

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 23, 2023



**BLUEJAY DIAGNOSTICS, INC.**

(Exact Name of Registrant as Specified in its Charter)

**DELAWARE**

**001-41031**

**47-3552922**

(State or Other Jurisdiction of Incorporation or  
Organization)

(Commission File No.)

(I.R.S. Employer Identification No.)

**360 Massachusetts Avenue, Suite 203  
Acton, MA 01720**

(Address of principal executive offices and zip code)

**(844) 327-7078**

(Registrant's telephone number, including area code)

(Former name or former address, if changed from last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act:

<b>Title of each class:</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered:</b>
Common Stock, par value \$0.0001 per share	BJDX	The Nasdaq Stock Market LLC

## Item 1.01 Entry into a Material Definitive Agreement.

On October 23, 2023, Bluejay Diagnostics, Inc. (the “Company”) and Toray Industries, Inc. (“Toray”) entered into an Amended and Restated License Agreement (the “New Toray License Agreement”) and a Master Supply Agreement (the “New Toray Supply Agreement”). The New Toray License Agreement and the New Toray Supply Agreement amend and supersede the prior License and Supply Agreement entered into by the parties in October 2020 and amended in July 2021.

Under the New Toray License Agreement, the Company continues to license from Toray intellectual property rights needed to manufacture single-use test cartridges, and the Company has received the right to sublicense certain Toray intellectual property to Sanyoseiko Co., Ltd. (“Sanyoseiko”) in connection with Sanyoseiko’s ongoing agreement with the Company to manufacture its Symphony device and cartridges (including in connection with the Company’s clinical trials). In addition, the New Toray License Agreement provides for the transfer of certain technology related to the cartridges to Sanyoseiko. The royalty payments payable by the Company to Toray have been reduced under the New Toray License Agreement from 15% to 7.5% (or less in certain circumstances) of net sales of certain cartridges for a term of 10 years. A 50% reduction in the royalty rate applies upon expiry of applicable Toray patents on a product-by-product and country-by-country basis. The New Toray License Agreement contemplates that applicable royalty payment obligations from the Company to Toray for other products will be determined separately by the parties in the future.

Under the New Toray Supply Agreement, Toray will manufacture in the near-term (through its wholly owned subsidiary Kamakura Techno-Science, Inc.) certain product intermediary components for use in cartridges being manufactured for the Company by Sanyoseiko. These cartridges made using Toray intermediates are for the purpose of obtaining FDA approval and not for commercial sale. The New Toray Supply Agreement has a term ending on the earlier of October 23, 2025 or the date that the Company obtains FDA approval for its product, and may be extended for up to six months by mutual agreements of the parties. Once FDA approval has been obtained, the intermediates and cartridges will be manufactured by Sanyoseiko under a separate supply agreement between the Company and Sanyoseiko.

The foregoing description of the New Toray License Agreement and the New Toray Supply Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of such agreements, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and are each incorporated herein by reference.

## Item 9.01. Financial Statements and Exhibits.

*(d) Exhibits*

10.1	<a href="#">Amended and Restated License Agreement, entered into on October 23, 2023, by and between Bluejay Diagnostics, Inc. and Toray Industries, Inc.</a>
10.2	<a href="#">Master Supply Agreement, entered into on October 23, 2023, by and between Bluejay Diagnostics, Inc. and Toray Industries, Inc.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

**Bluejay Diagnostics, Inc.**

By: /s/ Neil Dey

Neil Dey

Chief Executive Officer

Date: October 26, 2023

## AMENDED AND RESTATED

## LICENSE AGREEMENT

This Amended and Restated License Agreement (this “**Agreement**”) is made as of the 20th of October, 2023 (the “**A&R Effective Date**”) by and between Bluejay Diagnostics, Inc., having its principal place of business at 360 Massachusetts Avenue, Suite 203, Acton, MA, 01720, USA (“**Bluejay**”) and Toray Industries, Inc., having its principal place of business at 1-1, Nihonbashi-muromachi 2-chome, Chuo-ku, Tokyo 103-8666, Japan (“**Toray**”). Bluejay and Toray are together referred to as the “**Parties**” and individually as a “**Party**”.

**BACKGROUND**

- (A) Toray and Bluejay are parties to a License and Supply Agreement dated October 6, 2020 (the “**Original Agreement**”).
- (B) Toray and Bluejay have been discussing a new scheme for the purchase, supply, and development of, and transfer of technology in respect of, Chip Products (as defined in Article 1.5) for the purpose of achieving Commercial Sales (as defined in Article 1.6) by way of Bluejay’s developing the Chip Products and transitioning their manufacture from Toray to a Designated Manufacturer (as defined in Article 1.9).
- (C) In order to formalize this new scheme and the relevant terms and conditions, the Parties therefore desire: (i) to amend and restate their respective rights and obligations relating to the license under the Original Agreement as set forth in this Agreement; and (ii) to amend and restate their respective rights and obligations relating to the supply aspects of the Original Agreement as set forth in the Master Supply Agreement entered into between the Parties on or around the date of this Agreement (the “**Supply Agreement**”).

**NOW THEREFORE**, in consideration of the covenants contained herein, the Parties hereby agree as follows:

**Article 1. DEFINITIONS**

For the purpose of this Agreement, the following capitalized terms (the singular may include the plural and *vice versa*) shall have the following meanings:

