Assignment and Assumption Agreement**" shall mean the Assignment and Assumption Agreement in the form attached hereto as Exhibit D-2.

"**Put Option Bill of Sale**" shall mean the Bill of Sale in the form attached hereto as Exhibit E-2.

"**Put Option Patent Assignment Agreement**" shall mean the Patent Assignment Agreement in the form attached hereto as Exhibit F-2.

"**Put Option Period**" shall mean the period beginning on the Closing Date and ending at the earlier of (i) 5:00 p.m., Pacific Time, on the one year anniversary of the Closing Date (such time, the "**Put Expiration Time**") or (ii) immediately upon Otonomy's delivery to IncuMed of written notice that Otonomy has elected not to exercise the Put Option (such time of delivery the "**Put Cancellation Time**").

"**Reconveyance Documents**" shall have the meaning specified in Section 2.6(c).

"**Regulatory Approval**" shall mean all approvals, licenses, registrations or authorizations of all Governmental Authorities in a country for the manufacture, use, storage, import, marketing and sale of a Product in such country, including any pricing and reimbursement approvals.

"**Retained Liabilities**" shall have the meaning specified in Section 2.2.

"**Subsidiary**" shall mean any corporation or other entity, whether or not existing on the date hereof, in which Otonomy or IncuMed , as the context requires, directly or indirectly through subsidiaries or otherwise, beneficially owns at least fifty percent (50%) of either the equity interest or voting power of or in such corporation or other entity.

"**Tax**" or "**Taxes**" shall mean: (a) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes

based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (b) any liability for the payment of any amounts of the type described in clause (a) as a result of being or ceasing to be a member of an affiliated, consolidated, combined or unitary group for any period (including, without limitation, any liability under Treasury Regulation Section 1.1502-6 or any comparable provision of foreign, state or local law); and (c) any liability for the payment of any amounts of the type described in clause (a) or (b) as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts and including any liability for taxes of a predecessor entity.

"Tax Return" shall mean any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Third Party" means any Person other than Otonomy, IncuMed, Durect or their respective Affiliates.

"Trademarks" shall mean all trademarks, trade names, trade dress, service marks, logos and slogans, in each case whether registered or unregistered, and all Internet domain names, together with all registrations, applications and renewals thereof and the goodwill associated therewith anywhere in the world.

"Transaction Documents" shall mean, collectively, this Agreement, the Escrow Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the Patent Assignment Agreement and the License Agreement.

"Transferred Assets" shall have the meaning specified in Section 2.1.

"Transferred Books and Records" shall mean the originals of all the Books and Records (or copies where only copies are available) related to the Transferred Patent Rights, an Active Agent or Durect License Agreement that are (i) kept in the file cabinets identified by IncuMed, and (ii) stored in a digital form on IncuMed's server, together with any and all copyright and trade secret rights in such Books and Records and the information contained therein. Notwithstanding the foregoing, in no event will the Transferred Books and Records be deemed to include any inadvertently transferred files, records, or electronic documents related to devices, corporate records, or employees.

"Transferred Patent Rights" shall mean (a) the Patent Rights listed on Exhibit G, and (b) reissues, patents of addition, divisions, renewals, continuations, continuations-in-part, substitutions, extensions (including supplemental protection certificates), registrations, confirmations, re-examinations and foreign counterparts (in each case, if any) of the Patent Rights listed on Exhibit G.

EXHIBIT B

Representations and Warranties of IncuMed

1. Organization. IncuMed is duly organized, validly existing and in good standing under the laws of the State of Nevada and has all requisite power and authority to own its assets, including the Transferred Assets, and carry on its business as currently conducted by it. IncuMed is duly authorized to do business and are in good standing in each jurisdiction where the failure to be so qualified or in good standing would have a Material Adverse Effect.

2. Authority. IncuMed has all necessary corporate power and authority and have taken all actions necessary to enter into this Agreement, to execute and deliver the Transaction Documents to which it is a party and to carry out the transactions contemplated thereby. IncuMed has taken all action required by Law and its Charter Documents to duly authorize (i) the execution and delivery of the Transaction Documents to which it is a party and (ii) the consummation of the transactions contemplated thereby. No other corporate proceedings on the part of IncuMed are necessary to authorize the Transaction Documents and the transactions contemplated thereby. Each Transaction Document to which IncuMed is a party has been duly and validly executed and delivered by IncuMed and, when executed and delivered by Otonomy, shall constitute a legal, valid and binding obligation of IncuMed, enforceable against it in accordance with its terms. Notwithstanding the matters set forth in this Section 2, the enforceability of the Transaction Documents may be limited by principles of public policy and the rules of law governing specific performance, injunctive relief or other equitable remedies.

3. No Conflict. IncuMed's execution, delivery and performance of the Transaction Documents do not and will not (a) violate, conflict with or result in the breach of any provision of IncuMed's Charter Documents, (b) conflict with or violate any Law or Governmental Order applicable to IncuMed or any of the Transferred Assets, (c) conflict with, result in any breach of, constitute a default under or require any consent under any Contract that is binding on IncuMed, or (d) result in the creation of any Encumbrance on any of the Transferred Assets.

4. Governmental Consents and Approvals. The execution, delivery and performance of the Transaction Documents by IncuMed do not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to any Governmental Authority.

5. Litigation. There are no Actions by or against IncuMed or, to the Knowledge of IncuMed, any of its Affiliates relating to the Transferred Assets which are currently pending, or, to the Knowledge of IncuMed, threatened to be brought, before any Governmental Authority. Neither IncuMed, nor any of its Affiliates nor any of the Transferred Assets is subject to any Governmental Order (nor, to the Knowledge of IncuMed, are there any such Governmental Orders threatened to be imposed by any Governmental Authority) which has had or could have a Material Adverse Effect.

6. Contracts. Section 6(a) of the Disclosure Schedule sets forth a complete and accurate list of all Contracts, other than the Durect License, affecting the Transferred Assets to which IncuMed is a party or otherwise bound.

7. Intellectual Property.

(a) Transfers. Neither IncuMed nor its Affiliates has transferred ownership of, or granted any license of or right to use, or authorized the retention of any rights to use any Transferred Patent Rights to any other Person.

(b) Validity. Each Patent Right within the Transferred Patent Rights is subsisting, and all necessary registration, maintenance and renewal fees in connection with such Transferred Patent Rights that are required to be paid prior to the date of this Agreement have been paid, and all necessary documents and certificates in connection with such Transferred Patent Rights that are required to be filed prior to the date of this Agreement have been filed with the relevant Governmental Authorities for the purposes of perfecting, prosecuting and maintaining such Transferred Patent Rights. To the Knowledge of IncuMed, there are no actions that must be taken by IncuMed or its Affiliates within ninety (90) days of the date of this Agreement, including the payment of any registration, maintenance or renewal fees or the filing of any responses to PTO office actions (or equivalent actions of any equivalent authority anywhere in the world), for the purposes of obtaining, maintaining, perfecting or preserving or renewing any Transferred Patent Right.

(c) Enforceability. IncuMed (i) has not, nor, to the Knowledge of IncuMed, have any of its Affiliates, received written notice from any Person asserting that the Transferred Patent Rights or Durect Patent Rights are invalid or unenforceable and (ii) has no Knowledge of any act or omission by NeuroSystec or its counsel with respect to the filing or prosecution of the Transferred Patent Rights that would render any issued Patent Rights within the Transferred Patent Rights invalid or unenforceable, including without limitation, Knowledge of any failure to appropriately name in any such Patent Rights all inventors of the inventions claimed in such Patent Rights or to timely make any required filing, response or payment with respect to such Patent Rights. In addition, neither IncuMed nor, to the Knowledge of IncuMed, its Affiliates has entered into any agreement with any Person not to assert any charge of infringement of the Transferred Patent Rights or Durect Patent Rights against such Person, which would impact Otonomy's ability to enforce the Transferred Patent Rights or Durect Patent Rights after the Closing.

(d) Rights from Third Parties. One of IncuMed's existing or prior Affiliates has a written Contract with each of its prior employees or contractors pursuant to which IncuMed or its Affiliate (as applicable) has obtained ownership of, and is the exclusive owner of the Transferred Patent Rights.

(e) No Actions. Neither IncuMed nor to the Knowledge of IncuMed, its Affiliates, have received written notice from any Person claiming that the research, development, Regulatory Approval, manufacture, distribution, marketing, sale, promotion or other commercialization of Product as carried out by IncuMed or its Affiliates infringes or misappropriates

any Intellectual Property of any Person or constitutes unfair competition or trade practices under the Laws of any jurisdiction. There are no pending or, to the Knowledge of IncuMed, threatened claims (including interferences, oppositions and similar proceedings) challenging the Transferred Patent Rights or the Durect Intellectual Property nor has IncuMed or, to IncuMed's Knowledge, its Affiliates received any "offer to license" letters from any Person inviting IncuMed or its Affiliates to license any Third Party Intellectual Property purported to cover Product.

(f) Disclosure. To Incumed's Knowledge, the file cabinets and the server in the possession of IncuMed contain all material Books and Records related to the Transferred Assets that were identified by NeuroSystec, including but not limited to Books and Records related to (i) all Patent Rights that are/were owned or in-licensed by NeuroSystec as of, or at any time prior to, the Effective Date, that claim or disclose gacyclidine or any uses thereof; and (ii) all INDs and other regulatory filings, governmental permits, licenses, registrations, approvals and other submissions or authorizations relating to the Products that were made, filed or received by NeuroSystec, licensees, contractors, suppliers, successors, assigns and others acting under authority of NeuroSystec.

8. Encumbrances. Each item of Transferred Assets are free and clear of all Encumbrances and IncuMed is the exclusive owner, and has good title against all others, of all right, title and interest in, to and under all Transferred Assets.

9. No Other Representations or Warranties. Except for the representations and warranties contained in this Exhibit B, neither IncuMed nor any other Person makes any other express or implied representation or warranty on behalf of IncuMed.

EXHIBIT C-1

Representations and Warranties of Otonomy

1. Organization. Otonomy is duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own its assets and carry on its business as currently conducted by it.

2. Authority. Otonomy has all necessary corporate power and authority and has taken all actions necessary to enter into this Agreement, to execute and deliver the Transaction Documents to which it is a party and to carry out the transactions contemplated thereby. The board of directors of Otonomy has taken all action required by Law and the Charter Documents of Otonomy to be taken by it to duly authorize (i) the execution and delivery of the Transaction Documents to which it is a party and (ii) the consummation of the transactions contemplated thereby. No other corporate proceedings on the part of Otonomy are necessary to authorize the Transaction Documents and the transactions contemplated thereby. Each Transaction Document to which Otonomy is a party has been duly and validly executed and delivered by Otonomy and, when executed and delivered by IncuMed shall constitute a legal, valid and binding obligation of Otonomy, enforceable against it in accordance with its terms. Notwithstanding the matters set forth in this Section 2, the enforceability of the Transaction Documents may be limited by principles of public policy and the rules of law governing specific performance, injunctive relief or other equitable remedies.

3. No Conflict. Otonomy's execution, delivery and performance of the Transaction Documents do not and will not (a) violate, conflict with or result in the breach of any provision of Otonomy's Charter Documents, (b) conflict with or violate any Law or Governmental Order applicable to Otonomy or (c) conflict with, result in any breach of, constitute a default under or require any consent under any Contract that is binding on Otonomy.

4. No Other Representations or Warranties. Except for the representations and warranties contained in this Exhibit C-1, neither Otonomy nor any other Person makes any other express or implied representation or warranty on behalf of Otonomy.

EXHIBIT C-2

Representations and Warranties of Otonomy

1. Organization. Otonomy is duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own its assets and carry on its business as currently conducted by it.

2. Authority. Otonomy has all necessary corporate power and authority and has taken all actions necessary to execute and deliver the Reconveyance Documents to which it is a party and to carry out the transactions contemplated thereby. The board of directors of Otonomy has taken all action required by Law and the Charter Documents of Otonomy to be taken by it to duly authorize (i) the execution and delivery of the Reconveyance Documents to which it is a party and (ii) the consummation of the transactions contemplated thereby. No other corporate proceedings on the part of Otonomy are necessary to authorize the Reconveyance Documents and the transactions contemplated thereby. Each Reconveyance Document to which Otonomy is a party has been duly and validly executed and delivered by Otonomy and, if IncuMed's execution is necessary, when executed and delivered by IncuMed shall constitute a legal, valid and binding obligation of Otonomy, enforceable against it in accordance with its terms. Notwithstanding the matters set forth in this Section 2, the enforceability of the Reconveyance Documents may be limited by principles of public policy and the rules of law governing specific performance, injunctive relief or other equitable remedies.

3. No Conflict. Otonomy's execution, delivery and performance of the Reconveyance Documents do not and will not (a) violate, conflict with or result in the breach of any provision of Otonomy's Charter Documents, (b) conflict with or violate any Law or Governmental Order applicable to Otonomy, (c) conflict with, result in any breach of, constitute a default under or require any consent under any Contract that is binding on Otonomy or (d) result in the creation of any Encumbrance on any of the Transferred Assets.

4. Encumbrances. Each item of Transferred Assets are free and clear of all Encumbrances and Otonomy is the exclusive owner, and has good title against all others, of all right, title and interest in, to and under all Transferred Assets.

5. No Other Representations or Warranties. Except for the representations and warranties contained in this Exhibit C-2, neither Otonomy nor any other Person makes any other express or implied representation or warranty on behalf of Otonomy.

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED AS TO CERTAIN PORTIONS OF THIS DOCUMENT. EACH SUCH PORTION, WHICH HAS BEEN OMITTED HEREIN AND REPLACED WITH AN ASTERISK [***], HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

LICENSE AND COMMERCIALIZATION AGREEMENT

THIS LICENSE AND COMMERCIALIZATION AGREEMENT including the exhibits referred to herein and attached hereto which are hereby incorporated by reference (the "**Agreement**"**),** entered into as of April 30, 2013 ("**Signature Date**"), by and between Otonomy, Inc., a Delaware corporation having a principal place of business located at 6275 Nancy Ridge Road, Suite 100, San Diego, CA 92121 ("**Otonomy**") and DURECT Corporation, a Delaware corporation having a principal place of business located at 10260 Bubb Road, Cupertino, California 95104 ("**DURECT**").

RECITALS

A. WHEREAS, DURECT owns or has rights to certain information and data relating to the development of Gacyclidine and has conducted certain pre-clinical investigations regarding the use of Gacyclidine in the treatment of tinnitus.

B. WHEREAS, DURECT has licensed certain rights to Active Agents as locally delivered therapeutics with rights to sublicense to Otonomy pursuant to an Amended and Restated Agreement No. 98238 between Institut National de la Sante et de la Recherche Medicale ("**INSERM**") and DURECT dated May 1, 2001 as amended and restated in January 2002 (the "**INSERM Agreement**"), a copy of which is attached as Exhibit C.

C. WHEREAS, DURECT and NeuroSystec Corporation ("**NeuroSystec**") previously entered into a license and commercialization dated May 13, 2004 (the "**Prior Agreement**"), pursuant to which DURECT granted to NeuroSystec an exclusive license to certain technology for site-specific and time-released delivery of Gacyclidine and certain other drugs to the middle or inner ear, including certain rights obtained by DURECT under the INSERM Agreement.

D. WHEREAS, Otonomy and IncuMed, LLC ("**IncuMed**"), an affiliate of NeuroSystec, have entered into that certain Asset Transfer Agreement of even date herewith pursuant to which Otonomy purchased from IncuMed substantially all of the assets of NeuroSystec relating to Gacyclidine, including without limitation NeuroSystec's interest in the Prior Agreement.

E. WHEREAS, Otonomy and DURECT desire to amend and restate the Prior Agreement to modify and/or clarify certain of the provisions of the Prior Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Otonomy and DURECT hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings indicated herein:

1.1. "**Active Agent**" shall mean Gacyclidine, as well as each of the separate diasteriomers comprising Gacyclidine, together with all salt forms, solvates and esters of any of the foregoing, in each case to the extent claimed or otherwise disclosed in the DURECT Patent Rights.

1.2. "**Affiliate**" shall mean, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediates, is controlled by, controls, or is under common control with such Person, as of or after the Effective Date. For purposes of this definition only, the term "**control**" means the possession of the power to direct or cause the direction of the management and policies of an entity, whether by ownership of voting stock or partnership interest, by contract or otherwise, including, without limitation, direct or indirect ownership of fifty percent (50%) or more of the voting interest in the entity in question.

1.3. "**Approval**" shall mean the approval, including pharmacological, toxicological, and clinical approvals, which need to be granted by the relevant governmental authorities of a territory, for importation, promotion, distribution, sale, and administration thereof to patients of a Licensed Product in such territory (including, without limitation, an NDA or PMA granted by the FDA, including variations, extensions, and renewals thereof).

1.4. "**Commercially Reasonable Efforts**" shall mean a level of effort that would ordinarily be applied by [***]

1.5. "**Confidential Information**" shall have the meaning set forth in Section 11.1 below.