- 1.1 “A&R Effective Date” has the meaning defined in the introductory paragraph of this Agreement.
  - 1.2 “Affiliate” means in respect of either Party, any Person that directly, or indirectly through one of more intermediaries, controls, is controlled by or is under common control with such Party at any time. For the purpose of this Agreement and as used in this definition of “Affiliate”, “control” and, with correlative meanings, the terms “controlled by” and “under common control with,” shall mean to possess the power to direct management or policies of such Party, whether through: (a) direct or indirect beneficial ownership of more than fifty percent (50%) of the voting interest in such entity; (b) the right to appoint more than fifty percent (50%) of the directors of such Party; or (c) by contract.
  - 1.3 “Background Intellectual Property Rights” has the meaning defined in Article 13.4.1.
  - 1.4 “Bluejay Analysis Devices” has the meaning defined in Article 8.1.
  - 1.5 “Chip Products” means protein detection chips that have a function of automatic stepwise feeding of reagent for IL-6 and IL-8 and are supplied by Toray or the Designated Manufacturer.
  - 1.6 “Commercial Sales” means the commercial transfer or disposition for value of Products, supplied by the Designated Manufacturer, in a country in the Territory to a third party by Bluejay or any of its Affiliates, subcontractors, or sublicensees after obtaining all necessary Market Approvals as set forth in Articles 3.1 and 3.2 for such country.
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- 1.7 “Commercial Sales Start Date” has the meaning defined in Article 4.2.
- 1.8 “Confidential Information” of a Party means any proprietary or confidential information of any nature of such Party. Confidential Information may include, but shall not be limited to, the Toray Know-How, Bluejay Background Intellectual Property Rights, processes, compilations of information, records, specifications, cost and pricing information, customer lists, catalogs, booklets, technical advertising and selling data, samples, and the fact of either Party’s intent to manufacture or market any new product, and except for information which is public or general industry knowledge, all information furnished by a Party to the other Party shall be considered to be Confidential Information, whether or not specifically so designated.
- 1.9 “Designated Manufacturer” means SanyoSeiko Co., Ltd., a company incorporated in Japan with its principal place of business at 1435 Ozawa, Saruhashi-machi, Otsuki-shi, Yamanashi 409-0616, Japan (“SanyoSeiko”), or any other company as may be designated by Bluejay from time to time as the manufacturer of the Products and/or the Bluejay Analysis Devices.
- 1.10 “Effective Date” means October 6, 2020, being the effective date of the Original Agreement.
- 1.11 “Foreground Intellectual Property Rights” has the meaning defined in Article 13.3.
- 1.12 “Improvements” means any discoveries, inventions, formulations, processes, methods, know-how, techniques, formulae, compositions, compounds, or applications relating to Products during the term of this Agreement.
- 1.13 “Intellectual Property Rights” means all patent, industrial design, registered design, unregistered design right, trade secret, trade dress, moral right, copyright, and right in invention, ideas, work methodology, works of authorship, technology, innovation, creation, concepts, drawings, research, analysis, know-how, experiment, method, procedure, process, system, technique and other intellectual property rights or proprietary rights, including, in all cases, an application therefor and right to apply thereafter.
- 1.14 “Invention” has the meaning defined in Article 13.3.
- 1.15 “Joint Marketing Planning Meetings” has the meaning defined in Article 9.1.
- 1.16 “Market Approvals” means all approvals, clearances, licenses, registrations, or authorizations by an applicable Regulatory Authority necessary to import, commercialize and market Products in the Territory, including pricing and reimbursement approval in the Territory.
- 1.17 “Net Sales” means the gross amount collected by Bluejay, its Affiliates, subcontractors and sublicensees for Commercial Sales, less standard deductions taken in accordance with the United States generally accepted accounting principles (GAAP).
- 1.18 “Original Agreement” has the meaning defined in Paragraph (A) of the Background to this Agreement.
- 1.19 “Patents” means the patents listed and described in Exhibit A, plus: (a) all divisionals, continuations, continuations-in-part thereof or any other patent rights claiming priority directly or indirectly to any of the issues patents or patent applications identified on Exhibit A; and (b) all patents issuing on any of the foregoing, together with all registrations, reissues, re-examinations, renewals, supplemental protection certificates and extensions of any of the foregoing, and all foreign counterparts thereof.
- 1.20 “Performance Qualification” means that the testing performed on Chip Products for IL-6 manufactured by the Designated Manufacturer shows substantial equivalence between those Chip Products and Toray Chips, where the testing is based on specifications determined separately between Bluejay and Toray.

- 1.21 “Person” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other legal entity or organization, including a government or political subdivision, department or agency of a government.
- 1.22 “Product” means a protein detection chip that has a function of automatic stepwise feeding of reagent, the manufacture, use or sale of which in or into a given country would infringe a Valid Claim within the Patents. For clarity, “Product” includes Toray Chips.
- 1.23 “Public Official” has the meaning ascribed to it in Article 14.3.
- 1.24 “Regulatory Authority(s)” means the Food and Drug Administration (“**FDA**”) or any successor entity of the United States of America, any entity in charge of CE marking in the European Union and any other governmental authority whose approval is required for the commercialization of Products in the Territory.
- 1.25 “Royalty Term” has the meaning defined in Article 4.2.
- 1.26 “Supply Agreement” has the meaning defined in Paragraph (C) of the Background to this Agreement.
- 1.27 “Technical Assistance Fee” has the meaning defined in Article 5.4.
- 1.28 “Term” has the meaning defined in Article 15.1.
- 1.29 “Territory” means worldwide except for Japan.
- 1.30 “Toray Chip Intermediates” means the intermediates of Chip Products manufactured by Kamakura Techno-Science, Inc. (a company incorporated in Japan and an indirectly wholly owned Affiliate of Toray) and supplied by Toray, which specifically refers to a cartridge with beads and side films, QR cord label, side label-1, side label-2, reservoir filled with reagents, individual package bag, bag label, beads in PBS-T suspension for Pre-column and PAb coated beads in suspension for Reaction Column.
- 1.31 “Toray Chip Products” means Chip Products supplied by Toray.
- 1.32 “Toray Chips” means Toray Chip Intermediates and Toray Chip Products.
- 1.33 “Toray Know-How” means all intellectual property rights owned or controlled by Toray, including all: (a) trade secrets and confidential business information relating to Toray Chips; and (b) any other scientific or technical information and data relating to Toray Chips, which are necessary and/or useful for Bluejay to make, have made, promote, market, sell and distribute Chip Products in the Territory and to make Chip Products and have Chip Products made in Japan, including the information listed in Exhibit B, but excluding the Patents.
- 1.34 “Trademark” means the mark “RAY-FAST®”, and any other word, name, symbol, color, designation or device or any combination thereof owned by Toray, including, without limitation, any trademark, trade dress, brand mark, house mark, trade name, brand name, logo, or business symbol (whether or not registered or registerable) used in association with Products, and all trademark applications and registrations related thereto.
- 1.35 “Valid Claim” shall mean a claim of an issued or granted patent of the Patents which has not lapsed or become abandoned, which claim has not been declared invalid or unenforceable by a final, non-appealable decision or judgment of a court of competent jurisdiction, and that has not been explicitly disclaimed, or admitted in writing to be invalid or unenforceable or of a scope not covering a particular product or service through reissue, disclaimer or otherwise, provided that if a particular claim has not issued within five (5) years of its priority date, it will not be considered a Valid Claim for purposes of this Agreement unless and until such claim is included in an issued or granted Patent, notwithstanding the foregoing definition.

## **Article 2. GRANT OF LICENSES**

- 2.1 **Exclusive License.** Subject to the terms and conditions hereof, Toray hereby grants to Bluejay an exclusive (even as to Toray) and sublicensable (only in accordance with Article 2.3) license, under the Patents and Toray Know-How, to make, have made, use, promote, market, sell, offer to sell, import, export, label, repackage, distribute and otherwise exploit Products in the Territory.
- 2.2 **Non-Exclusive License.** Subject to the terms and conditions hereof, Toray hereby grants to Bluejay a non-exclusive and sublicensable (only in accordance with Article 2.3) license, under the Patents and Toray Know-How, to make Products and have Products made in Japan.
- 2.3 **Subcontract.** Bluejay may, after obtaining Market Approval under Article 3.1, sublicense its rights under Articles 2.1 and 2.2 to its Affiliates and other third parties (including, without limitation, contract manufacturing organizations, contract research organizations, distributors, and other contractors and service providers), with written notice to Toray with respect to the sub-licensee and the rights to be granted within fourteen (14) days after such sublicense, for the sole purpose of performing Bluejay's obligations under this Agreement or exercising Bluejay's rights with respect to the development, manufacture and commercialization or other exploitation of Products in the Territory and the manufacture of Products in Japan. Bluejay may sublicense its rights under Articles 2.1 and 2.2 to its Affiliates and other third parties (a) for purposes other than those described in the preceding sentence or (b) prior to obtaining Market Approval under Article 3.1, only after obtaining Toray's prior written consent. In either case, Bluejay shall require such sublicensees to undertake and be bound by the terms and conditions of this Agreement relating to the sublicensed activities and shall be responsible for any breach of such terms and conditions by any such sublicensee. Bluejay shall have the same responsibility for the activities of its sublicensees under any such arrangements as if the activities were directly those of Bluejay. For clarity, and not by way of limitation, any royalties shall be paid to Toray by Bluejay with regard to the activities of its sublicensees.

## **Article 3. COMMERCIALIZATION**

- 3.1 **Obtaining Market Approval.** Bluejay shall use reasonable efforts to seek Market Approval for Products from the Regulatory Authorities in the Territory at its own cost and responsibility. Bluejay shall inform and report to Toray the progress in obtaining the Market Approval on a monthly basis and shall use reasonable efforts to obtain Market Approval for Products in the United States of America or the European Union within three (3) years from the A&R Effective Date. Whenever Bluejay files an application for Market Approval with the Regulatory Authority in any country in the Territory, Bluejay shall provide Toray with a summary of such application submitted to the Regulatory Authority in English (including any amendments thereto). For clarity, Bluejay may use Toray Know-how in applications for Market Approval.
- 3.2 **Maintaining Market Approval.** Bluejay shall, at its own cost, maintain the Market Approval and shall not cause Market Approval to be transferred to any third party without Toray's prior written consent. Bluejay shall have primary responsibility for all communications, submissions and interactions with the Regulatory Authority for the purposes of maintaining the Market Approval. Upon Toray's request at the time of Toray's termination of this Agreement in accordance with Articles 15.2, 15.3 or 15.4 (limited, however, (a) in the case of Article 15.3(a) to where the breach (i) is a failure to pay royalties in accordance with Article 4.3 for two (2) consecutive calendar quarters or three (3) non-consecutive calendar quarters, (ii) constitutes a violation of applicable laws relating to international trade sanctions or embargos, (iii) is a failure to comply with the confidentiality and limitation of use with respect to Toray Know How under Article 18.1, (iv) is repeated three (3) times, or (v) is not cured within 90 days, and (b) in the case of Article 15.4 to where the breach cannot be cured and is so severe (such as where the breach constitutes a violation of applicable anti-bribery laws) that continuing this Agreement is no longer possible), Bluejay shall use reasonable efforts to arrange a transfer to Toray, or any other party designated by Toray, of the Market Approvals relating to Products whose Royalty Term has not expired either with no cost to Toray in the case of a breach of Article 15.3(a) or Article 15.4 (subject to the above limitations) or on reasonable terms and conditions to be agreed separately in writing in the case of a breach of Article 15.2 or Article 15.3(b).

- 3.3 **Promotion Plan, Sales Forecast and Estimate for Requirement.** Bluejay shall prepare its promotion plan (if any) and non-binding sales forecast of the Products and estimate of its requirements of Toray Chips for the first (1<sup>st</sup>) year commencing from the A&R Effective Date. Thereafter, Bluejay shall prepare its promotion plan and non-binding sales forecast of the Products and estimate of its requirements of Toray Chips every three (3) months for three (3) years.
- 3.4 **Starting Commercial Sales.** Bluejay shall make reasonable efforts to start Commercial Sales within five (5) years from the A&R Effective Date, but as soon as practically possible after obtaining the Market Approval.
- 3.5 **Extension Period.** In case Bluejay fails to start Commercial Sales within five (5) years from the A&R Effective Date due to reasons not attributable to Bluejay, the period for which the exclusive license is granted pursuant to Article 2.1 shall be extended for an additional six (6) months, repeatedly if necessary, provided that such additional extension period shall not exceed twenty four (24) months in total. If Bluejay fails to start Commercial Sales within such seven (7) year period, and such failure is due to events within Bluejay's reasonable control and not due to Toray's failure to timely perform its obligations hereunder or other causes beyond Bluejay's reasonable control, then Toray may, at its sole discretion, either convert the exclusive license granted under Article 2.1 to a non-exclusive license or terminate this Agreement.
- 3.6 **Sales Efforts.** Bluejay shall make reasonable efforts consistent with normal business practices in the medical device industry to expand sales activities of Products.
- 3.7 **Efforts for Obtaining a Reimbursement Approval.** Bluejay shall make reasonable efforts in obtaining a reimbursement approval on each of the national markets in the Territory if applicable.
- 3.8 **Sales Reports.** Within thirty (30) days after the close of each calendar quarter during the period Bluejay is marketing Products in the Territory, Bluejay shall provide Toray with high-level summaries of: (a) quarterly sales reports for Products for such calendar quarter in each country of the Territory; and (b) the stock reports of Chip Products as of the last day of such calendar quarter (if Toray is then supplying Toray Chips to Bluejay).
- 3.9 **Licensor's Name.** Bluejay shall not use or indicate on the label, packaging, packaging inserts or patient leaflets of Products, to the extent permitted by the laws and regulations of the Territory, words indicating the name of Toray as a licensor in respect of the Products. However, if Bluejay does wish to do so, Bluejay shall obtain Toray's prior written approval in respect of the manner and methods of indicating the name of Toray on any material by submitting such drafts to Toray.