1.6. "**Control**" or "**Controlled**" shall mean owned or in-licensed from a Third Party, with the ability to grant access to or a license or sublicense to Otonomy in accordance with this Agreement without violating the terms of any agreement or other arrangement with any Third Party.

1.7. **"Cover", "Covering"** or **"Covered"** means, with respect to a Licensed Product, that the using, selling, or offering for sale of such Licensed Product would, but for the license granted under this Agreement to the relevant DURECT Patent Rights, infringe a Valid Claim of the relevant DURECT Patent Rights in the country in which the activity occurs.

1.8. "**Deductible Expenses**" shall mean to the extent actually incurred or allowed with respect to any sale of a Licensed Product: (i) normal and customary trade, cash and/or quantity discounts, including any volume discount paid or credited to the third party, rebates, chargebacks, retroactive price adjustments and administrative fees (including U.S. Medicaid and Medicare programs or equivalents and other private or government sponsored rebates and administrative fees paid granted to purchasing groups in relation to Licensed Products); (ii) import, export, sales, use, excise and other consumption taxes and custom duties or tariffs, to the extent and up to the amount mentioned in that respect on the invoice, and any other governmental taxes (other than income taxes)

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or charges imposed upon the importation, use or sale of a Licensed Product; (iii) any charges for freight, postage, shipping, security or special handling or insurance; (iv) returns; and (v) reasonable provisions for allowance for uncollectible amounts.

1.9. "**DURECT Data**" shall mean all data and information owned or Controlled by DURECT as of or after the Effective Date related to the development, manufacturing, administration and use of Active Agent or the practice of the Joint Patent Rights, including but not limited to pre-clinical and clinical investigation protocols, data, and other results (including safety and efficacy data), information typically found in a Chemistry, Manufacturing and Controls (CMC) section of an FDA filing, all FDA, EMA and other regulatory submissions and correspondence, and information for investigations, including but not limited to investigator brochures.

1.10. "**DURECT Know-How**" shall mean all proprietary data, information and materials owned or Controlled by DURECT relating to the development, manufacturing, administration and use of any Active Agent and/or the practice of the Joint Patent Rights including, without limitation, know-how, test results, knowledge, techniques, discoveries, inventions, specifications, designs, regulatory filings, reports and all other documents, and specifically includes, but is not limited to, the DURECT Data.

1.11. "**DURECT Patent Rights**" shall mean the Patent Rights listed on Exhibit B.

1.12. "**DURECT Intellectual Property**" shall mean DURECT Know-How and DURECT Patent Rights.

1.13. "**Effective Date**" shall mean May 13, 2004.

1.14. "**EMA**" shall mean the European Medicines Agency or any successor thereto.

1.15. "**FDA**" shall mean the United States Food and Drug Administration, or any successor thereto.

1.16. "**GAAP**" shall mean United States generally accepted accounting principles, consistently applied or, if applicable, corresponding accounting principles in effect in relevant jurisdictions outside the United States, consistently applied.

1.17. "**Gacyclidine**" shall mean [***].

1.18. "**Joint Patent Rights**" shall mean the intellectual property disclosed in the patent application filed as [***], as well as any Patent Rights covering Inventions as that term is defined in the INSERM Agreement. A complete list all Joint Patent Rights existing as of the Signature Date is attached hereto as Exhibit B.

1.19. "**Licensed Product**" shall mean any pharmaceutical formulation containing an Active Agent, either alone or in association or combination with one or several other active or inactive ingredients, as a stand-alone product, or in combination with appropriate devices or

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bioerodable compounds which provide for site-directed delivery and/or extended release of such pharmaceutical formulation.

1.20. "**Marketing Approval Application**" shall mean generally a marketing authorization application filed with the FDA, EMA or other applicable health/regulatory authority, for approval to market and distribute Licensed Products in the applicable jurisdiction, including, without limitation, an NDA or PMA filed with the FDA.

1.21. "**NDA**" shall mean a new drug application filed with or granted by the FDA with respect to a Licensed Product seeking approval to commercially market said new drug.

1.22. "**Net Sales**" shall mean with respect to a Licensed Product on a country-by-country basis the gross amount invoiced, recognized or otherwise charged by Otonomy, its Affiliates and/or Sublicensees for the sale of a Licensed Product on a country-by-country basis in the Territory, less Deductible Expenses with respect thereto. It is acknowledged that Net Sales shall not include amounts for Licensed Product furnished to a Third Party for use in clinical trials conducted to obtain regulatory approval and Licensed Product distributed as free goods. Furthermore, Net Sales shall not include amounts from sales or other dispositions of Licensed Product between Otonomy and any of its Affiliates or between Otonomy (or any of its Affiliates) and Sublicensees, so long as such Affiliates and/or Sublicensees are not the end user of such Licensed Product.

1.23. "**Patent Rights**" shall mean any patent applications, continuations, continuations-in-parts, divisionals, or other patent applications (including, without limitation, provisional applications and PCT patent applications) and patents issuing from any of the foregoing including, but not limited to, any extension, renewal, reexamination, substitution, or reissue of such patents and all foreign equivalents of any of the foregoing.

1.24. "**Party**" shall mean either Otonomy or DURECT, as appropriate, and collectively Otonomy and DURECT are referred to herein as the "**Parties**".

1.25. "**Person**" shall mean an individual, corporation, partnership, limited liability company ("LLC"), trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

1.26. "**PMA**" shall mean a pre-marketing application filed with or granted by the FDA with respect to a Licensed Product seeking approval to commercially market said new device.

1.27. "**Sublicensee**(**s**)" shall mean any Third Party other than an Affiliate of Otonomy to whom Otonomy (or its Affiliate) has granted a sublicense of any or all of the rights in, to and under the DURECT Intellectual Property to make and sell Licensed Products.

1.28. **"Sublicensing Income"** means upfront, milestones or other payments received by Otonomy from a Sublicensee in consideration of a grant of a sublicense under the DURECT Patent Rights. Notwithstanding the foregoing, the following are specifically excluded from the definition of Sublicensing Income: [***]

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1.29. "**Term**" shall have the meaning set forth in Section 10.1 of this Agreement.

1.30. "**Territory**" shall mean the world.

1.31. "**Third Party**" shall mean any Person or entity other than a Party.

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1.32. "**Valid Claim**" shall mean any claim of an issued and unexpired patent within the DURECT Patent Rights, which has not been held unenforceable or invalid by a court or other governmental agency of competent jurisdiction in an unappealed and unappealable decision, and which has not been disclaimed or admitted to be invalid or unenforceable through reissue or otherwise.

For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) the use herein of the plural shall include the single and vice versa and the use of the masculine shall include the feminine; (b) unless otherwise set forth herein, the use of the term "including" means "including but not limited to"; and (c) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision. Additional terms may be defined throughout this Agreement.

2. LICENSES

2.1. License Grant. DURECT hereby grants to Otonomy an exclusive, royalty-bearing license, including the right to grant sublicenses, under the DURECT Intellectual Property, to research and develop, make, use, sell, offer for sale, import, export, and otherwise commercialize any Licensed Product and to have any of the foregoing performed on its behalf by a Third Party, in each case within the Territory.

2.2. Exclusivity. The license granted to Otonomy in section 2.1 is exclusive even with respect to DURECT. For clarity, DURECT shall not retain any rights under the DURECT Intellectual Property to research and develop, make, have made, use, sell, offer for sale or otherwise commercialize, import, and export any Licensed Product.

2.3. Sublicensing. Otonomy may, under the rights granted to it hereunder, freely grant sublicenses to any Third Party, including the right to grant further sublicenses, provided that all such sublicenses shall be in writing and shall be subordinate to the terms and conditions of this Agreement.

2.4. Termination of Exclusivity by DURECT. In the event that Otonomy has failed to use Commercially Reasonable Efforts to develop and commercialize a Licensed Product, DURECT shall notify Otonomy in writing. Otonomy shall have [***] to remedy such failure (the "**Cure Period**")**.** By way of example without limitation, it is hereby agreed that [***] If Otonomy has failed to remedy such failure within the Cure Period, then DURECT may elect, in its sole discretion, by written notice to Otonomy to (i) terminate this Agreement, such termination to take effect in due course so as to permit an orderly wind down of operations pertaining to this agreement, provided that any sublicenses granted by Otonomy prior to the date of such termination shall survive in accordance with Section 10.5.2 below; or (ii) convert the license granted in Section 2.1 to DURECT

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Intellectual Property into a non-exclusive license, provided that any such conversion of the license granted in Section 2.1 to a non-exclusive status shall not affect the exclusivity of any exclusive sublicenses granted by Otonomy prior to the date of such conversion. However, if Otonomy disputes such lack of diligence in writing within the Cure Period, [***] DURECT acknowledges and agrees that as a part of its development activities and diligence obligations hereunder Otonomy may conduct feasibility studies for the application of Licensed Product(s) to specific indications before undertaking further development.

3. DISCLOSURE OF DURECT KNOW-HOW.

3.1. Disclosure of DURECT Know-How. DURECT certifies that it has previously transferred to NeuroSystec all DURECT Know-How necessary or useful for the research, development and commercialization of the Active Agents.

4. ROYALTIES, PAYMENTS AND RELATED OBLIGATIONS

4.1. Payments by Otonomy to DURECT. As a partial reimbursement to DURECT for research and development and other expenses incurred by DURECT in connection with its efforts researching and developing Active Agents, Otonomy shall pay to DURECT the amounts set forth in Sections 4.1.1 and 4.1.2 below:

4.1.1. Milestones**.** Upon the first occurrence of the following milestones by Otonomy, its Affiliates or any Sublicensee, each a one-time, non-refundable fee, due and payable within [***] days after such event:

(i)	[***]	$[***]
(ii)	[***]	$[***]
(iii)	[***]	$[***]
(iv)	[***]	$[***]

Each of the above milestones shall be payable once only and only for the first occurrence of each such milestone, irrespective of the number of Licensed Products that may achieve such milestone, and only to the extent the Licensed Product triggering such milestone is Covered by a Valid Claim in the country in which the applicable filing or approval occurs.

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4.1.2. Sublicense Fees. [***] percent ([***]%) of all Sublicensing Income realized by Otonomy.

4.1.3. Royalties. In addition to the foregoing, earned running royalties shall be due as follows with respect to Licensed Products sold by Otonomy, its Affiliates and Sublicensees in countries in the Territory where at least one Valid Claim within the DURECT Patent Rights exists Covering such Licensed Product:

(i) a royalty of [***]% on that portion of annual Net Sales of such Licensed Products which does not exceed $[***]; and

(ii) a royalty of [***]% on that portion of annual Net Sales of such Licensed Products in excess of $[***].

4.2. Payments by Otonomy to INSERM. In addition to the royalties of Section 4.1.3 above, Otonomy shall pay to INSERM, on behalf of DURECT, earned running royalties for worldwide net sales of Licensed Products by Otonomy, its Affiliates and Sublicensees where such products are Covered by a Valid Claim under the Joint Patent Rights. Such royalty shall be [***] percent ([***]%) of net sales of such products. For the purposes of this Section 4.2, net sales shall be calculated as [***] Such payments will be calculated at the end of each calendar year and paid to INSERM within [***] days of the end of each calendar year. All calculations of fees payable to INSERM will be based on United Stated Dollars. Net sales in currency other than United Stated Dollars will be converted to United States Dollars using the currency exchange rate quoted in the Wall St. Journal (or comparable publication if not quoted in the Wall St. Journal) on the last day of the calendar year for which net sales are calculated. Along with payment, Otonomy will provide a statement showing the calculation used to calculate net sales and the royalty payment.

4.3. Royalty Term. Otonomy's obligation to pay royalties under Sections 4.1.3 shall continue on a Licensed Product-by-Licensed Product and on a country-by-country basis in the Territory until expiration or determination of invalidity of the last Valid Claim within the DURECT Patent Rights Covering such Licensed Product in such country. Otonomy's obligation to pay royalties to INSERM under Section 4.2 shall continue so long as DURECT's obligations to INSERM continue under the INSERM AGREEMENT.

4.4. Royalty Reports. Otonomy shall deliver to DURECT, within [***] in which a Licensed Product is sold, transferred or otherwise disposed of by Otonomy, its Affiliates or Sublicensees, a written report setting forth in reasonable detail (a) the number and types of Licensed Product(s) sold in each country, (b) the gross proceeds from such sales, (c) the calculation of the royalties payable to DURECT for such calendar year under Section 4.1, including the amount of Net Sales and Deductible Expenses (broken down by category) and (d) the calculation of royalties payable to INSERM. Notwithstanding the foregoing, Otonomy shall have no obligation under this Section 4.5 for so long as no royalties are payable under this Article 4.

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4.5. Payment Terms.

4.5.1. Otonomy shall pay all royalties due and payable on Net Sales by it, its Affiliates and Sublicensees pursuant to Sections 4.1.5 on a per [***] in which the applicable Licensed Product is sold, transferred or otherwise disposed of by Otonomy, its Affiliates and Sublicensees.

4.5.2. Unless expressly stated otherwise, all payments made under this Agreement shall be made in United States Dollars and by wire transfer (net of bank charges which shall be borne by the paying party) to one or more bank accounts to be designated in writing by each Party or by INSERM as the case may be. In the event that a Licensed Product is sold by Otonomy, its Affiliates or Sublicensees in currencies other than United States Dollars, Net Sales shall be calculated by conversion of foreign currency to U.S. Dollars at the conversion rate equal to the average of the conversion rates existing in the United States (referencing the "U.S. dollar noon buying rates", or its equivalent, published in the Wall Street Journal) on the last working day of each month of the period during which royalties are being calculated.

4.5.3. No multiple royalties shall be due or payable for any Licensed Product notwithstanding that the manufacture, use, offer for sale, sale or import of any Licensed Product by or for Otonomy, its Affiliates or Sublicensees is or shall be covered by more than one Valid Claim within DURECT Patent Rights. For the avoidance of doubt, royalties due under Sections 4.2 shall not be deemed multiple royalties.

4.6. Taxes. Each Party shall be responsible for and pay all taxes, duties and levies directly imposed by all foreign, federal, state, local or other taxing authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on such Party's transactions or payments under this Agreement, other than taxes imposed or based on net income. If withholding under the applicable laws of any country is required with respect to any payment to be made by either Party under this Agreement, the paying Party shall withhold the required amount and pay such amount to the appropriate governmental authority and all amounts due hereunder shall be reduced by the amount required to be withheld. In such a case, the withholding Party shall, upon the other Party's request, promptly provide the other Party with original receipts or other evidence sufficient to allow the other Party to obtain the benefits of any such tax withholding. The Parties shall use reasonable efforts, if applicable and appropriate, to cooperate in reducing any tax withholding on payments made hereunder.

4.7. Inspection of Books and Records. Otonomy shall maintain, and require its Affiliates and Sublicensees to maintain in accordance with GAAP, complete and accurate books and records which enable the calculation of royalties and other payments payable hereunder to be verified. Otonomy, its Affiliates and its Sublicensees shall retain such books and records for each annual period for three (3) years after the submission of the corresponding report under Section 4.4. Upon two (2) weeks prior written notice to Otonomy, independent accountants reasonably acceptable to Otonomy may have access to such books and records to conduct a review or audit for the sole purpose of verifying the accuracy of the royalty reports and payments due under this

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Agreement for any annul period ending not more than three (3) years prior to the date of such request, provided that DURECT may conduct no more than one such audit in any twelve (12) month period and shall not audit any given annual period more than once. Such access shall be permitted during Otonomy's normal business hours during the term of this Agreement and for two (2) years after the expiration or termination of this Agreement. The independent accountant shall execute and deliver to Otonomy a standard confidentiality agreement (i.e., consistent with industry norms). In the event of any underpayment, Otonomy shall promptly pay to DURECT the difference between the amount actually paid by Otonomy and the amount determined to be owed under this Section 4.7. Any amounts determined to have been overpaid shall be credited against future payments owed to DURECT. Any such inspection or audit shall be at DURECT's expense, unless the inspection or audit results in a determination that DURECT has been underpaid by Otonomy in any annual period by more than [***] percent ([***]%) of the amount actually owed by Otonomy for such annual period, in which case Otonomy shall pay all reasonable costs and expenses incurred by DURECT in the course of making such determination, including the reasonable fees and expenses of such accountant.

4.8. Royalty Anti-stacking. [***]

5. [THIS SECTION INTENTIONALLY LEFT BLANK]

6. DEVELOPMENT, REGISTRATION, COMMERCIALIZATION AND ADVERSE EVENTS

6.1. Annual Development Reports. During the period beginning on the Signature Date and continuing until the commercial launch of the first Licensed Product, Otonomy shall provide annual written reports to DURECT summarizing material development and regulatory activities undertaken by Otonomy with respect to the Licensed Products. All such reports shall be provided to DURECT strictly for information purposes only and all information contained therein shall be treated as Otonomy's Confidential Information in accordance with Article 11.