**Article 4. CONSIDERATION FOR LICENSED RIGHTS**

- 4.1 **Upfront License Fee Payment.** In consideration for the ongoing rights, licenses and privileges granted hereunder, Bluejay has paid Toray, and Toray hereby acknowledges it has received payment of, an upfront license fee in two (2) installments of:
- 4.1.1 One Hundred Twenty Thousand U.S. Dollars (US\$120,000) within ninety (90) days from the Effective Date; and
- 4.1.2 an additional One Hundred Twenty Thousand U.S. Dollars (US\$120,000) prior to the first (1<sup>st</sup>) anniversary date of the first (1<sup>st</sup>) payment set forth above.



- 4.2 **Running Royalty.** On a Product-by-Product and country-by-country basis, for the period commencing on the date of the first Commercial Sales of a Product in a country where a Valid Claim of a Patent covers that Product (that date for each Product, the “**Commercial Sales Start Date**”) and continuing until the later of: (a) the expiration or abandonment of the last of the Patents (whichever comes later); or (b) the tenth (10th) anniversary of the Commercial Sales Start Date (that period for each Product, the “**Royalty Term**”), Bluejay shall pay to Toray a royalty of seven point five percent (7.5%) of the Net Sales of Chip Products for IL-6 in countries where a Valid Claim of a Patent covers those Chip Products; provided, however, that if the FDA requires Bluejay to re-conduct clinical studies for the purpose of obtaining Market Approval in the U.S. due to quality problems attributable to Toray Chips for IL-6, Bluejay may reduce the royalty to four percent (4%); and provided further that on a Product-by-Product and country-by-country basis, the royalty for Products shall be reduced by fifty percent (50%) if at any time during such period a Product ceases to be covered by a Valid Claim of a Patent in the country where the Product is sold (for clarity, if the Commercial Sales Start Date of a Product occurs after a Product ceases to be covered by a Valid Claim of a Patent in the country where the Product is sold, the royalty for such Product will be reduced by fifty percent (50%) at the beginning of the Royalty Term). Toray shall promptly notify Bluejay in writing of the loss of any such cover, and any such royalty reduction shall take effect with respect to all sales with respect to the applicable Product and country on and after the date on which such cover is lost. Bluejay may offset the amount of royalties due in the payment quarter immediately following the date of receipt of Toray’s notice against any amount of excess royalties previously paid due to the loss of such cover. The royalty for Products other than Chip Products for IL-6 shall be determined separately by written agreement between the Parties.
- 4.3 **Payment of Royalties.** Royalties for each quarter of any calendar year shall be paid within thirty (30) days after the end of such calendar quarter. Bluejay shall provide Toray with a report showing the calculation of any royalties paid.
- 4.4 **Minimum Royalties.** Following the first Commercial Sale in the first (1<sup>st</sup>) country, Bluejay shall pay Toray a one-time minimum royalty of Sixty Thousand U.S. Dollars (US\$60,000), which shall be creditable against any royalties owed by Bluejay to Toray in such calendar year. For the calendar years following that first (1<sup>st</sup>) Commercial Sale, Bluejay shall pay Toray a minimum royalty of One Hundred Thousand U.S. Dollars (US\$100,000) per year, which shall be payable once each year and creditable against any royalties owed by Bluejay to Toray in such calendar year.
- 4.5 **Withholding Taxes.** If at any time during the term hereof, any governmental authority shall require that taxes be withheld by Bluejay and remitted directly to the governmental authority on behalf of Toray, Bluejay shall promptly transmit to Toray tax receipts issued by the appropriate tax authorities in respect of such taxes so withheld and remitted so as to enable Toray to support a claim for credit against income taxes payable by Toray. All such withheld amounts shall be deemed paid to Toray for purposes of determining whether Bluejay has met its payment obligations hereunder.
- 4.6 **Audits.** Bluejay shall keep true, complete, accurate and separate records, files and books of account containing all the data necessary for the full computation and verification of royalties. For a period of one (1) year following any payment of royalties made by Bluejay to Toray pursuant to Articles 4.2 and 4.3, and upon Toray’s reasonable advance written notice to Bluejay, Bluejay shall permit Toray and/or any independent certified accountant engaged by Toray to inspect the records, files and books of Bluejay solely and exclusively related to the sales of Products. Such inspection shall be completed during regular business hours, in a manner that minimizes disruption to business. Any such audit shall be at the sole expense of Toray, except if any audit discloses that Bluejay owes royalties to Toray in excess of three percent (3%) of the royalties actually paid for the time period covered by such audit, in which case Bluejay will reimburse Toray for the costs of the audit.