6.2. Regulatory Reporting. The Parties understand and agree that Otonomy, itself or through its agents or designees, shall have the sole right to correspond with appropriate regulatory agencies and submit INDs and Marketing Approval Applications for Licensed Products as Otonomy deems useful or necessary to fulfill its obligations hereunder. Accordingly, except as otherwise

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required by law, DURECT shall not correspond directly with the FDA or any other regulatory authority relating to the process of obtaining Approvals for Licensed Products, without Otonomy's prior permission. Notwithstanding the foregoing, DURECT agrees to provide such reasonable assistance, as requested by Otonomy and at Otonomy's expense, in preparing, submitting and maintaining such INDs and Marketing Approval Applications.

6.3. Development and Commercialization Responsibilities. Otonomy (itself or through its Affiliates or designees) shall pay for all costs related to and shall bear all responsibility for the development, manufacturing, registration and sale of the Licensed Product(s). Otonomy (itself or through its Affiliates or designees) shall pay for all costs related to and shall bear all responsibility for all marketing and promotional activities related to Licensed Product(s) in the Territory and shall decide on the strategy regarding such activities. Otonomy shall use Commercially Reasonable Efforts to develop, obtain Approvals for, promote and sell Licensed Product(s) being granted Approval in the Territory, it being understood that the efforts of Otonomy's Affiliates and Sublicensees shall count towards Otonomy's own Commercially Reasonable Efforts.

7. PATENT MAINTENANCE AND ENFORCEMENT

7.1. Prosecution of DURECT Patent Rights. DURECT hereby appoints Otonomy as its agent to, at its expense, file, prosecute and maintain the patent applications or patents within the DURECT Patent Rights. Otonomy shall provide DURECT and INSERM reasonable opportunity to review and comment on such activities, including providing DURECT and INSERM promptly and in a timely fashion with copies of all relevant communications to or from any patent authority in the Territory regarding the DURECT Patent Rights and providing drafts of any material filings or responses to be made to such patent authorities reasonably in advance of the submission of such filings or responses. Otonomy shall consider in good faith any reasonable comments provided by DURECT or INSERM in connection with the prosecution of such DURECT Patent Rights in the Territory, provided that it is understood that Otonomy shall retain final decision-making authority with respect thereto. If Otonomy elects not to prepare, file, prosecute or maintain any patent applications or patents within the DURECT Patent Rights in any given country(ies), Otonomy shall give DURECT written notice thereof within a reasonable period, not less than thirty (30) calendar days, prior to allowing such patent applications or patents to lapse or become abandoned or unenforceable, and DURECT shall thereafter have the right, at DURECT's sole expense and discretion, to prepare, file, prosecute and maintain such patent applications or patents in such countries.

7.2. Patent Enforcement. If either Party becomes aware that any patents within the DURECT Patent Rights are being or have been infringed by any Third Party, such Party shall promptly notify the other Party in writing describing the facts relating thereto in reasonable detail. Otonomy shall have the initial right, but not the obligation, to institute, prosecute and control any action, suit or proceeding (an "**Action**") with respect to such infringement including any declaratory judgment action, at its expense, using counsel of its choice. DURECT shall cooperate reasonably with Otonomy, including being named in such Action if necessary, at Otonomy's written request and expense, in connection with any such Action. Any amounts recovered in such Action shall be used first to reimburse costs and expenses incurred by Otonomy and then DURECT, to the extent such

costs and expenses have been reasonably incurred in connection with such Action (including attorneys and expert fees) and any remainder attributable to compensatory damages shall be retained by Otonomy and shall be treated as Net Sales hereunder except to the extent that DURECT has already received royalty payments pursuant to Section 4.1.3 for such amounts; provided, however, that any remainder that is attributable to an increase by the court pursuant to 35 USC Section 284 or equivalent foreign law provision shall be retained by Otonomy. For the avoidance of doubt, in the event that the court awards increased damages pursuant to 35 USC Section 284 or equivalent foreign law provision, the reimbursement of costs and expenses shall be subtracted first from such increased damages.

7.3. Step-In Enforcement. In the event Otonomy fails to take action to abate any commercially significant infringement of the DURECT Patent Rights (i.e., by initiating an Action or by entering into negotiations with the alleged infringer regarding the terms under which Otonomy would grant a sublicense to the infringer) within two (2) months of receiving notice thereof (or a shorter period of time if DURECT's rights in the DURECT Patent Rights are reasonably likely to be prejudiced by such a delay), DURECT shall have the right, but not the obligation, to initiate and/or maintain such Action in its own name and at its own expense, and Otonomy shall cooperate reasonably with DURECT, at DURECT's written request and expense, in connection with any such Action. Any amounts recovered in such Action shall be used first to reimburse costs and expenses incurred by DURECT and then Otonomy, to the extent such costs and expenses have been reasonably incurred in connection with such Action (including attorneys and expert fees) and any remainder attributable to compensatory damages shall be retained by Otonomy and shall be treated as Net Sales hereunder except to the extent that DURECT has already received royalty payments pursuant to Section 4.1.3 for such amounts; provided, however, that any remainder that is attributable to an increase by the court pursuant to 35 USC Section 284 or equivalent foreign law provision shall be retained by DURECT. For the avoidance of doubt, in the event that the court awards increased damages pursuant to 35 USC Section 284 or equivalent foreign law provision, the reimbursement of costs and expenses shall be subtracted first from such increased damages.

7.4. Cooperation. In any Action, the parties shall provide each other with reasonable cooperation and assistance, including agreeing to be named as a party to such Action, causing other necessary parties and parties with an interest to join and be named as necessary, and, upon the written request and at the expense of the Party bringing such Action, the other Party shall make available, at reasonable times and under appropriate conditions, all relevant personnel, records, papers, information, samples, specimens, and the like in its possession. Notwithstanding any other provision of this Article 7, neither Party shall make any settlements of any suit, proceeding or action relating to an infringement of any DURECT Patent Rights that would materially and adversely affect the other Party or the rights and licenses granted hereunder (which in the case of any suit, proceeding or action being brought by DURECT, would include any settlement that would not terminate all further use by the alleged infringer of such DURECT Patent Rights) without first obtaining such other Party's prior written consent, such consent not to be unreasonably withheld or delayed or conditioned upon receipt of consideration.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1. Representations, Warranties and Covenants of Otonomy. Otonomy represents and warrants that, as of the Signature Date:

8.1.1. Otonomy is a corporation, duly organized, validly existing and in good standing under the laws of Delaware.

8.1.2. The execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Otonomy.

8.1.3. There is no pending, or to its knowledge, threatened Third Party lawsuit, claim, action or demand against Otonomy.

8.1.4. The execution, delivery and performance of this Agreement will not conflict with any agreement to which Otonomy is a party or by which it is bound.

8.2. Representations, Warranties and Covenants of DURECT. DURECT represents, warrants and covenants that, as of the Signature Date:

8.2.1. DURECT is a corporation, duly organized validly existing and in good standing under the laws of Delaware;

8.2.2. The execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of DURECT;

8.2.3. DURECT has the right and authority to grant the rights and licenses granted to Otonomy under this Agreement;

8.2.4. DURECT has not granted any right, license or interest in, to or under the DURECT Patent Rights or DURECT Know-How inconsistent with the rights, license and interests granted to Otonomy in this Agreement, and DURECT shall not grant during the term of this Agreement any right, license or interest in, **to** or under the DURECT Intellectual Property that is inconsistent with the rights, licenses and interests granted to Otonomy hereunder;

8.2.5. DURECT has provided to Otonomy a true copy (including any amendments thereto) of each agreement with a Third Party referring or relating substantially to the manufacture, use or sale of any Active Agent. Exhibit A contains a complete list of all such Third Party agreements.

8.2.6. There is no pending or, to DURECT's knowledge, threatened Third Party lawsuit, claim, action or demand against DURECT which relates to the use of any Active Agent or the DURECT Intellectual Property.

8.2.7. Other than the patents and patent applications listed on Exhibit B, DURECT represents and warrants that it is not the assignee, co-assignee, or licensee, of any patents, or patent

applications, that would (i) Cover the Active Agents or (ii) preclude Otonomy from exercising any of the rights granted hereunder.

8.2.8. To its knowledge, DURECT does not own or control any investigational new drug application, drug master file or comparable regulatory filing for any Active Agent not included in this Agreement.

8.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY DISCLAIMS, ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ANY WARRANTY ARISING OUT OF PRIOR COURSE OF DEALING AND USAGE OF TRADE.

9. INDEMNIFICATION AND INSURANCE

9.1. Indemnification by Otonomy. Otonomy shall indemnify and hold harmless DURECT, its Affiliates and their respective officers, directors, employees and agents (each a "**DURECT Indemnitee**") from and against claims, demands, liabilities, damages, losses and expenses, including reasonable attorney's fees and costs, actually incurred by the indemnified party arising out of or in connection with any lawsuit, claim, action or demand ("**Claims**") brought by a third party based upon (i) the negligence or intentional misconduct of Otonomy or its Affiliates; (ii) breach by Otonomy or its Affiliates of the representations and warranties made by it in this Agreement; (iii) use by or on behalf of Otonomy of any Active Agents or Licensed Products for clinical trials, and (iv) the use, manufacture, marketing, promotion, sale, advertising, transportation, handling, storage, or distribution of Licensed Products by or on behalf of Otonomy, including any claims with respect to a defect or alleged defect in the labeling of such Licensed Products or any defect or alleged defect in the design or formulation of such Licensed Products; except in each case for (x) Claims arising due to the negligence, intentional misconduct, or breach of this Agreement by DURECT or its Affiliates, and (y) Claims for which DURECT is obligated to indemnify Otonomy Indemnitees pursuant to Section 9.2.

9.2. Indemnification by DURECT. DURECT shall indemnify and hold harmless Otonomy, its Affiliates and their respective officers, directors, employees and agents (each a "**Otonomy Indemnitee**") from and against claims, demands, liabilities, damages, losses and expenses, including reasonable attorney's fees and costs, actually incurred by the indemnified party arising out of or in connection with any Claims brought by a third party based upon (i) the negligence or intentional misconduct of DURECT or its Affiliates; and (ii) breach by DURECT or its Affiliates of the representations and warranties made by it in this Agreement; except in each case for (x) Claims arising due to the negligence, intentional misconduct omissions of, or breach of this Agreement by Otonomy or its Affiliates and (y) Claims for which Otonomy is obligated to indemnify DURECT Indemnitees pursuant to Section 9.1.

9.3. Procedure. The foregoing indemnifications are subject to the following procedural requirements: the Otonomy Indemnitee or DURECT Indemnitee shall give prompt written notice to the indemnifying party of any claims, suits or proceedings by Third Parties which may give rise to any claim for which indemnification may be required under this Article 9, and the Otonomy Indemnitee or DURECT Indemnitee shall reasonably cooperate with the indemnifying party and its counsel in the course of the defense of any such suit, claim or demand, such cooperation to include without limitation using reasonable efforts to provide or make available documents, information and witnesses at the expense of the indemnifying party. The indemnifying party shall be entitled to assume the defense and control of any such claim at its own cost and expense; provided, however, that the Otonomy Indemnitee or DURECT Indemnitee shall have the right to be represented by its own counsel at its own cost in such matters. Neither the indemnifying party nor the indemnified party shall settle or dispose of any such matter in any manner which would materially and adversely affect the rights or interests of the other party (including the obligation to indemnify hereunder) without the prior written consent of the other party, which shall not be unreasonably withheld or delayed or conditioned on further consideration.

9.4. Otonomy Insurance. Prior to dosing the first human with the Licensed Product in the first clinical trial, Otonomy shall, at its sole cost and expense, procure and maintain comprehensive general liability insurance and clinical trial insurance policies from a qualified insurance company which has a superior rating from a recognized rating service, with minimum limits of $2,000,000 for combined bodily injury and property damage. Additionally, prior to launch of any Licensed Product hereunder, Otonomy shall, at its sole cost and expense, procure and maintain products liability insurance policies from a qualified insurance company which has a superior rating from a recognized rating service, with coverage terms and limits standard and customary for commercialization of products similar to the Licensed Products in the pharmaceutical industry, but no less than $5,000,000 for combined bodily injury and property damage. All such insurance policies shall include DURECT as an additional named insured.

Otonomy will furnish to DURECT certificates of all such insurance policies:

– at least 30 days prior to the scheduled commencement of a clinical trial for a Licensed Product (and within 30 days of the date of each anniversary of the related insurance certificate date), evidence of coverage in accordance with this Section 9.4; and

– at least 60 days prior to the first commercial sale by Otonomy in the Territory (and within 30 days of the date of each anniversary of the related insurance certificate date), evidence of insurance coverage in accordance with this Section 9.4.

If Otonomy is unable to secure or maintain all such insurance policies and coverage as provided for herein, the parties will negotiate in good faith reasonable accommodations regarding risk exposure of the parties.

10. TERM AND TERMINATION

10.1. Term. This Agreement shall commence on the Effective Date and continue in full force and effect until the expiration of all of Otonomy’s royalty payment obligations as specified

under Section 4.4, unless terminated earlier pursuant to Sections 2.4, 10.2, 10.3, 10.4 or 12.6 (the "**Term**")**.** Upon such expiration or termination (excluding termination under Sections 2.4, 10.2, 10.3, 10.4 or 12.6), the license granted under Section 2.1 shall be thereafter paid-up, perpetual and royalty-free.

10.2. Otonomy Termination. Otonomy may terminate this Agreement upon sixty (60) days prior written notice for any reason, including if Otonomy decides to halt development of Licensed Products.

10.3. Termination by Either Party. Either Party may terminate this Agreement upon written notice to the other Party if the other Party (i) makes a general assignment for the benefit of creditors; (ii) files an insolvency petition in bankruptcy; (iii) petitions for or acquiesces in the appointment of any receiver, trustee or similar officer to liquidate or conserve its business or any substantial part of its assets; (iv) commences under the laws of any jurisdiction any proceeding for relief under the Bankruptcy Code of 1986, as amended ("**Code**") or similar bankruptcy laws in applicable jurisdictions, involving its insolvency, reorganization, adjustment of debt, dissolution, liquidation or any other similar proceeding for the release of financially distressed debtors; or (v) becomes a party to any proceeding or action of the type described above in (iii) or (iv), and such proceeding or action remains undismissed or unstayed for a period of more than sixty (60) days.

10.4. DURECT Termination. DURECT may terminate this agreement upon written notice if Otonomy is in material breach of any provision hereunder and has not cured such breach within [***] days following the receipt of a first notice which specifies in reasonable detail the nature of the breach sent to it by DURECT; provided, however, that if Otonomy disputes such breach in writing within the Cure Period, [***].

10.5. Effect of Termination.

10.5.1. Upon termination of this Agreement in its entirety pursuant to Section 2.4, 10.2, or 10.4, the licenses granted by DURECT to Otonomy hereunder shall terminate and except as reasonably necessary for surviving rights or obligations under this Section 10.5: (i) Otonomy shall, at DURECT's option, promptly destroy or return to DURECT all copies of Confidential Information of DURECT in Otonomy's or its Affiliates' possession, and (ii) DURECT shall promptly destroy or return all Confidential Information of Otonomy's then in DURECT's possession. Notwithstanding the foregoing, each Party may retain one (1) copy of the Confidential Information of the other Party in its archival files, subject to the non-use and non-disclosure provisions herein, solely for purposes of determining the scope of its rights and obligations hereunder. Termination of this Agreement by any Party shall not require resort to any court or compliance with any other formality and shall not prejudice the right of either party to recover any damages for breach of this Agreement.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

10.5.2. Upon termination of this Agreement in its entirety pursuant to Sections 10.2-10.4, the licenses granted by DURECT to Otonomy hereunder shall terminate. Notwithstanding the foregoing, any sublicenses granted by Otonomy to a Sublicensee hereunder shall survive, provided that upon request by DURECT, such Sublicensee promptly agrees in writing to be bound by the applicable terms of this Agreement. For purposes of clarity, it is understood and agreed that (i) each Sublicensee shall be responsible for paying to DURECT all royalties and milestones to which DURECT would have been entitled to had this Agreement not been so terminated based on such Sublicensee's development and commercialization of Licensed Products, and (ii) the duties of DURECT under such surviving sublicense will not be greater than the duties of DURECT under this Agreement.

10.6. Survival. Articles 4 (solely with respect to amounts owed prior to expiration or termination), 1, 9, 11 and 12 and Sections 7.2, 7.3, and 7.4 (each solely with respect to any Actions on-going at the time of termination), 8.3, 10.5 and 10.6 shall survive expiration or termination of this Agreement.

11. CONFIDENTIAL INFORMATION AND PUBLICATION

11.1. Confidentiality. In connection with the Non-Disclosure Agreement, as defined below, and with this Agreement, the parties have disclosed and will disclose or make available to each other information, data and materials of a confidential or proprietary nature ("**Confidential Information**")**,** including but not limited to each Party's proprietary know-how, invention disclosures, materials and/or technologies, economic information, business or research strategies, clinical trial data and information, trade secrets and material embodiments thereof.

11.2. Confidentiality and Non-Use. The recipient of a disclosing Party's Confidential Information shall maintain such Confidential Information in confidence, and shall disclose such Confidential Information only to those of its employees, agents, consultants, Sublicensees, attorneys, accountants, advisors, existing and potential investors, and potential development and commercialization partners who have a reasonable need to know such Confidential Information for purposes contemplated by this Agreement and who are bound by obligations of confidentiality and non-use no less restrictive than those set forth herein. The recipient of the disclosing Party's Confidential Information shall use such Confidential Information solely to exercise its rights and perform its obligations under this Agreement (including, without limitation, the right to use and disclose such Confidential Information, to the extent required, in regulatory applications and filings), unless otherwise mutually agreed in writing. The recipient of the disclosing Party's Confidential Information shall take the same degree of care that it uses to protect its own confidential and proprietary information of a similar nature and importance (but in any event no less than reasonable care).

11.3. Exclusions. Confidential Information of a disclosing Party shall not include information that: (a) was in the recipient's possession prior to receipt from the disclosing Party as demonstrated by contemporaneous documentation; (b) was or becomes, through no fault of the recipient, publicly known; (c) was furnished to the recipient by a Third Party without breach of a duty or obligation of confidentiality to the disclosing Party; (d) was independently developed by the

recipient without use of, application of or reference to the disclosing Party's Confidential Information as demonstrated by contemporaneous documentation.

11.4. Legal Disclosures. It shall not be a violation of this Article 11 for the recipient to disclose the disclosing Party's Confidential Information when such information is required to be disclosed under applicable law, but such disclosure shall be for the sole purpose of and solely to the extent required by such law, and provided that the recipient, to the extent possible, shall give the disclosing Party prior written notice of the proposed disclosure and cooperate fully with the disclosing Party to minimize the scope of any such required disclosure, to the extent possible and in accordance with applicable law and will use all reasonable efforts to secure confidential treatment of such Confidential Information required to be disclosed.

11.5. Termination. All obligations of confidentiality and non-use imposed under this Article 11 shall expire [***] years after the date of expiration or termination of this Agreement.

11.6. Publications and Press Releases. Neither Party shall issue any press release, publication, or any other public announcement relating to this Agreement, without obtaining the other Party's prior written approval, provided, however, that the parties may issue a mutually agreed upon joint press release regarding this Agreement at a time to be mutually agreed upon. Once such press releases or other public announcements have been approved for disclosure by the parties, such approval will not be required again before a Party may subsequently repeat disclosure of information contained therein. Notwithstanding the foregoing, each Party shall have the right to make such disclosures as may be required by applicable laws, including applicable securities laws.

12. MISCELLANEOUS

12.1. Trademarks. Otonomy (itself or through its Affiliates or designees) will have sole responsibility for, and ownership of, any and all trademarks for the Licensed Product used in the Territory.

12.2. Marking Requirement. Each Party agrees to mark the appropriate patent number or numbers as reasonably requested by the other Party on such Licensed Products made or sold in accordance with all applicable governmental laws, rules and regulations to the extent reasonably possible, and to require its Affiliates and Sublicensees to do the same. Each Party acknowledges and agrees that by agreeing to mark Licensed Products, the other Party is not agreeing or otherwise admitting that any such marked product is covered by the claims of the DURECT Patent Rights or any other patent. All uses of the DURECT name and marks shall be subject to prior review and approval by DURECT, such approval not to be unreasonabley withheld or conditioned on further consideration.

12.3. Governing Law; Dispute Resolution.

12.3.1. This Agreement shall be governed by, and construed and interpreted, in accordance with the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

12.3.2. In the event of any controversy, claim or dispute arising out of or related to this Agreement or to the breach or interpretation thereof (a "**Dispute**"), the parties shall first refer such Dispute to the Chief Executive Officer, or his or her duly appointed representative (each a "**Responsible Executive**") of each Party for attempted resolution by good faith executive negotiations within [***] days after such referral is made. In the event such officers are unable to resolve such Dispute within such [***] day period, either Party may assert its rights in a manner in accordance with the provisions of Section 12.3.3-12.3.6.

12.3.3. Subject to Section 12.3.5, any Dispute that is not resolved under Section 12.3.2 shall be solely and exclusively settled by final and binding arbitration in accordance with the then current commercial arbitration rules of the American Arbitration Association, subject to the terms and conditions of this Section 12.3. Either Party may initiate the arbitration of a Dispute by sending written notice of such election to the other Party clearly marked "Arbitration Demand" (the "**Arbitration Demand**")**.** The Dispute shall be adjudicated by three (3) neutral and impartial arbitrators. Each Party shall nominate one arbitrator within [***] days after the other Party's receipt of the Arbitration Demand, and the two arbitrators so named will then jointly appoint the third arbitrator as chairman of the arbitration tribunal. The decision of the arbitration tribunal shall be final and binding upon the parties hereto, and may be entered in any competent court for judicial acceptance of such an award and order of enforcement.

12.3.4. All costs of the arbitration shall be shared equally by the parties, and each Party shall be responsible for its own legal and other costs. The arbitrators shall not have the right or authority to award punitive damages to either Party.

12.3.5. Notwithstanding anything to the contrary in this Section 12.3, each Party may, and expressly reserves the right to, seek judicial relief from any court of competent jurisdiction in order to obtain an injunction or other equitable relief or to enforce a breach of the confidentiality provisions in Article 11 or to otherwise obtain temporary relief pending the outcome of the arbitration.

12.3.6. Arbitration will take place in [***]. The proceedings shall be conducted and all documentation shall be presented in English. The parties agree that the arbitration proceedings and its contents shall be kept confidential, except as may otherwise be required by applicable law.

12.4. Export Regulations. The parties agree that this Agreement is subject in all respects to the laws and regulations of the United States of America, including the *Export Administration Act of 1979,* as amended, and any regulations thereunder.

12.5. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF THE OTHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

12.6. Force Majeure. Neither Party shall be held responsible for any delay or failure in performance hereunder to the extent caused by strikes, embargoes, unexpected government requirements, civil or military authorities, acts of God, earthquake, or by war, insurrection, terrorism or other causes beyond such Party's control and without such Party's fault or negligence; provided that the affected Party notifies the unaffected Party as soon as reasonably possible, and resumes performance hereunder as soon as reasonably possible following cessation of such force majeure event. Each Party agrees to give the other Party prompt written notice of the occurrence of any such condition set forth herein, the nature thereof, and the extent to which the affected Party will be unable fully to perform its obligations hereunder. Each Party further agrees to use all reasonable efforts to correct the condition as quickly as possible, and to give the other prompt written notice when it is again fully able to perform such obligations. If, as a result of conditions set forth herein, either Party is unable to substantially perform any of its material obligations hereunder for any consecutive period of three hundred and sixty-five (365) days, the other Party shall have the right to terminate this Agreement upon written notice.

12.7. Independent Contractors. The relationship of Otonomy and DURECT established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create any other relationship between Otonomy and DURECT. Neither Party shall have any right, power or authority to bind the other or assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

12.8. Assignment. Otonomy and DURECT may assign this Agreement to an Affiliate or in connection with the merger, acquisition or sale by Otonomy or DURECT, as the case may be, of all or substantially all of its assets relating to this Agreement upon prior written notice to DURECT or Otonomy, as the case may be, and without the need for DURECT's or Otonomy's consent, as applicable, provided however that (a) any such assignee shall assume all obligations of Otonomy or DURECT, as the case may be, under this Agreement and (b) no assignment shall relieve Otonomy or DURECT of responsibility for the performance of any accrued obligations which Otonomy or DURECT then has hereunder. Aside from the foregoing, no rights or obligations under this Agreement may be transferred or assigned by a Party to a Third Party without the prior written consent of the other Party. Any assignment not in conformance with this Section 12.8 shall be null, void and of no legal effect.

12.9. Notices. All notices required or permitted to be given hereunder shall be (a) delivered in person or (b) sent by express courier (via a reliable courier company such as FedEx or DHL), or (c) sent by registered airmail, with postage prepaid, and return receipt requested or (d) sent by facsimile (with a confirmation letter thereof sent by express courier or registered airmail) to the address specified below or to such changed address as may have been previously specified in writing by the addressed Party from time to time during the term of this Agreement. If notice is given in person, by courier or by fax, it shall be effective upon receipt; if notice is given by overnight delivery service, it shall be effective two (2) business days after deposit with the delivery service; and if notice is given by mail, it shall be effective five (5) business days after deposit in the mail. Notices shall be sent as follows:

If to DURECT:

Attn: General Counsel
DURECT Corporation
10260 Bubb Road
Cupertino, CA 95014

Main: (408) 777-1827
Facsimile: (408) 777-3577

If to Otonomy:

Otonomy, Inc.
Attn: CEO
6275 Nancy Ridge Road,
Suite100
San Diego, CA 92121

Main: (858) 242-5200
Facsimile: (858) 200-0933

With copy to:

Wilson Sonsini Goodrich & Rosati
Attn: Kenneth A. Clark, Esq.
650 Page Mill Road
Palo Alto, California 94304

Facsimile: (650) 493-6811

12.10. Modification; Waiver. This Agreement may not be altered, amended or modified in any way except by a writing signed by authorized representatives of both of the parties. The failure of a Party to enforce any rights or provisions of the Agreement shall not be construed to be a waiver of such rights or provisions, or a waiver by such Party to thereafter enforce such rights or provision or any other rights or provisions hereunder. No waiver shall be effective unless made in writing and signed by the waiving Party.

12.11. Severability. If any provision of this Agreement shall be found by a court of competent jurisdiction or the arbitration panel described in Section 12.3 to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of the remainder of this Agreement. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction or the arbitration panel described in Section 12.3 to be void, invalid or unenforceable, and reformation or striking of such provision materially changes the economic benefit of this Agreement to either Otonomy or DURECT, Otonomy and DURECT shall modify such provision in accordance with this Section 12.13 to obtain a legal, valid and enforceable provision and provide an

economic benefit to Otonomy and DURECT that most nearly effects Otonomy's and DURECT's intent on entering into this Agreement.

12.12. Bankruptcy Treatment of Licenses. The parties agree that the rights granted to Otonomy hereunder, including, without limitation, those rights granted in Section 2, are rights in "intellectual property" within the scope of Section 101 (or its successors) of the United States Bankruptcy Code (the "**Code**")**.** Licensee shall have the rights set forth herein with respect to the Licensed Products when and as developed or created. In addition, Otonomy, as a licensee of intellectual property rights hereunder, shall have and may fully exercise all rights available to a licensee under the Code, including, without limitation, under Section 365(n) or its successors. In the event of a case under the Code involving DURECT, Otonomy shall have the right to obtain (and DURECT or any trustee for DURECT or its assets shall, at Otonomy's written request, deliver to Otonomy) a copy of all embodiments (including, without limitation, any work in progress) of any intellectual property rights granted hereunder, including, without limitation, embodiments of any Licensed Products, and any other intellectual property necessary or desirable for Otonomy to use or exploit any Licensed Products or to exercise its rights hereunder. In addition, DURECT shall take all steps reasonably requested by Otonomy to perfect, exercise and enforce its rights hereunder, including, without limitation, filings in the U.S. Copyright Office and U.S. Patent and Trademark Office, and under the Uniform Commercial Code.

12.13. Entire Agreement. The parties hereto acknowledge that this Agreement, together with the exhibits attached hereto, sets forth the entire agreement and understanding of the parties as to the subject matter hereto, and supersedes all prior and contemporaneous discussions, agreements and writings in respect hereto. This Agreement supersedes the Non-Disclosure Agreement to the extent indicated in Section 11.6 hereunder.

12.14. Headings. The article, section and paragraph headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of the articles, sections or paragraphs to which such headings apply.

12.15. Counterparts. This Agreement may be executed in two or more counterparts (including faxed counterparts), each of which shall be deemed an original and all of which together shall constitute one instrument.

12.16. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer, nor shall anything herein confer on, any person other than the parties and the respective successors or permitted assigns of the parties, any rights, remedies, obligations or liabilities. For the avoidance of doubt, any payment made to INSERM pursuant to Section 4.2 represents payments owed by Otonomy to DURECT, which DURECT would otherwise remit to INSERM pursuant to DURECT's payment obligations, and are paid by Otonomy to INSERM directly on behalf of DURECT solely for the convenience of DURECT and Otonomy. Such payments do not relieve DURECT of its obligations to pay 1NSERM and do not create an independent right on the part of INSERM under this Agreement.

IN WITNESS WHEREOF, Otonomy and DURECT have executed this Agreement by their respective duly authorized representatives.

OTONOMY, INC.	**DURECT CORPORATION**
By: /s/ David A. Weber, PhD	By: /s/ James E. Brown
Name: David A. Weber, PhD	Name: James E. Brown
Title: *President & Chief Executive Officer*	Title: *CEO*

EXHIBIT A

DURECT THIRD PARTY LICENSES

[***]

*** This exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT B

DURECT PATENT RIGHTS

[***]

*** This exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT C
INSERM AGREEMENT

[***]

*** This exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Exhibit 10.12

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED AS TO CERTAIN PORTIONS OF THIS DOCUMENT. EACH SUCH PORTION, WHICH HAS BEEN OMITTED HEREIN AND REPLACED WITH AN ASTERISK [***], HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

LICENSE AGREEMENT

BETWEEN

OTONOMY, INC.

AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

FOR

CASE NO. SD2008-274, SD2009-077 THROUGH SD2009-098 AND SD 2009-126

TABLE OF CONTENTS

LICENSE AGREEMENT

This agreement ("Agreement") is made by and between Otonomy, Inc. a Delaware corporation having an address at 5626 Oberlin Drive, Suite 100, San Diego, California 92121 ("LICENSEE") and The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200 ("UNIVERSITY"), represented by its San Diego campus having an address at University of California, San Diego, Technology Transfer & Intellectual Property Services, Mail Code 0910, 9500 Gilman Drive, La Jolla, California 92093-0910 ("UCSD").

This Agreement is effective on the date of the last signature ("Effective Date").

RECITALS

WHEREAS, the inventions disclosed in UCSD Disclosure Docket No. SD2008-274 and titled "Auris-Interna Formulations for Treating Otic Diseases and Conditions" and the additional related disclosures listed in Exhibit A (collectively, "Invention"), were made in the course of research at UCSD by Dr. Jeffrey Harris, and at Otonomy by one or more non-UC collaborators, including Dr. Jay Lichter (hereinafter and collectively, the "Inventors") and are covered by Patent Rights as defined below;

WHEREAS, Dr. Jeffrey Harris is an employee of the Veterans Administration Medical Center and UNIVERSITY. In accordance with the policy of the U.S. Department of Veterans Affairs ("VA"), Dr. Harris reported the Invention (UC Case No. SD2008-274 and the additional related disclosures listed in Exhibit A) to the VA for a determination of rights. The VA may decide that the U.S. Government should retain its right, title and interest in and to the Invention. Dr. Harris will assign his right, title and interest in and to the Invention (UC Case No. SD2008-274 and the additional related disclosures listed in Exhibit A) jointly to the U.S. Government and UNIVERSITY;

WHEREAS, the VA and UNIVERSITY entered into a Cooperative Technology Administration Agreement (VA/UC Agreement) under which the VA authorizes UNIVERSITY to have the exclusive right to prepare, file, prosecute and maintain patent applications and patents covering inventions in which both parties have an interest and the exclusive right to negotiate, execute and administer agreements for the commercialization of such inventions;

WHEREAS, UNIVERSITY is desirous that the Invention be developed and utilized to the fullest possible extent so that its benefits can be enjoyed by the general public;

WHEREAS, LICENSEE is desirous of obtaining certain rights from UNIVERSITY for commercial development, use, and sale of the Invention, and the UNIVERSITY is willing to grant such rights; and

WHEREAS, LICENSEE understands that UNIVERSITY may publish or otherwise disseminate information concerning the Invention at any time and that LICENSEE is paying consideration thereunder for its early access to the Invention, not continued secrecy therein.

NOW, THEREFORE, the parties agree:

ARTICLE 1. DEFINITIONS

The terms, as defined herein, shall have the same meanings in both their singular and plural forms.

1.1 "Affiliate" means any corporation or other business entity which is bound in writing by LICENSEE to the terms set forth in this Agreement and in which LICENSEE owns or controls, directly or indirectly, at least twenty percent (20%) of the outstanding stock or other voting rights entitled to elect directors, or in which LICENSEE is owned or controlled directly or indirectly by at least twenty percent (20%) of the outstanding stock or other voting rights entitled to elect directors; but in any country where the local law does not permit foreign equity participation of at least twenty percent (20%), then an "Affiliate" includes any company in which LICENSEE owns or controls or is owned or controlled by, directly or indirectly, the maximum percentage of outstanding stock or voting rights permitted by local law.