## **Article 5. TECHNICAL SUPPORT**

- 5.1 **Toray Know-How.** Toray has provided Bluejay, and Bluejay hereby acknowledges it has received, in English or (if approved by Bluejay) Japanese, the information set out in Exhibit B and Exhibit C (being information constituting Toray Know-How identified by the Parties as of the A&R Effective Date). All other Toray Know-How which may be necessary and/or useful for Bluejay to manufacture, test, and validate the Chip Products, if any, will be provided by technical assistance pursuant to Article 5.2.
- 5.2 **Technical Assistance for Establishing Alternative Manufacturing Site.** To make the Toray Know-How provided for in Article 5.1 available for the purpose of establishing alternative manufacturing site for the Chip Products (including the intermediates of Chip Products) under Article 7.2, Toray shall, upon the request of Bluejay until Bluejay receives the written confirmation of Performance Qualification from Sanyo Seiko and if it is reasonably acceptable for Toray, provide technical assistance reasonably necessary for such establishment, including dispatching its technical personnel or its Affiliates' or subcontractors' technical personnel to Bluejay or SanyoSeiko for such technical assistance relating to the manufacture and testing of Chip Products using Toray Chips and Toray Know-How. Toray's technical personnel for technical support under this Article 5.2 will be dispatched only to SanyoSeiko, Toray Research Center, Inc. (a Japanese corporation with its address at 1-1-1, Nihonbashi-Honcho, Chuo-ku, Tokyo 103-0023), and Enplas Corporation (a Japanese corporation with its address at 2-30-1, Namiki, Kawaguchi City, Saitama 332-0034 Japan). Toray is not obliged to dispatch such technical personnel to other Designated Manufacturers unless otherwise agreed by the Parties. Such technical assistance may include, without limitation, technical assistance for obtaining Market Approval of International Organization for Standardization (ISO), Quality Management System (QMS), CE marking and the FDA for Bluejay or SanyoSeiko and for establishing the commercial manufacturing of Chip Products.
- 5.3 **Loan of Devices for Analysis.** Toray shall procure and loan fifteen (15) devices for analysis (RD-100), which are used with Toray Chips and currently owned by Toray's Affiliate, Toray Medical Co., Ltd., to Bluejay, free of charge. Bluejay shall bear any costs and expenses for the shipment and setup of such devices. Toray shall support Bluejay through the technical assistance rendered pursuant to Article 5.2 for the setup and maintenance of such devices to the extent reasonable. Bluejay shall bear any costs and expenses for repair or maintenance of such devices. Such devices shall be returned to Toray upon the termination or expiration of this Agreement, and any costs and expenses for such return shall be borne by Bluejay. The devices shall be returnable to Toray by Bluejay on ten (10) days prior notice.
- 5.4 **Costs and Expenses for Technical Assistance.** Toray shall provide the technical assistance for completing the transfer of Toray Know-How under Article 5.1 and establishing an alternative manufacturing site under Article 5.2 free of charge until Bluejay has received written confirmation of Performance Qualification from SanyoSeiko. If Toray provides, at Bluejay's request, technical assistance after that confirmation has been received, or technical assistance for other purposes, Bluejay shall pay Toray one thousand US Dollars (US\$1,000) per dispatched personnel per working day (which in this context means in principle eight (8) hours of work within reasonable business hours) in addition to actual transportation and accommodation fees for such dispatch (collectively, the "**Technical Assistance Fee**") in accordance with a written invoice from Toray accompanied by reasonable receipts and any other supporting documentation reasonably requested by Bluejay.

## **Article 6. USE OF TRADEMARK**

- 6.1 Bluejay shall not use the Trademark and shall label and repackage Toray Chips with its own trademark and shall not market, promote, sell or distribute Products using the Trademark in the Territory.

**Article 7. PURCHASE AND SUPPLY TERMS; ESTABLISHMENT OF ALTERNATIVE MANUFACTURING SITE**

- 7.1 **Purchase and Supply Terms.** The rights and obligations of the Parties relating to the purchase and supply of Toray Chips are provided for in the Supply Agreement. For clarity, under the Supply Agreement:
- 7.1.1 for the duration of the effective term of the Supply Agreement, Bluejay shall purchase Toray Chip Intermediates from Toray and Toray shall supply Toray Chip Intermediates to the Designated Manufacturer. The Chip Products manufactured using Toray Chip Intermediates must not be used for Commercial Sales; and
  - 7.1.2 notwithstanding the foregoing, Bluejay will not be required to comply with its purchase obligations provided for in the Supply Agreement, and Toray will not be required to comply with its supply obligations provided for in the Supply Agreement, once Market Approval for Chip Products is obtained from the FDA or the Supply Agreement otherwise expires or terminates, provided, however, that neither Bluejay nor Toray shall cancel any Purchase Order (as defined in the Supply Agreement) which has already been placed by Bluejay.
- 7.2 **Establishment of alternative Manufacturing Site.** During the effective term of the Supply Agreement, Bluejay shall establish an alternative manufacturing site of the Chip Products for Commercial Sales at the Designated Manufacturer at its own cost. Upon the request of Bluejay, Toray shall provide technical assistance in accordance with Article 5.2 for the purpose of assisting Bluejay in Bluejay's establishment of an alternative manufacturing site of the Chip Products for Commercial Sales at the Designated Manufacturer. Bluejay shall purchase Chip Products for Commercial Sales from the Designated Manufacturer. Once such first (1<sup>st</sup>) manufacturing site is established, the second (2<sup>nd</sup>) site or the following sites, if any, will be established by Bluejay without Toray's technical assistance.
- 7.3 **Sale of Products to Toray.** Toray may purchase from Bluejay, for the purpose of re-sale in Japan, Products that Bluejay manufactures or has Designated Manufacturer manufacture on reasonable terms and conditions to be separately discussed and agreed in writing between the Parties.

**Article 8. BLUEJAY ANALYSIS DEVICES**

- 8.1 **Bluejay Analysis Devices.** Bluejay may, at its own cost and responsibility, design and manufacture, or have Designated Manufacturer design and manufacture, devices for analysis to be used for Products ("**Bluejay Analysis Devices**"). For the avoidance of doubt, Toray does not make any representations and warranties, express or implied, as to the Bluejay Analysis Devices. Toray may purchase Bluejay Analysis Devices for research or commercial purposes in Japan on reasonable terms and conditions to be separately discussed and agreed in writing between the Parties.

**Article 9. MARKETING PLAN AND SALES REPORTS**

- 9.1 **Joint Marketing Planning Meetings.** The Parties may, upon a Party's request, which shall not be unreasonably withheld or delayed by the other Party, arrange and hold meetings at least once every six (6) months, or at such other intervals as may be otherwise agreed to by the Parties in order to exchange information relating to the marketing of the Products in the Territory, to discuss marketing plans and sales forecasts of the Products, to discuss strategies relating to the marketing of the Products, and to take such other actions as required under this Agreement (such meetings, "**Joint Marketing Planning Meetings**").
- 9.2 **Sales Reports.** Bluejay shall use reasonable efforts to realize the marketing plans and sales forecasts discussed in the Joint Marketing Planning Meeting. Bluejay shall report quarterly sales quantities and sales amounts of the Products in the Territory to Toray within fourteen (14) days from the end of the previous quarter and shall from time to time notify Toray of significant events in the Territory pertaining to the market situation, the competition, government controls, the general economy or any other major issues with regard to the market in the Territory.