1.2 "Combination Product" means any product which is a Licensed Product (as defined below) and contains other product(s) or product component(s) that is not an excipient, diluant, adjuvant, buffer and the like and (i) does not use Invention, or Patent Rights (as defined below); (ii) the sale, use or import by itself does not contribute to or induce the infringement of Patent Rights; (iii) is sold separately by LICENSEE, its Sublicensee (as defined below) or an Affiliate; and (iv) enhances the market price of the final product(s) sold, used or imported by LICENSEE, its Sublicensee, or an Affiliate.

1.3 "Field" means [***].

1.4 "Licensed Method" means any method that uses or is covered by Patent Rights the use of which would constitute, but for the license granted to LICENSEE under this Agreement, an infringement, an inducement to infringe or contributory infringement, of any pending or issued claim within Patent Rights, had LICENSEE not had rights in patents and patent applications claiming Invention.

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1.5 “Licensed Product” means any service, composition or product that is covered by the claims of Patent Rights, or that is produced by the Licensed Method, or the manufacture, use, sale, offer for sale, or importation of which would constitute, but for the license granted to LICENSEE under this Agreement, an infringement, an inducement to infringe or contributory infringement, of any pending or issued claim within the Patent Rights, had LICENSEE not had rights in patents and patent applications claiming Invention.

1.6 “Net Sales” means the total of the gross invoice prices of Licensed Products sold or leased by LICENSEE, Sublicensee, Affiliate, or any combination thereof, less the sum of the following actual and customary deductions where applicable and separately listed: cash, trade, or quantity discounts; sales, use, tariff, import/export duties or other excise taxes imposed on particular sales (except for value-added and income taxes imposed on the sales of Licensed Product in foreign countries); transportation charges; or credits to customers because of rejections or returns. For purposes of calculating Net Sales, transfers to a Sublicensee or an Affiliate of Licensed Product under this Agreement for (i) end use (but not resale) by the Sublicensee or Affiliate shall be treated as sales by LICENSEE at list price of LICENSEE, or (ii) resale by a Sublicensee or an Affiliate shall be treated as sales at the list price of the Sublicensee or Affiliate.

1.7 “Patent Rights” means UNIVERSITY’s rights in any of the US patent applications listed in Exhibit B disclosing and claiming the Inventions, filed by Inventors and assigned to UNIVERSITY; and continuing applications thereof including divisions, substitutions, and continuations-in-part (but only to extent the claims thereof are enabled by disclosure of the parent application); any patents issuing on said applications including reissues, reexaminations and extensions; and any corresponding foreign applications or patents.

1.8 “Sublicense” means an agreement into which LICENSEE enters with a third party that is not an Affiliate for the purpose of (i) granting certain rights; (ii) granting an option to certain rights; or (iii) forbearing the exercise of any rights, granted to LICENSEE under this Agreement. “Sublicensee” means a third party with whom LICENSEE enters into a Sublicense.

1.9 “Term” means the period of time beginning on the Effective Date and ending on the expiration date of the longest-lived Patent Rights.

1.10 “Territory” means worldwide where Patent Rights exist.

1.11 “VA/UC Agreement” means the Cooperative Technology Administration Agreement with an effective date of May 19, 2000, together with any amendments which have been executed by the Effective Date of this Agreement, which such Agreement and such amendments are attached hereto as Exhibit A and are incorporated herein by reference.

ARTICLE 2. GRANTS

License. Subject to the limitations set forth in this Agreement, and limitations set forth in the VA/UC Agreement, UNIVERSITY hereby grants to LICENSEE, and LICENSEE hereby accepts, a license under Patent Rights to make and have made, to use and have used, to sell and have sold, to offer for sale, and to import and have imported Licensed Products and to practice Licensed Methods, in the Field within the Territory and during the Term.

The license granted herein is exclusive for Patent Rights.

The License granted in this Paragraph 2.1 is subject to the following:

The obligation to the U.S. Government under 35 U.S.C. §§ 200-212 and all applicable governmental implementing regulations, as amended from time to time, (including the obligation to report on the utilization of the Invention as set forth in 37 C.F.R. § 401.14 (h)), and all applicable provisions of any license to the U.S. Government executed by UNIVERSITY and the VA/UC Agreement.

2.2 **Sublicense.**

(a) The license granted in Paragraph 2.1 includes the right of LICENSEE to grant Sublicense to third parties during the Term but only for as long the license is exclusive.

(b) With respect to Sublicense granted pursuant to Paragraph 2.2(a), LICENSEE shall:

(i) not receive, or agree to receive, anything of value in lieu of cash as consideration from a third party under a Sublicense granted pursuant to Paragraph 2.2(a) without the express written consent of UNIVERSITY;

(ii) to the extent applicable, include all of the rights of and obligations due to UNIVERSITY (and, if applicable, the rights and obligations of the US Government under 35 U.S.C. §§ 200-212 and the VA/UC Agreement) and contained in this Agreement;

(iii) promptly provide UNIVERSITY with a copy of each Sublicense issued; and

(iv) collect and guarantee payment of all payments due, directly or indirectly, to UNIVERSITY from Sublicensees and summarize and deliver all reports due, directly or indirectly, to UNIVERSITY from Sublicensees.

(c) Upon termination of this Agreement for any reason, UNIVERSITY, at its sole discretion, shall determine whether LICENSEE shall cancel or assign to UNIVERSITY any and all Sublicenses; provided, however, that LICENSEE may submit a proposed Sublicense to UNIVERSITY in advance for UNIVERSITY's prior approval, such approval not to be unreasonably withheld or delayed, and if UNIVERSITY approves such Sublicense, and Sublicensee agrees to the terms of this Agreement, then such Sublicense shall also become a direct license between Sublicensee and UNIVERSITY upon termination of this Agreement for any reason.

(d) If LICENSEE grants a license to a third party under its own interest in the Field in any patent rights claiming Invention, LICENSEE shall also concurrently grant a Sublicense under Patent Rights to said third party under this Paragraph.

2.3 **Reservation of Rights.** UNIVERSITY and VA reserve the right to:

(a) use the Invention and Patent Rights for educational and research purposes;

(b) publish or otherwise disseminate any information about the Invention at any time; and

(c) allow other nonprofit institutions to use Invention and Patent Rights for educational and research purposes in their facilities.

2.4 The U.S. Government shall have the non-exclusive, non-transferrable, irrevocable, royalty-free, paid-up right to practice or have practiced the Invention throughout the world by or on behalf of the U.S. Government and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement to which the U.S. Government is a signatory.

ARTICLE 3. CONSIDERATION

3.1 **Fees and Royalties.** The parties hereto understand that the fees and royalties payable by LICENSEE to UNIVERSITY under this Agreement are partial consideration for the license granted herein to LICENSEE under Patent Rights. LICENSEE shall pay UNIVERSITY:

(a) a **license issue fee** of [***] dollars (US$[***]) upon execution of this Agreement;

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(b) **license maintenance fees** of [***] dollars (US$[***]) per year and payable on the first anniversary of the Effective Date and annually thereafter on each anniversary; provided however, that LICENSEE's obligation to pay this fee shall end on the date when LICENSEE is commercially selling a Licensed Product;

(c) **milestone payments** in the amounts payable according to the following schedule or events for each Licensed Product:

	Amount	Date or Event
(i)	$[***]	[***]
(ii)	$[***]	[***]
(iii)	$[***]	[***]
(iv)	$[***]	[***]
(v)	$[***]	[***]

provided, however, in the event a Licensed Product is designated as an "orphan" product when it achieves an above event, then LICENSEE shall only pay 25% of the amount for the corresponding event for each such orphan Licensed Product.

(d) an **earned royalty** of [***] percent ([***]%) on Net Sales of Licensed Products by LICENSEE and/or its Affiliate(s);

provided, however, that the earned royalty due on Net Sales of Combination Product by LICENSEE and/or its Affiliate(s) shall be calculated as below:

Earned Royalties due UNIVERSITY = [***]

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[***]

(e) In the event LICENSEE is required to pay royalties to one or more third parties for patent rights necessary to make, use or sell Licensed Products, LICENSEE may deduct $[***] from the earned royalties payable to UNIVERSITY for every $[***] LICENSEE actually pays to said third parties; provided, however, in no event shall the amount payable to UNIVERSITY be less than [***]% of the amount otherwise due.

(f) [***] percent ([***]%) of all **sublicense fees** received by LICENSEE from its Sublicensees that are not earned royalties;

(g) on each and every **sublicense royalty** payment received by LICENSEE from its Sublicensees on sales of Licensed Product by Sublicensee, the higher of (i) [***] percent ([***]%) of the royalties received by LICENSEE; or (ii) royalties based on the royalty rate in Paragraph 3.1(d) as applied to Net Sales of Sublicensee;

(h) beginning the calendar year of commercial sales of the first Licensed Product by LICENSEE, its Sublicensee, or an Affiliate and if the total earned royalties paid by LICENSEE under Paragraphs 3.1(d) and (g) to UNIVERSITY in any such year cumulatively amounts to less than [***] dollars (US$[***]) **("minimum annual royalty"),** LICENSEE shall pay to UNIVERSITY a minimum annual royalty on or before [***] the difference between amount noted above and the total earned royalty paid by LICENSEE for such year under Paragraphs 3.1(d) and (g); provided, however, that for the year of commercial sales of the first Licensed Product, the amount of minimum annual royalty payable shall be pro-rated for the number of months remaining in that calendar year.

All fees and royalty payments specified in Paragraphs 3.1(a) through 3.1(h) above shall be paid by LICENSEE pursuant to Paragraph 4.3 and shall be delivered by LICENSEE to UNIVERSITY as noted in Paragraph 10.1.

3.2 **Patent Costs** LICENSEE shall reimburse UNIVERSITY all past and future out-of-pocket Patent Costs incurred in the Territory within thirty (30) days following the date an itemized invoice is sent from UNIVERSITY to LICENSEE.

There are no past Patent Costs paid by UNIVERSITY as of October 6, 2008.

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3.3 **Due Diligence.**

(a) LICENSEE shall, either directly or through its Affiliate(s) or Sublicensee(s):

[***]

(b) If LICENSEE fails to perform any of its obligations specified in Paragraphs 3.3(a)(i)-(ix), then UNIVERSITY shall have the right and option to either terminate this Agreement or change LICENSEE's exclusive license to a

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nonexclusive license. This right, if exercised by UNIVERSITY, supersedes the rights granted in Article 2. The VA also has termination rights under Article 7 of the VA/UC Agreement.

(c) The rights of the U.S. Government as provided for in Paragraph 3.5.4 of the VA/UC Agreement apply to LICENSEE under this Agreement.

ARTICLE 4. REPORTS, RECORDS AND PAYMENTS

4.1 **Reports.**

(a) **Progress Reports.** Beginning six months after Effective Date and ending on the date of first commercial sale of a Licensed Product in the United States, LICENSEE shall report to UNIVERSITY progress covering LICENSEE's (and Affiliate's and Sublicensee's) activities for the preceding six months to develop and test all Licensed Products and obtain governmental approvals necessary for marketing the same. Such semi-annual reports shall be due within sixty days of the reporting period and include a summary of work completed, summary of work in progress, current schedule of anticipated events or milestones, market plans for introduction of Licensed Products, and summary of resources (dollar value) spent in the reporting period.

(b) **Royalty Reports.** After the first commercial sale of a Licensed Product anywhere in the world, LICENSEE shall submit to UNIVERSITY quarterly royalty reports on or before each [***]. Each royalty report shall cover LICENSEE's (and each Affiliate's and Sublicensee's) most recently completed calendar quarter and shall show:

(i) the date of first commercial sale of a Licensed Product in each country;

(ii) the gross sales, deductions as provided in the definition of Net Sales in Article 1, and Net Sales during the most recently completed calendar quarter and the royalties, in US dollars, payable with respect thereto;

(iii) the number of each type of Licensed Product sold;

(iv) sublicense fees and royalties received during the most recently completed calendar quarter in US dollars, payable with respect thereto;

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(v) the method used to calculate the royalties; and

(vi) the exchange rates used.

If no sales of Licensed Products have been made and no sublicense revenue has been received by LICENSEE during any reporting period, LICENSEE shall so report.

4.2 **Records & Audits.**

(a) LICENSEE shall keep, and shall require its Affiliates and Sublicensees to keep, accurate and correct records of all Licensed Products manufactured, used, and sold, and sublicense fees received under this Agreement. Such records shall be retained by LICENSEE for at least [***] ([***]) years following a given reporting period.

(b) All records shall be available during normal business hours for inspection at the expense of UNIVERSITY by UNIVERSITY's Internal Audit Department or by a Certified Public Accountant selected by UNIVERSITY and in compliance with the other terms of this Agreement for the sole purpose of verifying reports and payments or other compliance issues. Such inspector shall not disclose to UNIVERSITY any information other than information relating to the accuracy of reports and payments made under this Agreement or other compliance issues. In the event that any such inspection shows an under reporting and underpayment in excess of [***] percent ([***]%) for any [***] ([***]) period, then LICENSEE shall pay the cost of the audit as well as any additional sum that would have been payable to UNIVERSITY had the LICENSEE reported correctly, plus an interest charge at a rate of [***] percent ([***]%) per year. Such interest shall be calculated from the date the correct payment was due to UNIVERSITY up to the date when such payment is actually made by LICENSEE. For underpayment not in excess of [***] percent ([***]%) for any [***] ([***]) period, LICENSEE shall pay the difference within [***] ([***]) days without interest charge or inspection cost.

(c) UNIVERSITY may provide the VA with all financial information obtained from LICENSEE under Paragraph 4.1 hereof to the extent required under the VA/UC Agreement, and if such information is provided to the VA, UNIVERSITY will require that the VA not disclose it to third parties.

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4.3 **Payments.**

(a) All fees reimbursements and royalties due UNIVERSITY shall be paid in United States dollars and all checks shall be made payable to "The Regents of the University of California", referencing UNIVERSITY's taxpayer identification number, 95-6006144, and sent to UNIVERSITY according to Paragraph 10.1 (Correspondence). When Licensed Products are sold in currencies other than United States dollars, LICENSEE shall first determine the earned royalty in the currency of the country in which Licensed Products were sold and then convert the amount into equivalent United States funds, using the exchange rate quoted in the Wall Street Journal on the last business day of the applicable reporting period.

(b) Royalty Payments.

(i) Royalties shall accrue when Licensed Products are invoiced, or if not invoiced, when delivered to a third party or Affiliate.

(ii) LICENSEE shall pay earned royalties quarterly on or before [***]. Each such payment shall be for earned royalties accrued within LICENSEE's most recently completed calendar quarter.

(iii) Royalties earned on sales occurring or under sublicense granted pursuant to this Agreement in any country outside the United States shall not be reduced by LICENSEE for any taxes, fees, or other charges imposed by the government of such country on the payment of royalty income, except that all payments made by LICENSEE in fulfillment of UNIVERSITY's tax liability in any particular country may be credited against earned royalties or fees due UNIVERSITY for that country. LICENSEE shall pay all bank charges resulting from the transfer of such royalty payments.

(iv) If at any time legal restrictions prevent the prompt remittance of part or all royalties by LICENSEE with respect to any country where a Licensed Product is sold or a sublicense is granted pursuant to this Agreement, LICENSEE shall convert the amount owed to UNIVERSITY into US currency and shall pay UNIVERSITY directly from its US sources of fund for as long as the legal restrictions apply.

(v) In the event that any patent or patent claim within Patent Rights is held invalid in a final decision by a patent office from which no appeal or additional patent prosecution has been or can be taken, or

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by a court of competent jurisdiction and last resort and from which no appeal has or can be taken, all obligation to pay royalties based solely on that patent or claim or any claim patentably indistinct therefrom shall cease as of the date of such final decision. LICENSEE shall not, however, be relieved from paying any royalties that accrued before the date of such final decision, that are based on another patent or claim not involved in such final decision

(c) Late Payments. In the event royalty, reimbursement and/or fee payments are not received by UNIVERSITY when due, LICENSEE shall pay to UNIVERSITY interest charges at a rate of [***] percent ([***]%) per year. Such interest shall be calculated from the date payment was due until actually received by UNIVERSITY.

ARTICLE 5. PATENT MATTERS

5.1 **Patent Prosecution and Maintenance.**

(a) LICENSEE shall diligently prosecute and maintain United States and, if available, foreign patents, and applications in Patent Rights using counsel of its choice. LICENSEE shall provide UNIVERSITY with copies of all relevant documentation relating to such prosecution. The counsel shall take instructions only from LICENSEE, and all patents and patent applications in Patent Rights shall be assigned jointly to UNIVERSITY, the VA and LICENSEE.

(b) LICENSEE shall consider amending any patent application in Patent Rights to include claims reasonably requested by UNIVERSITY.