**Article 10. REPRESENTATIONS AND WARRANTIES**

10.1 **General Warranties.** Each Party represents and warrants as of the A&R Effective Date to the other that: (a) it has the full right to enter into this Agreement and carry out its obligations hereunder; (b) this Agreement constitutes its legal, valid and binding obligation; (c) there are no agreements, commitments or obstacles, technical or legal, including patent rights of any third party, which could prevent it from carrying out all of its obligations hereunder; and (d) the execution, delivery and performance of this Agreement will not constitute a violation or breach of any agreement or contract to which it is a Party or by which it is bound or the terms of any judicial or administrative decree or order to which it is subject. Without limiting the foregoing, Toray further represents and warrants to Bluejay as of the A&R Effective Date that: (i) Toray owns or co-owns the Patents; (ii) Toray has all rights and consents necessary to license the Patents as provided for in this Agreement; and (iii) the Patents are duly maintained and in effect.

**Article 11. DISCLAIMER**

11.1 **No Other Warranty.** EXCEPT AS SPECIFICALLY PROVIDED IN ARTICLE 10, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR ANY WARRANTY AGAINST INFRINGEMENT OF ANY THIRD PARTY PATENT.

11.2 **Amount Limit.** EACH PARTY'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR CONNECTED WITH, OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPLACEMENT, USE OR PERFORMANCE OF ANY TORAY CHIPS SHALL IN NO CASE EXCEED THE PRICE FOR SUCH TORAY CHIPS WHICH GIVES RISE TO THE CLAIM. FOR CLARITY, NOTWITHSTANDING ANYTHING CONTRARY HEREIN: (a) BLUEJAY SHALL PAY THE FULL AMOUNT OF ROYALTIES TO TORAY IN ACCORDANCE WITH ARTICLE 4 OF THIS AGREEMENT; AND (b) THIS LIMITATION SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 12.

11.3 **Indirect Damage.** NOTWITHSTANDING ANYTHING CONTRARY HEREIN, EXCEPT AS ARISING FROM A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 18 OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 12, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR: (A) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES; (B) LOSS OF ANTICIPATED PROFIT OR REVENUE, LOSS OF USE, COST OF CAPITAL; OR (C) PROPERTY DAMAGE INDEPENDENT OF THE PRODUCTS AND LOSS ARISING OUT OF SUCH DAMAGES.

**Article 12. INDEMNIFICATION**

12.1 **Indemnification by Toray.** Toray shall indemnify, defend and hold harmless Bluejay and its Affiliates from and against any liabilities or damages, or expenses in connection therewith (including reasonable attorney's fees and costs and other expenses of litigation), resulting from third party claims arising or resulting from: (a) the material breach of this Agreement by Toray; or (b) the willful misconduct or the gross negligence of Toray, unless such liabilities, damages or expenses arise or result from the willful misconduct or the gross negligence of Bluejay.

12.2 **Indemnification by Bluejay.** Bluejay shall indemnify, defend and hold harmless Toray and its Affiliates from and against any and all liabilities or damages, or expenses in connection therewith (including reasonable attorney's fees and costs and other expenses of litigation), resulting from third party claims arising or resulting from: (a) the material breach of this Agreement by Bluejay; or (b) the willful misconduct or the gross negligence of Bluejay, unless such liabilities, damages, or expenses arise or result from the willful misconduct or the gross negligence of Toray.

12.3 **Insurance.** Each of the Parties shall maintain comprehensive general liability insurance, product liability insurance as well as other types of insurance in type and amount considered to be reasonable and prudent given the types of risks involved in the manufacturing, repackaging and distribution of the Products, as the case may be. Each Party shall maintain such coverage with third party commercial insurance carrier(s), for the term of this Agreement, and for the length of period required to cover the maximum limitation period for product liability claims in the Territory.

**Article 13. INTELLECTUAL PROPERTY RIGHTS ETC.**

13.1 **Third Party Claim.** Both Parties shall cooperate in defending against any third party claim or dispute which may arise from or in connection with an infringement claim within the Territory of any trademark or any Intellectual Property Rights of a third party relating to the marketing, sales and distribution of Chip Products hereunder. Toray shall be solely liable with respect to any award or judgment adverse to Bluejay or Toray if such claim or dispute arises from or in connection solely with Toray Chips that have not been changed, modified or improved by Bluejay or the Designated Manufacturer. Bluejay shall be liable with respect to any award or judgment adverse to Bluejay or Toray if such claim or dispute arises from or in connection solely with (a) the labeling or repackaging of Toray Chips, or (b) Bluejay's use of any changes, modifications or improvements that Bluejay or Designated Manufacturer makes to Toray Chips.

13.2 **Notification.** During the term of this Agreement, if Bluejay or Toray, at any time, becomes aware of any infringement or threatened infringement by a third party of any Intellectual Property Rights of Toray Chips or the Chip Products in the Territory, Bluejay or Toray, as the case may be, shall promptly give notice to the other Party, and the Parties shall consult with each other as to the action to be taken. Bluejay agrees to give Toray support in resisting such infringement or threatened infringement.

13.3 **Improvements, Inventions, and Foreground Intellectual Property Rights.** Bluejay (including by its Affiliates, subcontractors, sublicensees, or their respective employees or agents) shall be permitted under the licenses granted herein to make Improvements. All Improvements, whether or not patentable, which are discovered, generated, conceived or reduced to practice (i) solely by or on behalf of Bluejay (including by its Affiliates, sublicensees, subcontractors or their respective employees or agents), (ii) solely by or on behalf of Toray, or (iii) jointly by or on behalf of Bluejay and Toray in the course of the performance of this Agreement, including all rights, title and interest in and to the Intellectual Property Rights therein and thereto (all such rights, title and interest, "**Foreground Intellectual Property Rights**"; all patentable Improvements, "**Inventions**"), shall be solely owned by Bluejay or Toray, or jointly owned by Bluejay and Toray, in accordance with each Party's level of contribution as set out below.

13.3.1 An Invention and the Foreground Intellectual Property Rights subsisting in or in relation to the Invention which are discovered, generated, conceived or reduced to practice solely by or on behalf of Bluejay without Toray's contribution made in an agreed collaboration with Bluejay shall be solely owned by Bluejay.

- 13.3.2 An Invention and the Foreground Intellectual Property Rights subsisting in or in relation to the Invention which are discovered, generated, conceived or reduced to practice solely by or on behalf of Toray without Bluejay's contribution made in an agreed collaboration with Toray shall be solely owned by Toray.
- 13.3.3 An Invention and the Foreground Intellectual Property Rights in the Invention shall be jointly owned by Bluejay and Toray if both Parties made a contribution (which may include, without limitation, a financial, technical or other commitment or promise by one Party to the other Party) to the underlying Improvement. For the avoidance of doubt, Toray shall not be deemed to have contributed to, and an Invention and the Foreground Intellectual Property Rights subsisting in or in relation to the Invention shall therefore not be jointly owned by Toray, merely because Bluejay refers to (which includes Bluejay having had access to, knowledge of, or experience with) Toray's Background Intellectual Property Rights or Toray's Confidential Information unless Toray has contributed to such Invention and Foreground Intellectual Property Rights in an agreed collaboration with Bluejay, and vice versa.
- 13.3.4 If Toray has made a contribution as provided for in Article 13.3.1, or if Bluejay has made a contribution as provided for in Article 13.3.2, the shares of joint ownership in that Invention and the Foreground Intellectual Property Rights in that Invention shall be determined by written agreement between the Parties in accordance with each Party's level of contribution to the Invention. The Parties shall in good faith discuss and cooperate with other with respect to any procedures and applications relating to registration of any such jointly owned Inventions. If the Parties agree to jointly file for a patent for an Invention, each Party shall bear the expenses for any such procedures and applications in proportion to their respective ownership ratios. If a Party decides not to file for a patent in a particular country, the other Party may file for a patent in that country at its own expense, and the first Party hereby consents to the other Party making that filing and shall sign a written consent or other such documentation if necessary to prove that consent and otherwise cooperate with the filing Party, the reasonable expenses for which shall be borne by the filing Party upon submission of a reasonable invoice with supporting receipts and other such documentation.
- 13.3.5 Bluejay may use and exploit (including by licensing) all Inventions and all Foreground Intellectual Property Rights that Bluejay solely owns without any additional payment to Toray and without limitation in the Territory and Japan. Bluejay may use and exploit all Inventions and all Foreground Intellectual Property Rights that the Parties jointly own without any additional payment to Toray and without limitation in the Territory and Japan, provided that any license to a third party under such jointly owned Inventions and Foreground Intellectual Property Rights will be subject to Toray's prior written consent.
- 13.3.6 Toray may use and exploit (including by licensing) all Inventions and Foreground Intellectual Property Rights that Toray solely owns without any additional payment to Bluejay and without limitation in Japan. Toray may use and exploit all Inventions and all Foreground Intellectual Property Rights that the Parties jointly own without any additional payment to Bluejay and without limitation in Japan, provided that any license under such jointly owned Inventions and Foreground Intellectual Property Rights to a third party will be subject to Bluejay's prior written consent.

13.4 **Background Intellectual Property Rights.**

- 13.4.1 **Bluejay Background Intellectual Property Rights.** All Intellectual Property Rights existing as of the A&R Effective Date or arising separately to this Agreement and the Original Agreement ("**Background Intellectual Property Rights**") of Bluejay shall at all times remain the sole property of Bluejay, and Toray shall not use Background Intellectual Property Rights of Bluejay except as expressly provided for in this Agreement.

- 13.4.2 **Toray Background Intellectual Property Rights.** Any and all rights in and to the Patents and Toray Know-how shall at all times remain the sole property of Toray subject to the licenses granted in this Agreement.
- 13.4.2.1 Bluejay may use and exploit (including by sublicensing but subject to Toray’s prior written consent under Article 2.3) Toray Know-How to the extent necessary for Bluejay, its Affiliates, subcontractors and sublicensees to use and exploit Foreground Intellectual Property Rights for the purpose as expressly provided for in this Agreement without any additional payment to Toray and without limitation in the Territory and Japan.
- 13.4.2.2 Bluejay shall not use Background Intellectual Property Rights of Toray except as expressly provided for in this Agreement (including, without limitation, Article 13.4.2.1).
- 13.4.3 **Subcontracting by Toray.** Toray shall cause all Affiliates and other third-party subcontractors that engage in work for Toray relating to this Agreement that will or may involve Intellectual Property Rights or Confidential Information to be legally bound to terms and conditions substantially similar to the terms under this Agreement relating to Intellectual Property Rights and Confidential Information. Toray shall be responsible for any breach of such terms and conditions by any such Affiliates and other third-party subcontractors and shall have the same responsibility for the activities of those Affiliates and other third-party subcontractors under any such arrangements as if the activities were directly those of Toray.

**Article 14. COMPLIANCE AND ETHICAL CONDUCT**

- 14.1 It is the policy of both Parties to conduct businesses at all times in accordance with its highest standards of corporate and business ethics. Both Parties agree to comply with any and all laws, regulations and governmental orders of the jurisdictions relating to the execution and performance of this Agreement and with all other performance standards under or pursuant to this Agreement.
- 14.2 Bluejay shall be responsible for and fulfill any and all legal obligations of an importer, a distributor and/or a holder of marketing authorization of medical products in the Territory including, but not limited to, establishing the documented procedures for the traceability of Products imported and sold by Bluejay, as may be required by any national or rural government of the Territory or any other competent authorities, and Toray shall assist Bluejay in fulfilling such obligations. Bluejay shall assist Toray in fulfilling the legal obligations of a supplier or a manufacturer of Toray Chips in the Territory which are required by any national or rural government of the Territory or any other competent authorities.
- 14.3 Either Party shall not offer, promise, or give money or any other thing of value to a Public Official in connection with this Agreement. “**Public Official**” in this Agreement means an officer, employee or any person acting for or on behalf of: (a) any government or any department, agency or instrumentality thereof (including state-owned or state-controlled entities); or (b) any public or international organization. If, during the term of this Agreement, either Party pays compensation or anything of value to a third party in relation to this Agreement, such Party shall, upon request from the other Party, promptly inform the other Party of: (i) any information regarding such third party; and (ii) any information regarding such payment, including the detail, purpose, and any other information which the other Party deems necessary.