(c) LICENSEE may elect to terminate its payment obligations with respect to any patent application or patent in Patent Rights upon three (3) months' written notice to UNIVERSITY. LICENSEE shall use reasonable efforts to curtail further Patent Costs for such application or patent when such notice of termination is sent to UNIVERSITY. UNIVERSITY, at its sole discretion and at its sole expense, may continue prosecution and maintenance of said patent application or patent, and LICENSEE shall have no further license with respect thereto. Non-payment of any portion of Patent Costs with respect to any application or patent may be deemed by UNIVERSITY as an election by LICENSEE to terminate all obligations with respect to such application or patent. The UNIVERSITY is not obligated to file, prosecute or maintain Patent Rights outside the Territory at any time or to file, prosecute or maintain Patent Rights to which LICENSEE has terminated its license hereunder.

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(d) LICENSEE shall apply for an extension of the term of any patent in Patent Rights if appropriate under the Drug Price Competition and Patent Term restoration Act of 1984 and/or European, Japanese and other foreign counterparts of this law. LICENSEE shall prepare all documents for such application, and shall execute such documents and take any additional action as required in connection herewith.

5.2 **Patent Infringement.**

(a) If LICESNEE learns of the substantial infringement of any patent licensed under this Agreement, then LICENSEE shall call UNIVERSITY's attention thereto in writing and provide UNIVERSITY with reasonable evidence of infringement. Neither party will notify a third party of the infringement of any of UNIVERSITY's Patent Rights without first obtaining the consent of the other party, which consent will not be unreasonably denied. Both parties shall use their best efforts in cooperation with each other to terminate infringement without litigation.

(b) LICENSEE may request that the UNIVERSITY take legal action against the infringement of University's Patent Rights. Such request must be in writing and must include reasonable evidence of infringement and damages to LICENSEE. If the infringing activity has not abated within ninety (90) days following the effective date of request, then the UNIVERSITY or the U.S. Government has the right to:

commence suit on its own account; or
refuse to participate in the suit, and

the UNIVERSITY shall give notice of its election in writing to LICENSEE by the end of the one-hundredth (100th) day after receiving notice of written request from LICENSEE. LICENSEE may thereafter bring suit for patent infringement, at its own expense, if and only if the UNIVERSITY and the U.S. Government elect not to commence suit and if the infringement occurred during the period and in a jurisdiction where LICENSEE had exclusive rights under this Agreement. If, however, LICENSEE elects to bring suit in accordance with this Paragraph 5.2, then the UNIVERSITY or the U.S. Government may thereafter join that suit at its own expense. LICENSEE agrees not to bring suit for patent infringement without following the procedures of this Paragraph, and both parties agree to be bound by the outcome of a suit for patent infringement, patent infringement issues and patent infringement defenses raised through the pendency of such a suit under this Paragraph 5.2 (b).

(c) Legal action, as is decided on, will be at the expense of the party bringing suit and all damages recovered thereby will belong to the party bringing suit, but legal action brought jointly by the UNIVERSITY and/or the U.S.

Government and by LICENSEE and fully participated in by them will be at the joint expense of the parties and all recoveries will be shared jointly by them in proportion to the share of expense paid by each party.

(d) Any recovery or settlement received in connection with any suit will first be shared by UNIVERSITY and LICENSEE equally to cover the litigation costs each incurred, and next shall be paid to UNIVERSITY or LICENSEE to cover any litigation costs it incurred in excess of the litigation costs of the other. In any suit initiated by LICENSEE, any recovery in excess of litigation costs will be shared between LICENSEE and UNIVERSITY as follows: (i) for any recovery other than amounts paid for willful infringement: (A) UNIVERSITY will receive [***] percent ([***]%) of the recovery if UNIVERSITY was not a party in the litigation and did not incur any litigation costs; (B) UNIVERSITY will receive [***] percent ([***]%) of the recovery if UNIVERSITY was a party in the litigation, but did not incur any litigation costs, including the provisions of Paragraph 5.2(b) above, or (C) UNIVERSITY will receive [***] percent ([***]%) of the recovery if UNIVERSITY incurred any litigation costs in connection with the litigation; and (ii) for any recovery for willful infringement, UNIVERSITY will receive [***] percent ([***]%) of the recovery. In any suit initiated by UNIVERSITY, any recovery in excess of litigation costs will belong to UNIVERSITY. UNIVERSITY and LICENSEE agree to be bound by all determinations of patent infringement, validity, and enforceability (but no other issue) resolved by any adjudicated judgment in a suit brought in compliance with this Section 5.2.

(e) Each party shall cooperate with the other in litigation proceedings instituted hereunder but at the expense of the party bringing suit. Litigation will be controlled by the party bringing the suit, except that UNIVERSITY may be represented by counsel of its choice in any suit brought by LICENSEE.

5.3 Patent Marking. LICENSEE shall mark all Licensed Products made, used or sold under the terms of this Agreement, or their containers, in accordance with the applicable patent marking laws.

ARTICLE 6. GOVERNMENTAL MATTERS

6.1 **Governmental Approval or Registration.** If this Agreement or any associated transaction is required by the law of any nation to be either approved or registered with any governmental agency, LICENSEE shall assume all legal obligations to do so.

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LICENSEE shall notify UNIVERSITY if it becomes aware that this Agreement is subject to a United States or foreign government reporting or approval requirement. LICENSEE shall make all necessary filings and pay all costs including fees, penalties, and all other out-of-pocket costs associated with such reporting or approval process.

6.2 **Export Control Laws.** LICENSEE shall observe all applicable United States and foreign laws with respect to the transfer of Licensed Products and related technical data to foreign countries, including, without limitation, the International Traffic in Arms Regulations and the Export Administration Regulations.

6.3 **Preference for United States Industry.** If LICENSEE sells a Licensed Product or Combination Product in the US, LICENSEE shall manufacture said product substantially in the US.

ARTICLE 7. TERMINATION OF THE AGREEMENT

7.1 **Termination by UNIVERSITY.**

(a) If LICENSEE fails to perform or violates any term of this Agreement, then UNIVERSITY may give written notice of default ("Notice of Default") to LICENSEE. If LICENSEE fails to cure the default within sixty (60) days of the Notice of Default, UNIVERSITY may terminate this Agreement and the license granted herein by a second written notice ("Notice of Termination") to LICENSEE. If a Notice of Termination is sent to LICENSEE, this Agreement shall automatically terminate on the effective date of that notice. Termination shall not relieve LICENSEE of its obligation to pay any fees owed at the time of termination and shall not impair any accrued right of UNIVERSITY. The VA also has termination rights under Article 7 of the VA/UC Agreement.

(b) This Agreement will terminate immediately, without the obligation to provide 60 days notice as set forth in Paragraph 7.1(a), if LICENSEE files a claim including in any way the assertion that any portion of UNIVERSITY's Patent Rights is invalid or unenforceable where the filing is by the LICENSEE, a third party on behalf of the LICENSEE, or a third party at the written urging of the LICENSEE.

7.2 **Termination by LICENSEE.**

(a) LICENSEE shall have the right at any time and for any reason to terminate this Agreement upon a ninety (90)-day written notice to UNIVERSITY. Said

notice shall state LICENSEE's reason for terminating this Agreement. The VA also has termination rights under Article 7 of the VA/UC Agreement.

(b) Any termination under Paragraph 7.2(a) shall not relieve LICENSEE of any obligation or liability accrued under this Agreement prior to termination or rescind any payment made to UNIVERSITY or action by LICENSEE prior to the time termination becomes effective. Termination shall not affect in any manner any rights of UNIVERSITY arising under this Agreement prior to termination.

7.3 Survival on Termination. The following Paragraphs and Articles shall survive the termination of this Agreement:

(a) Article 4 (REPORTS, RECORDS AND PAYMENTS);

(b) Paragraph 7.4 (Disposition of Licensed Products on Hand);

(c) Paragraph 8.2 (Indemnification);

(d) Article 9 (USE OF NAMES AND TRADEMARKS);

(e) Paragraph 10.2 hereof (Secrecy); and

(f) Paragraph 10.5 (Failure to Perform).

7.4 Disposition of Licensed Products on Hand. Upon termination of this Agreement, LICENSEE may dispose of all previously made or partially made Licensed Product within a period of one hundred and twenty (120) days of the effective date of such termination provided that the sale of such Licensed Product by LICENSEE, its Sublicensees, or Affiliates shall be subject to the terms of this Agreement, including but not limited to the rendering of reports and payment of royalties required under this Agreement.

ARTICLE 8. LIMITED WARRANTY AND INDEMNIFICATION

8.1 **Limited Warranty.**

(a) UNIVERSITY warrants that it has the lawful right to grant this license.

(b) The license granted herein is provided "AS IS" and without WARRANTY OF MERCHANTABILITY or WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE or any other warranty, express or implied. UNIVERSITY and VA make no representation or warranty that the Licensed

Product, Licensed Method or the use of Patent Rights will not infringe any other patent or other proprietary rights.

(c) NEITHER UNIVERSITY NOR THE VA WILL BE LIABLE FOR ANY LOST PROFITS, COSTS OR PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, ENHANCED DAMAGES FOR INTELLECTUAL PROPERTY INFRINGEMENT OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES SUFFERED BY LICENSEE, SUBLICENSEES, JOINT VENTURES, AFFILIATES OR DEVELOPMENT PARTNERS ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY) EVEN IF UNIVERSITY OR THE VA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) Nothing in this Agreement shall be construed as:

(i) a warranty or representation by UNIVERSITY or VA as to the validity or scope of any Patent Rights;

(ii) a warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or shall be free from infringement of patents of third parties;

(iii) an obligation to bring or prosecute actions or suits against third parties for patent infringement except as provided in Paragraph 5.2 hereof;

(iv) conferring by implication, estoppel or otherwise any license or rights under any patents of UNIVERSITY or the U.S. Government other than Patent Rights as defined in this Agreement, regardless of whether those patents are dominant or subordinate to Patent Rights; or

(v) an obligation to furnish any know-how not provided in Patent Rights.

8.2 **Indemnification.**

(a) LICENSEE shall indemnify, hold harmless and defend the U.S. Government, the UNIVERSITY, its officers, employees, and agents; the sponsors of the research that led to the Invention; and the Inventors of the patents and patent applications in Patent Rights and their employers against any and all claims,

suits, losses, damage, costs, fees, and expenses resulting from or arising out of exercise of this license or any sublicense. This indemnification shall include, but not be limited to, any product liability.

(b) LICENSEE, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement and obtain, keep in force and maintain insurance or an equivalent program of self insurance as follows:

(i) prior to initiation of human clinical trials: comprehensive or commercial general liability insurance (contractual liability included) with limits of at least : (A) each occurrence, five hundred thousand dollars (US$500,000); (B) products/completed operations aggregate, one million dollars (US$1,000,000); (C) personal and advertising injury, five hundred thousand dollars (US$500,000); (D) general aggregate (commercial form only), one million dollars (US$1,000,000);

(ii) upon initiation of human clinical trials: comprehensive or commercial general liability insurance (contractual liability included) with limits of at least: (A) each occurrence, five million dollars (US$5,000,000); (B) products/completed operations aggregate, ten million dollars (US$10,000,000); (C) personal and advertising injury, five million dollars (US$5,000,000); and (D) general aggregate (commercial foul only), ten million dollars (US$10,000,000); and

(iii) the coverage and limits referred to above shall not in any way limit the liability of LICENSEE.

(c) LICENSEE shall furnish UNIVERSITY with certificates of insurance showing compliance with all requirements. Such certificates shall:

(i) provide for thirty (30) day advance written notice to UNIVERSITY of any modification;
(ii) indicate that UNIVERSITY has been endorsed as an additional insured under the coverage referred to above; and
(iii) include a provision that the coverage shall be primary and shall not participate with nor shall be excess over any valid and collectable insurance or program of self-insurance carried or maintained by UNIVERSITY.

(d) UNIVERSITY shall notify LICENSEE in writing of any claim or suit brought against UNIVERSITY or U.S. Government in respect of which UNIVERSITY or U.S. Government intends to invoke the provisions of this Article. LICENSEE shall keep UNIVERSITY informed on a current basis of its defense of any claims under this Article.

ARTICLE 9. USE OF NAMES AND TRADEMARKS

9.1 Nothing contained in this Agreement confers any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of either party hereto or the VA (including contraction, abbreviation or simulation of any of the foregoing). Unless required by law, the use by LICENSEE of the name, "The Regents of the University of California" or the name of any campus of the University Of California or the VA is prohibited, without the express written consent of UNIVERSITY. Unless required by law, the use by LICENSEE of the name "U.S. Department of Veteran Affairs" is prohibited.

9.2 UNIVERSITY may disclose to the Inventors the terms and conditions of this Agreement upon their request. If such disclosure is made, UNIVERSITY shall request the Inventors not disclose such terms and conditions to others.

9.3 UNIVERSITY or VA may acknowledge the existence of this Agreement and the extent of the grant in Article 2 to third parties, but UNIVERSITY shall not disclose the financial terms of this Agreement to third parties, except where UNIVERSITY is required by law to do so, such as under the California Public Records Act.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 **Correspondence.** Any notice or payment required to be given to either party under this Agreement shall be deemed to have been properly given and effective:

(a) on the date of delivery if delivered in person, or

(b) five (5) days after mailing if mailed by first-class or certified mail, postage paid, to the respective addresses given below, or to such other address as is designated by written notice given to the other party.

If sent to LICENSEE:

Otonomy, Inc.
5626 Oberlin Drive, Suite 100
San Diego, California 92121
Attention : Jay Lichter, Ph.D.
Phone: (858) 768-7826
Fax: (858) 200-0821
With a copy to: Court R. Turner

If sent to UNIVERSITY by mail:

University of California, San Diego
Technology Transfer Office

9500 Gilman Drive
Mail Code 0910
La Jolla, CA 92093-0910
Attention: Assistant Vice Chancellor

If sent to UNIVERSITY by courier:

University of California, San Diego
Technology Transfer Office
10300 North Torrey Pines Road
Torrey Pines Center North, First Floor
La Jolla, CA 92037
Attention : Assistant Vice Chancellor

10.2 **Secrecy.**

(a) "Confidential Information" shall mean information relating to the Invention and disclosed by UNIVERSITY to LICENSEE during the term of this Agreement, which if disclosed in writing shall be marked "Confidential", or if first disclosed otherwise, shall within thirty (30) days of such disclosure be reduced to writing by UNIVERSITY and sent to LICENSEE:

(b) Licensee shall:

(i) use the Confidential Information for the sole purpose of performing under the terms of this Agreement;

(ii) safeguard Confidential Information against disclosure to others with the same degree of care as it exercises with its own data of a similar nature;

(iii) not disclose Confidential Information to others (except to its employees, agents or consultants who are bound to LICENSEE by a like obligation of confidentiality) without the express written permission of UNIVERSITY, except that LICENSEE shall not be prevented from using or disclosing any of the Confidential Information that:

(A) LICENSEE can demonstrate by written records was previously known to it;

(B) is now, or becomes in the future, public knowledge other than through acts or omissions of LICENSEE;

(C) is lawfully obtained by LICENSEE from sources independent of UNIVERSITY; or

(D) is required to be disclosed by law or a court of competent jurisdiction; and

(c) The secrecy obligations of LICENSEE with respect to Confidential Information shall continue for a period ending five (5) years from the termination date of this Agreement.

10.3 **Assignability.** This Agreement may be assigned by UNIVERSITY, but is personal to LICENSEE and assignable by LICENSEE only with the written consent of UNIVERSITY. LICENSEE may assign in connection with the sale or merger of all or substantially all of its assets with or into another party subject to approval by UNIVERSITY. The consent of UNIVERSITY will not be unreasonably withheld or delayed if the assignment is in conjunction with the transfer of all or substantially all of the business of LICENSEE to which this Agreement relates. However, UNIVERSITY will not be deemed to be unreasonable in withholding consent where the assignment is prohibited by State or Federal Law or is likely to cause damage to the UNIVERSITY reputation or is counter to the UNIVERSITY'S stated missions as a public entity.

10.4 **No Waiver.** No waiver by either party of any breach or default of any covenant or agreement set forth in this Agreement shall be deemed a waiver as to any subsequent and/or similar breach or default.

10.5 **Failure to Perform.** In the event of a failure of performance due under this Agreement and if it becomes necessary for either party to undertake legal action against the other on account thereof, then the prevailing party shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

10.6 **Governing Laws.** THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, but the scope and validity of any patent or patent application shall be governed by the applicable laws of the country of the patent or patent application.

10.7 **Force Majeure.** A party to this Agreement may be excused from any performance required herein if such performance is rendered impossible or unfeasible due to any catastrophe or other major event beyond its reasonable control, including, without limitation, war, riot, and insurrection; laws, proclamations, edicts, ordinances, or regulations; strikes, lockouts, or other serious labor disputes; and floods, fires, explosions, or other natural disasters. When such events have abated, the non-performing party's obligations herein shall resume.

10.8 **Headings.** The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

10.9 **Entire Agreement.** This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof.

10.10 **Amendments.** No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each party.

10.11 **Severability.** In the event that any of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained in it.

IN WITNESS WHEREOF, both UNIVERSITY and LICENSEE have executed this Agreement, in duplicate originals, by their respective and duly authorized officers on the day and year written.

OTONOMY:

By: /s/ Jay Lichter, Ph.D.
(Signature)

Name: Jay Lichter, Ph.D.

Title: CEO

Date: 11/5/08

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

By: /s/ Jane C. Moores, Ph.D.
(Signature)

Name: Jane C. Moores, Ph.D.

Title: Assistant Vice Chancellor-IP

Date: 10/30/08

Exhibit A

Inventions Included in this Agreement

[***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

[***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Exhibit B

Patent Applications

[***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

[***]

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Exhibit C

VA/UC Agreement

Exhibit C

U.S. DEPARTMENT OF VETERANS AFFAIRS

AND THE UNIVERSITY OF CALIFORNIA

COOPERATIVE TECHNOLOGY ADMINISTRATION AGREEMENT

This Cooperative Technology Administration Agreement ("Agreement") is made as of this 19th day of May, 2000, by and between the United States Department of Veterans Affairs (hereinafter referred to as "VA"), as represented by the Technology Transfer Program, Office of Research and Development, having an address at 810 Vermont Avenue N.W., Washington, D.C. 20420, and The Regents of the University of California, as represented by the Office of Technology Transfer, having an address at 1111 Franklin Street, 5th Floor, Oakland, California 94607-5200 ("University").

RECITALS

Whereas, VA and University through their employment relationship with certain faculty and staff, through 37 CFR Part 501, and/or through 35 U.S.C. 200-212, as well as state law and implementing policies, have an interest in inventions made by their employees;

Whereas, VA and University policies promote disclosure of research results for the public's use and benefit, as well as to define and protect the rights of inventors, provide for an equitable distribution of the rewards and responsibilities associated with the invention(s), and provide that income from such invention(s) be used for the purpose of promoting research and education;

Whereas, pursuant to their shared objectives, it is the mutual desire of VA and University that their respective interests in such inventions be administered and managed exclusively by University on behalf of both parties in a manner to ensure the timely commercialization of such inventions and to make their benefits widely available for society's use and benefit;

Whereas, VA is authorized to transfer to and to undertake all suitable steps to administer its rights in any such existing or future invention through contract with a nonprofit organization (including a university) under 35 U.S.C. 202(e) (to the maximum extent permitted by law), 35 U.S.C. 207(a)(3), or 15 U.S.C. 3710a;

Now, therefore, the parties hereto agree as follows:

1. DEFINITIONS

1.1 "Dual Appointment Personnel (DAP)" means any person who is employed by and has entered into and signed an employment or patent agreement with both VA and University.

1.2 "Patent Rights" means all United States patent applications and patents and corresponding patent applications and patents filed in countries other than the

United States that are assigned to VA and University, including any reissues, extensions, substitutions, divisions, continuations, and continuation-in-part applications (only to the extent, however, that claims in the continuations-in-part applications are entitled to the priority filing date of the parent patent application) based on the subject matter claimed in or covered by a Subject Invention.

1.3 "Property Rights" means all personal property rights covering the tangible personal property in biological materials directly associated with any Subject Invention.

1.4 "Made" in relation to any Subject Invention means the conception or first actual reduction to practice of such Subject Invention.

1.5 "Subject Invention" means Patent Rights and/or related Property Rights covering any existing or future disclosed invention in which both parties have an interest under their various policies, that is made either by a DAP or at least one inventor from each party, and that is not a Disclaimed Invention.

1.6 "Disclaimed Invention" means any Subject Invention for which University declines to pursue patenting, license or commercialization activities under Section 2.2 of this Agreement.

1.7 "License Agreement" means any executed agreement entered into by University under this Agreement that grants Licensee the right to make, use, sell, offer for sale, or import products covered by or claimed by the Subject Invention being licensed under such agreement or otherwise deals with administration of the Subject Invention, such as option or secrecy agreements.

1.8 "Licensee" means any party, not including the United States Government, that enters into a License Agreement with University.

1.9 "Government" means the Government of the United States of America.

1.10 "Fiscal Year" means July 1 through June 30.

1.11 "Gross Revenues" means consideration received by University from the licensing of any Subject Invention, but not including consideration in the form of research funding or other research support.

1.12 "Net Revenues" means Gross Revenues, less any prior contractual obligations to third party research supporters or joint owners, then less Administrative Fee, Expenses, Inventors Share, and Research Share for each Subject Invention.

1.13 "Inventors Share" means those revenues due under the applicable University of California policy to named inventors for each Subject Invention.

1.14 “Research Share” means those revenues to be allocated directly for research purposes, if any, under the applicable University of California Patent Policy for each Subject Invention.

1.15 “Expenses” means legal and other direct expenses incurred by University (that are not otherwise reimbursed from a third party) for patenting, protecting and preserving U.S. and foreign patent, copyright and related property rights, maintaining patents and such other costs, taxes, or reimbursements as may be necessary or required by law for each Subject Invention.

1.16 “Administrative Fee” means 15% fee of Gross Revenues retained by University in consideration of University’s commercialization efforts for each Subject Invention.

1.17 “UC Site” means the campus or U.S. Department of Energy Laboratory managed by University at which a Subject Invention is made.

1.18 “Pooled Amount” means Net Revenues aggregated by UC site cumulatively over time beginning the effective date of this Agreement for all of that UC Site’s Subject Inventions.

2. PATENT PROSECUTION AND PROTECTION

2.1 Disclosure. The parties agree to promptly and in confidence report to the other party each Subject Invention. VA agrees to provide to University a copy of its Determination of Rights letter to inventors regarding any potential Subject Invention.

2.2 Disclaimed Inventions. University shall notify VA in writing of any individual Subject Invention for which the University declines to pursue patenting, licensing or commercialization activities, and as of the date of such notice, that invention shall no longer be considered a Subject Invention under this Agreement.

2.3 VA authorizes University to have the exclusive right to prepare, file, prosecute, and maintain patent application(s) and patents covering any Subject Invention. University shall promptly provide to VA, upon request, all serial numbers and filing dates, together with copies of all such applications, including, on request copies of all Patent Office Actions, responses, and all other Patent Office communications. In addition, University shall be granted Power of Attorney for all such patent applications.

2.4 University shall make an election with respect to foreign filing including in which countries foreign filing will be done prior to the election, within ten (10) months of any United States filing. If any foreign patent applications are filed, University shall promptly, upon request, provide to VA all serial numbers and filing dates

together with copies of all such foreign patent applications, including on request, copies of all Patent Office Actions.

2.5 University shall promptly record assignments of domestic patent rights covering a Subject Invention in the United States Patent and Trademark Office and shall promptly provide VA with a copy of each recorded assignment with respect to VA.

2.6 Notwithstanding any other provision of this Agreement, University shall not abandon the prosecution of any patent application including provisional patent applications (except for purposes of filing continuation application(s)) or the maintenance of any patent for a Subject Invention without prior written notice to VA. Upon receiving such written notice, VA may, at its sole option and expense, take over the prosecution of any such patent application, or the maintenance of any such patent, and such invention shall no longer be considered a Subject Invention under this Agreement.

2.7 University may decide to bail Property Rights as a more efficient commercialization method than patenting. If University so decides, then University will follow the guidelines issued by the U.S. National Institutes of Health on such commercialization approach.

3. LICENSING

3.1 VA authorizes University to have the exclusive right to negotiate, execute, and administer any License Agreement. VA shall not license to any third parties any Subject Invention unless this Agreement is terminated in accordance with Article 7 (Termination) and there are no License Agreements in effect or under negotiation. VA also agrees to not pre-commit any Subject Inventions or future inventions that would be Subject Inventions under this Agreement to a commercial research sponsor or other entity through prior agreements made by VA foundations or others.

3.2 VA authorizes University to have the sole right to diligently seek a Licensee and negotiate and enter into License Agreements for the commercial development of any Subject Invention and to administer all such License Agreements for the mutual benefit of the parties and in the public interest.

3.3 University shall have the final authority to enter into negotiations and execute License Agreements. In accordance with Section 5.2, University shall provide VA with a copy of all executed License Agreements. VA shall keep these documents and related documentation confidential, unless such disclosure is required by law, except that VA may disclose the existence of any License Agreement, but only to the extent of the granting clause. VA will not disclose the names of the Licensee or any other terms contained in the License Agreement unless such disclosure is required under law.

3.4 University agrees to not enter into a License Agreement for commercial development of Subject Invention with a company who is identified on the current list of companies debarred from covered transactions as provided, and updated from time to time, by the VA.

3.5 Any respective License Agreement will include provisions that address the following:

3.5.1 The License Agreement will be subject to the overriding obligations to the U.S. Government, including those set forth in 35 U.S.C. §200-212 or 15 U.S.C. 3710a, and applicable governmental implementing regulations, whichever may be appropriate.

3.5.2 For a License Agreement granting an exclusive right to use or sell the Subject Invention in the United States, Licensee knowledges that any patent products embodying the Subject Invention or produced through the use thereof will be manufactured substantially in the United States.

3.5.3 The Government shall have the nonexclusive, nontransferable, irrevocable, royalty-free, paid-up right to practice or have practiced the Subject Invention throughout the world by or on behalf of the Government and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement to which the Government is a signatory.

3.5.4 The Government shall retain the right to require University to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the invention in the applicant’s licensed field of use on terms that are reasonable under the circumstances; or, if University fails to grant such a license, to grant the license itself. The Government may exercise its rights retained herein only in exceptional circumstances and only if the Government determines that (i) the action is necessary to meet health or safety needs that are not reasonably satisfied by University; (ii) the action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by University; or (iii) University has failed to comply with an agreement containing provisions described in 35 U.S.C. 204 or 15 U.S.C. 3710a(c)(4)(B), whichever is appropriate.

4. REVENUES

4.1 Inventor Share. University shall be solely responsible for calculating and distributing Inventor Share pursuant to University of California policy. Inventor Share will be distributed equally among the named inventors unless mutually agreed in writing by all inventors.

4.2 Research Share. University shall be solely responsible for calculating and distributing Research Share. The Research Share will be pro-rated in proportion to the number of sole University, sole VA and DAP employee inventors. For financial calculation purposes under this section, any DAP will be considered to be 50% VA and 50% University, regardless of actual employment percentages.

Example: For an invention made by a DAP inventor and two sole VA inventors, University would direct from 15% Research Share, 2.5% to the appropriate University research program and 12.5% to the VA for its appropriate research program.

4.3 Net Revenues. University agrees to pay to VA an amount equivalent to 50% of the Pooled Amount for each UC Site less payments made by University to VA for previous Fiscal Years. University's obligation to make payments to VA shall commence from the date that the Pooled Amount calculation is positive for a UC Site. Such payments are payable in annual installments and are due no later than January 31 for Pooled Amount calculation made for the prior Fiscal Year.

4.4 All payments to VA, required under this Agreement shall be in U.S. Dollars and shall be made by University by check or bank draft drawn on United States banks and shall be payable, as appropriate, to the "Department of Veterans Affairs (royalty)." All such payments shall be sent to the following address:

Department of Veterans Affairs
Technology Transfer Financial Management Office (12TT)
810 Vermont Avenue NW
Washington, D.C. 20420

The payment under Section 4.3 will be accompanied with an itemized accounting of performance of each individual Subject Invention.

5. RECORDS AND REPORTS

5.1 University shall keep complete, true, and accurate accounts of all Expenses and of all Gross Revenues received by it under each License Agreement and shall permit VA or VA's designated agent to examine its books and records in order to verify the payments due or owed under this Agreement.

5.2 University shall submit to VA at the address identified in Article 8 a semi-annual report, not later than January 31 covering the period through the prior June 30 and not later than April 30 covering the period through the prior December 31, setting forth the status of all patent prosecution, commercial development, and licensing activity concerning Subject Invention(s), and upon request of the VA, copies of patents issued and, in confidence, License Agreements executed during that period.

5.3 The report required under Section 5.2 shall also be made within sixty (60) days of the termination of this Agreement.

6. PATENT INFRINGEMENT

6.1 If the administrators responsible for this Agreement at VA or University learns of the substantial infringement of any Subject Invention, then the party who learns of the infringement will promptly call attention to the infringement in writing to the other party and provide the other party with reasonable evidence of the infringement. Neither party will notify a third party of infringement without first obtaining written consent of the other party, which consent will not be unreasonably withheld. University, in cooperation with VA, will use its best efforts to terminate the infringement without litigation. If the efforts of the parties are not successful in abating the infringement within 90 days after the infringement was formally brought to the attention of the parties, then either party will have the right to elect to:

6.1.1 commence suit on its own account;

6.1.2 permit an exclusive Licensee to bring suit separately, but only if University or VA elects not to bring suit;

6.1.3 join with the other party or an exclusive Licensee in the suit; or

6.1.4 refuse to participate in the suit;

and each party will give written notice of its election to the other party within 10 days after the 90-day period. University may permit an exclusive Licensee to bring suit on its own account, either by formal notice or by failure to act within the period, but only if University or VA elects not to commence suit or join each other in any suit.

6.2 Such legal action as is decided upon will be at the expense of the party on account of whom suit is brought and all recoveries recovered thereby will belong to such party, provided, however, that legal action brought by VA, University, and/or an exclusive Licensee, and participated in by the parties bringing suit will be at the expense of such parties, and all recoveries will be allocated in the following order:

6.2.1 to each party reimbursement in equal amounts of the attorney’s costs, fees, and other related expenses to the extent each party paid for such costs, fees, and expenses until all such costs, fees, and expenses are consumed for each party; and

6.2.2 any remaining amount shared by them in proportion to the share of expenses paid by each party.

6.3 Each party will cooperate with the other in litigation proceedings instituted under this Agreement but at the expense of the party on account of whom suit is brought. This litigation (including settlement) will be controlled by the party bringing the suit, except that University will control the suit if brought jointly. Either party may be represented at its sole expense by counsel of its choice in any suit brought by the other party or an exclusive Licensee. VA's agreement in this paragraph is subject to U.S. Department of Justice approval on a case-by-case basis.

7. TERM AND TERMINATION

7.1 Term. This Agreement is effective when signed by both parties and shall extend until the expiration of the last-to-expire of the License Agreements or patents covering a Subject Invention included under this Agreement, whichever is later, unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement.

7.2 Termination by Mutual Consent. University and VA may elect to terminate this Agreement, or portions thereof, at any time by mutual consent in writing. In such event, any outstanding commitments to third parties through License Agreements, options thereto, or research agreements concerning any Subject Invention(s) or future inventions that would be Subject Inventions under this Agreement that were entered into by University or were reliant on this Agreement prior to the effective termination date shall survive this Agreement.

7.3 Termination by Unilateral Action.

7.3.1 Written Notice. Either Party may unilaterally terminate this entire Agreement at any time by giving the other Party prior written notice, but not less than six (6) months prior to the desired termination date.

7.3.2 Commitments. In such event, any outstanding commitments to third parties through License Agreements, options thereto, or research agreements concerning any Subject Invention(s) or future inventions that would be Subject Inventions under this Agreement that were entered into by University or were reliant on this Agreement prior to the effective termination date shall survive this Agreement. All uncancelable obligations shall be included within Expenses.

7.4 Termination of License Agreement by VA. The VA may terminate a License Agreement if it is determined by VA that:

7.4.1 University or any of its Licensees substantially fail to meet the material obligations set forth in the License Agreement: or

7.4.2 The VA determines that such action is necessary to meet requirements for public use specified by federal regulations issued after the date of this

Agreement and such requirements are not reasonably satisfied by University or any Licensees; or

7.4.3 University or any Licensees have willfully made a material false statement of, or willfully omitted, a material fact in any report required by this Agreement: or

7.4.4 University or any Licensees commit a substantial breach of covenant or agreement contained in the License Agreement; or

7.4.5 University or any Licensees materially defaults in making any payment or report required by this Agreement or a License Agreement; or

7.4.6 University or any Licensees is adjudged as bankrupt or has its assets placed in the hands of the receiver or makes any assignment or other accommodation for the benefit of creditors; or

7.4.7 University is held by a court of competent jurisdiction, without taking a further appeal, to have misused any patent rights covering a Subject Invention.

7.5 Prior to any termination of the License Agreement, VA shall furnish University and any Licensee of record a written notice of intention to terminate, and University and any notified Licensee shall be allowed 30 days after the date of such notice to remedy any breach or default of any covenant or agreement of the License Agreement or to show cause why the License Agreement should not be terminated.

7.6 The word termination' and cognate words, such as 'term' and 'terminate,' used in this Article 7 and elsewhere in this Agreement are to be read, except where the contrary is specifically indicated, as omitting from their effect the following rights and obligations all of which survive any termination to the degree necessary to permit their complete fulfillment or discharge;

7.6.1 University's obligation to supply a terminal report as specified in Section 5.3 of this Agreement.

7.6.2 VA's right to receive or recover and University's obligation to share Net Revenues or accruable for payment at the time of any termination as specified in Article 4 of this Agreement.

7.6.3 University's obligation to maintain records and VA's right to conduct a final audit pursuant to Section 5.1 of this Agreement.

7.6.4 Sublicenses, releases, and agreements of non-assertion running in favor of Licensees prior to any termination and on which royalties shall have been paid.

7.6.5 Any cause of action or claim VA accrued or to accrue, because of any breach or default by University.

7.7 In the event the termination of this Agreement or conversion of this Agreement, any Licensee of record granted pursuant to this Agreement may, at Licensee's option, be converted to a license directly between Licensee and VA.

7.8 After effective termination, each party may separately license its interests in Subject Inventions according to its own policy. Apart from specific obligations of the parties under this Agreement accrued prior to termination, the parties will have no further rights or obligations under this Agreement after such termination.

8. NOTICES

All notices required or permitted by this Agreement to be given to the parties thereto shall be deemed to have been properly given if delivered in writing, in person or mailed by prepaid, first class, registered or certified mail or by an express/overnight delivery service provided by a commercial carrier, properly addressed to the other Party. Notices shall be considered timely if such notices are received on or before the established deadline date or sent on or before the deadline date as verifiable by U.S. Postal Service postmark or dated receipt from a commercial carrier. Parties should request a legibly dated U.S. Postal Service postmark or obtain a dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Notices shall be sent to the mailing address below, or alternative address(es) for individual Subject Inventions as identified in writing by the VA Director, Technology Transfer Program or by the University Executive Director, Research Administration and Technology Transfer.

To VA:
Director (122)
Technology Transfer Program
Office of Research and Development
U.S. Department of Veterans Affairs
810 Vermont Avenue N.W.
Washington, D.C. 20420

To University:
The Regents of the University of California
Office of the President
Office of Technology Transfer (OTT)
1111 Franklin Street, 5th Floor
Oakland, California 94607-5200
Attention: Executive Director,
Research Administration and Technology Transfer

9. GOVERNING LAWS, SETTLING DISPUTES

9.1 This Agreement shall be construed in accordance with U.S. Federal law and the law of the State of California when not in conflict with U.S. Federal law. Federal law and regulations will preempt any conflicting or inconsistent provisions in this Agreement. University shall have all defenses available to it under California law.

9.2 Any controversy or any disputed claim by either party against the other arising under or related to this Agreement shall be submitted jointly to University, Executive Director of Research Administration and Technology Transfer, and to the VA, Director, Technology Transfer Program, Office of Research and Development. University and VA will be free after written decisions are issued by those officials to pursue any and all administrative and/or judicial remedies that may be available.

10. MISCELLANEOUS

10.1 The Agreement or anything related thereto shall not be construed to confer on any person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this Agreement shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

10.2 It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

10.3 This Agreement is binding upon and shall inure to the benefit of the parties hereto, their successors or assigns, but this Agreement may not be assigned by either party without the prior written consent of the other party.

10.4 This Agreement confers no license or rights by implication, estoppel, or otherwise under any patent applications or patents of University or VA other than Subject Inventions regardless of whether such patents are dominant or subordinate to Subject Inventions.

10.5 Any modification to this Agreement must be in writing and agreed to by both parties.

10.6 It is understood and agreed by University and VA that this Agreement constitutes the entire agreement, both written and oral, between the parties, and that all prior agreements respecting the subject matter hereof, either written or oral, express or implied, shall be abrogated, canceled, and are null and void and of no effect.

10.7 Use of Name. Neither party may use the name of the other party in any way for advertising or publicity without the express written consent of the other party, provided, however, that while University may not allow a Licensee to use the name of VA for advertising or publicity, it does have the right to use the name of VA in connection with negotiating a License Agreement or sublicense agreement and where required by law.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as follows:

U.S. DEPARTMENT OF VETERANS AFFAIRS

By: /s/ John R. Feussner, M.D.

Name: John R. Feussner, M.D.

Title: Chief Research and Development Officer

Date: 5/19/00

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: /s/ Alan B. Bennett

Name: Alan B. Bennett

Title: Executive Director, Research Administration and Technology Transfer

Date: 5/18/00

AMENDMENT NO. 1 TO THE
LICENSE AGREEMENT
BETWEEN OTONOMY, INC. AND
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
FOR UCSD CASE NO. SD2008-274, SD2009-077 THROUGH SD2009-098 AND SD2009-126

This amendment to the agreement ("Amendment") is made by and between Otonomy, Inc., a Delaware corporation ("OTONOMY") and The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200 ("UNIVERSITY"), as represented by its San Diego campus having an address at University of California, San Diego, Technology Transfer Office, Mail-code 0910, 9500 Gilman Drive, La Jolla, California 92093-0910 ("UCSD"). The amendment is effective as of the date of the last signature below ("Amendment Effective Date").

Whereas, OTONOMY has entered into a License Agreement ("License Agreement") with the UNIVERSITY effective November 5, 2008 (UC Control No. 2009-03-0242) wherein OTONOMY was granted certain rights;

Whereas, the parties to the License Agreement wish to put in place certain modifications to the License Agreement which more accurately reflect the OTONOMY business strategy and commercialization plan for Licensed Products, and to make corrections to the License Agreement;

Whereas, the VA has released rights to the Inventions covered under the License Agreement and Amendment.

These changes are effective on the Amendment Effective Date.

Therefore, the parties agree as follows:

WITH RESPECT TO "VA/UC AGREEMENT":

1. Replace "Exhibit A" with "Exhibit C" in Paragraph 1.11.

WITH RESPECT TO FIELD:

2. Paragraph 1.3 of the License Agreement shall be amended to read:

"Field" shall mean therapies for human otic diseases.

WITH RESPECT TO SUBLICENSE:

3. Paragraph 2.2(c) of the License Agreement shall be DELETED in its entirely and REPLACED with:

Upon termination of this Agreement for any reason, UNIVERSITY, at its sole discretion, shall determine whether LICENSEE shall cancel or assign to UNIVERSITY any and all Sublicenses; provided, however, that LICENSEE may submit a proposed Sublicense to UNIVERSITY in advance for UNIVERSITY's prior approval, such approval not to be unreasonably withheld or delayed, and if UNIVERSITY approves such Sublicense, and

Sublicensee agrees to the terms of this Agreement, the UNIVERSITY's duties under any Sublicense are to be no greater than the UNIVERSITY's duties under this Agreement, and UNIVERSITY's rights will be no less than under this Agreement, then such Sublicense shall become a direct license between Sublicensee and UNIVERSITY upon termination of this Agreement for any reason.

WITH RESPECT TO RESERVATION OF RIGHTS:

4. In Paragraph 2.3 (c) DELETE:

   "...in their facilities."

WITH RESPECT TO LICENSE MAINTENANCE FEE:

5. Paragraph 3.1(b) of the License Agreement shall be amended to read:

   license maintenance fees of [***] dollars (US$[***]) per year and payable on the first anniversary of Effective Date and annually thereafter on each anniversary; provided however, that LICENSEE's obligation to pay this fee shall end on the date when LICENSEE is commercially selling a Licensed Product;

WITH RESPECT TO MILESTONE PAYMENTS:

6. Paragraph 3.1(c) (i) Date or Event of the License Agreement shall be amended to read:

   [***]

WITH RESPECT TO SUBLICENSE FEES:

7. Paragraph 3.1 (f) shall be replaced in its entirety with the following:

   [***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

[***]

For the purposes of this Agreement, Sublicense Fees means all consideration received by LICENSEE from Sublicensees that are not:
(i) earned royalties,
(ii) research payments and reimbursement of research expenses which are explicitly earmarked for research and development activities under the Sublicense towards the commercialization of Licensed Products,
(iii) payments as reimbursements for patent expenses for the prosecution, maintenance and litigation matters regarding Patent Rights,
(iv) payments for equity investments, but only to the extent such equity investments do not exceed a per share price (a) of the previous round of private equity financing; or (b) reflective of the fair market value on a public trade, or
(v) loans which are not forgiven.

For the purpose of the above paragraph, research payments and reimbursement of research expenses shall not include salaries of LICENSEE employees or compensation paid to parties that perform financial management, human resources, publicity or fund raising functions for LICENSEE or any other individuals whose job functions do not contribute directly to the research and development of Licensed Product.

WITH RESPECT TO DUE DILIGENCE:

8. Paragraph 3.3 (a) will be amended as follows:

   DELETE: 3.3(a)(iv)
   DELETE: 3.3(a)(vi)

WITH RESPECT TO PATENT MATTERS:

9. Paragraph 5.1 (a) is amended as follows:

   LICENSEE shall diligently prosecute and maintain United States and, if applicable, foreign patents, and applications in Patent Rights using counsel of its choice. LICENSEE shall provide UNIVERSITY with copies of all relevant documentation relating to such prosecution and share proposed responses to a patent office sufficiently in advance of a deadline to permit UNIVERSITY to comment. The counsel shall take instructions only from LICENSEE, and all patents and patent applications in Patent Rights shall be jointly assigned to UNIVERSITY and LICENSEE.

10. Paragraph 5.2 (b) is amended as follows adding this sentence to the end of the paragraph:

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

LICENSEE my not join UNIVERSITY in such a suit without UNIVERSITY's written permission.

WITH RESPECT TO INVENTIONS INCLUDED:

11. Exhibit A will be amended to include the following cases:

    [***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

[***]

WITH RESPECT TO PATENTS INCLUDED:

12. Exhibit B will be amended to include the following patent applications:

[***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

[***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

[***]

LICENSEE shall pay to UNIVERSITY a License Amendment Fee of [***] dollars (US$ [***]) within thirty (30) days of the Amendment Effective Date.

All other terms and conditions in the License Agreement between OTONOMY and UNIVERSITY, effective November 5, 2008, shall remain unchanged and in effect.

The parties agree that this Amendment may be executed by facsimile and in two (2) or more counterparts each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

OTONOMY, INC.:	**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**
By: /s/ Jay Lichter	By: /s/ Jane C. Moores, PhD
Name: Jay Lichter	Name: Jane C. Moores, PhD
Title: President & CEO	Title: Assistant Vice Chancellor - Technology Transfer
Date: 1/27/10	Date: 1-21-10

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

AMENDMENT NO. 2 TO THE
LICENSE AGREEMENT
BETWEEN OTONOMY, INC. AND
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
FOR UCSD CASE NO. SD2008-274, SD2009-077 THROUGH SD2009-098 AND SD2009-126

This amendment to the agreement ("Amendment No. 2") is made by and between Otonomy, Inc., a Delaware corporation having an address at 5626 Oberlin Drive, Suite 100, San Diego, California 92121 ("OTONOMY") and The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200 ("UNIVERSITY"), as represented by its San Diego campus having an address at University of California, San Diego, Technology Transfer Office, Mail-code 0910, 9500 Gilman Drive, La Jolla, California 92093-0910 ("UCSD"). The amendment is effective as of the date of the last signature below ("Amendment No. 2 Effective Date").

Whereas, OTONOMY has entered into a License Agreement ("License Agreement") with the UNIVERSITY effective November 5, 2008 (UC Control No. 2009-03-0242) wherein OTONOMY was granted certain rights;

Whereas, OTONOMY has entered into an Amendment ("Amendment No. 1") with the UNIVERSITY effective January 27, 2010 (UC Control No. 2009-03-024A) wherein certain changes were made to the License Agreement;

Whereas, the parties to the License Agreement wish to put in place a modification and clarification to the License Agreement.

This change is effective on the Amendment No. 2 Effective Date.

Therefore, the parties agree as follows:

WITH RESPECT TO ARTICLE 3. COMPENSATION:

Paragraph 3.1 (c) (iv) shall be amended to read:

(iv) $[***] [***]

Delete Paragraph 3.1(c)(v):

(v) $[***] [***]

Replace Paragraph 3.1(c)(v) with the following:

(v) $[***] [***]

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Add to Paragraph 3.1:

(vi) $[***] [***]

(vii) $[***] [***]

(viii) $[***] [***]

WITH RESPECT TO ARTICLE 5. PATENT MATTERS:

Paragraph 5.2 (b) shall be deleted in its entirety and replaced with the following:

LICENSEE may request that the UNIVERSITY take legal action against the infringement of University's Patent Rights. Such request must be in writing and must include reasonable evidence of infringement and damages to LICENSEE. If the infringing activity has not abated within ninety (90) days following the effective date of request, then the UNIVERSITY or the U.S. Government has the right to:

commence suit on its own account; or
refuse to participate in the suit, and

the UNIVERSITY shall give notice of its election in writing to LICENSEE by the end of the one-hundredth (100th) day after receiving notice of written request from LICENSEE; provided, however, in the event of a litigation commenced under the Hatch-Waxman Act, UNIVERSITY shall give notice of its election in writing to LICENSEE by the end of the thirtieth (30th) day after receiving notice of written request from LICENSEE. LICENSEE may thereafter bring suit for patent infringement, at its own expense, if and only if the UNIVERSITY and the U.S. Government elect not to commence suit and if the infringement occurred during the period and in a jurisdiction where LICENSEE had exclusive rights under this Agreement. If, however, LICENSEE elects to bring suit in accordance with this Paragraph 5.2, then the UNIVERSITY or the U.S. Government may thereafter join that suit at its own expense. LICENSEE agrees not to bring suit for patent infringement without following the procedures of this Paragraph, and both parties agree to be bound by the outcome of a suit for patent infringement, patent infringement issues and patent infringement defenses raised through the pendency of such a suit under this Paragraph 5.2 (b).

All other terms and conditions in the License Agreement between OTONOMY and UNIVERSITY, effective November 5, 2008 and amended in Amendment No. 1, effective January 27, 2010, shall remain unchanged and in effect.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

The parties agree that this Amendment No. 2 may be executed by facsimile and in two (2) or more counterparts each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

OTONOMY, INC.	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
By: /s/ Jay Lichter	By: /s/ Jane C. Moores, Ph.D.
Name: Jay Lichter	Name: Jane C. Moores, Ph.D.
Title: CEO	Title: Assistant Vice Chancellor
Date: June 9, 2010	Date: 6/9/10

AMENDMENT NO. 3 TO THE LICENSE AGREEMENT

BETWEEN OTONOMY, INC. AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

FOR USCD CASE NO. SD2008-274, SD2009-077 THROUGH SD2009-098, SD200-126, SD2009-230 THROUGH SD2009-234, SD2009-302 THROUGH SD2009-305, SD2009-355 THROUGH SD2009- 357, SD2009-389, SD2010-011, SD2010-052 THROUGH SD2010-060, SD2010-147 THROUGH SD2010-149

This amendment to the agreement ("Amendment No. 3") is made by and between Otonomy, Inc., a Delaware corporation having an address at 6275 Nancy Ridge Drive, Suite 100, San Diego, California 92121 ("Otonomy") and The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200 ("UNIVERSITY"), as represented by its San Diego campus having an address at University of California, San Diego, Technology Transfer Office, Mail Code 0910, 9500 Gilman Drive, La Jolla, California 92093-0910 ("UCSD"). Amendment No. 3 is effective as of the date of the last signature below ("Amendment No. 3 Effective Date").

Whereas, OTONOMY has entered into a License Agreement with the UNIVERSITY effective November 5, 2008 (UC Control No. 2009-03-0242), Amendment No. 1 effective January 27th, 2010 (UC Control No. 2009-03-0242REVA) and Amendment No. 2 effective June 9th, 2010 (UC Control No. 2009-03-0242REVB), (collectively, "License Agreement") wherein OTONOMY was granted certain rights;

Whereas, the parties wish to put in place a modification to the License Agreement.

Therefore, the parties agree as follows:

WITH RESPECT TO ARTICLE 3. CONSIDERATION:

Paragraph 3.1(e) shall be deleted in its entirety and replaced with:

In the event LICENSEE is required to pay royalties or milestone fees or sublicense fees to a third party in consideration for intellectual property rights which LICENSEE determines are necessary to make, use or sell Licensed Product, then LICENSEE may deduct [***] percent ([***]%) of such royalties or milestone fees or sublicense fees owing to such third party from any royalties or milestone fees or sublicense fees due under this Agreement, provided that in no event shall (i) the amounts due to UNIVERSITY under Paragraph 3.1(f) be reduced to less than [***] percent ([***]%) of the amount that would otherwise be due to UNIVERSITY thereunder, and (ii) royalties or milestone fees due to UNIVERSITY be reduced to less than [***] percent ([***]%) of the amount that would otherwise be due to UNIVERSITY.

All other terms and conditions in the License Agreement between OTONOMY and UNIVERSITY shall remain unchanged and in effect.

The parties agree that this Amendment No. 3 may be executed electronically and in two or more counterparts each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

In consideration for this Amendment No. 3, OTONOMY shall pay an amendment fee in the amount of [***] ($[***]) dollars. Payment shall be made within thirty (30) days after the Amendment No. 3 Effective Date and receipt of invoice.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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OTONOMY, INC:

By: /s/ Paul E. Cayer

Name: Paul E. Cayer

Title: Chief Business Officer

Date: 11/7/12

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA:

By: /s/ Jane C. Moores, Ph.D.

Name: Jane C. Moores, Ph.D.

Title: Assistant Vice Chancellor

Date: 11/7/12