**Article 15. TERM AND TERMINATION**

- 15.1 This Agreement shall take effect on the A&R Effective Date and shall continue in full force and effect until the expiration of the last Royalty Term (that period, the “**Term**”), unless sooner terminated by mutual written consent of the Parties or terminated in accordance with Articles 15.2, 15.3 or 15.4. Notwithstanding the foregoing, Article 10 (Representations and Warranties), Article 11 (Disclaimer), Article 12 (Indemnification), Article 13 (Intellectual Property Rights etc.), Article 14 (Compliance and Ethical Conduct), Article 16 (Steps After Termination), Article 18 (Confidentiality and Limitation on Use), Article 22 (Governing Law) and Article 23 (Dispute Resolution) and this Article 15.1 shall survive expiration or termination of this Agreement.
- 15.2 If Bluejay does not satisfy the Commercial Sales requirements of Articles 3.4 and 3.5 of this Agreement, Toray may terminate this Agreement in accordance with Article 3.5 by providing Bluejay prior written notice.
- 15.3 Either Party may terminate this Agreement forthwith by giving a written notice to the other Party if:
- (a) the other Party fails to remedy any material breach of this Agreement within thirty (30) days after receiving a written notice requesting it to do so; or
  - (b) the other Party enters into any arrangement of composition with its creditors or goes into liquidation, insolvency, bankrupt, receivership or reorganization proceedings, except that, in case of non-voluntary proceedings, when such non-voluntary proceedings are not dismissed within ninety (90) days, or if the other Party becomes dissolved, or terminates its corporate existence by merger, consolidation or otherwise.
- 15.4 Either Party may terminate this Agreement forthwith by giving a written notice to the other Party if the other Party breaches an obligation under Article 14.3.

**Article 16. STEPS AFTER TERMINATION**

- 16.1 Expiration or termination of this Agreement shall not release any Party from any liability which at the time of such expiration or termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such expiration or termination, nor shall any such expiration or termination affect in any way the survival of any right, duty or obligation of any Party which is stated in this Agreement to survive such expiration or termination.
- 16.2 Any termination of this Agreement under this Article 16 shall not prejudice any right and remedy available to the terminating Party under this Agreement, law, trade custom or otherwise.
- 16.3 Upon expiration or termination of this Agreement, Bluejay shall:
- (a) cease to label and repackage Toray Chips;
  - (b) upon Toray’s request, promptly return to Toray or destroy, at Toray’s discretion, all documents and materials containing Toray Know-How and its Confidential Information, including any duplicated copy thereof; provided, however, that Bluejay may retain one (1) copy for archival purposes to the extent necessary to confirm compliance with this Agreement or as may be required in accordance with applicable law or regulations or Bluejay’s internal regulations; and
  - (c) report to Toray on the marketable inventory of Toray Chips on hand at the time of such expiration or termination of this Agreement and discuss and determine the period of time Bluejay may continue to sell those Toray Chips.



16.4 The Parties acknowledge and agree that:

16.4.1 on the expiry of the applicable Royalty Term for a certain Product, no further royalties are payable with respect to the sales of that Product in the Territory, and the licence granted by Toray to Bluejay under this Agreement with respect to that Product in the Territory shall become fully paid-up, perpetual, irrevocable, and royalty-free; and

16.4.2 therefore Bluejay will and may continue to sell such Products in the Territory even after the expiry of the Term.

**Article 17. FORCE MAJEURE**

A Party shall not be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement, except for monetary payment, when such failure or delay is caused by or results from, directly or indirectly, act of God, fire, flood, tidal wave, landslide, pandemic, epidemic, quarantine, embargoes, government regulations, prohibitions or interventions, wars, acts of war (whether war be declared or not), act of terrorism, insurrection, riots, civil commotion, or any other cause beyond the reasonable control of the affected Party, provided that the affected Party shall promptly notify the other Party of the nature and effect of such event.

**Article 18. CONFIDENTIALITY AND LIMITATION ON USE**

18.1 Except as otherwise permitted in this Article 18, during the term of this Agreement and for a period of five (5) years thereafter, each Party shall retain in confidence and use only for the purposes of this Agreement any Confidential Information supplied by or on behalf of the other Party to such Party under this Agreement. The obligations and duties under this Article 18.1 shall not apply to the information which:

- (a) was in the public domain at the time of disclosure;
- (b) was known by such Party prior to the date of disclosure by the other Party as evidenced by tangible records of such knowledge;
- (c) becomes part of the public domain through no fault of such Party;
- (d) is disclosed to such Party by a third party having a bona fide right to disclose such information; or
- (e) is independently developed by such Party without using the Confidential Information of the other Party.

18.2 Notwithstanding the obligations of Article 18.1:

- (a) in the event a Party is required to make a disclosure of the other Party's Confidential Information in order to comply with any applicable law, the Party will, as soon as is practicable and legally permitted, notify the other Party of the disclosure or possible disclosure and will use all reasonable efforts to provide the Confidential Information under conditions of confidentiality, or obtain a protective order protecting such information; and
- (b) Bluejay's obligations of confidentiality and non-use with respect to Toray Know-How shall survive for the period that Toray Know-How retains its status as a trade secret under applicable law, even after five (5) years from the termination of this Agreement.

18.3 Notwithstanding the obligations of Article 18.1, Toray may disclose Confidential Information to Designated Manufacturers; provided, however, that Toray shall cause all such Designated Manufacturers to comply with confidentiality obligations at least substantially similar to those set forth in this Agreement.

- 18.4 No announcement, news release, public statement, publication or other public presentation relating to the existence of this Agreement, the subject matter herein, or either Party's performance hereunder including any written or oral publication, any manuscript, abstract or the like which includes data or any other information generated and provided by the development effort hereunder, shall be made without the other Party's prior approval as to form and content.
- 18.5 Notwithstanding Article 18.4, Toray consents to the filing of this Agreement, as amended, as an exhibit to any filings made by Bluejay with the U.S. Securities and Exchange Commission, and consents to the description of the terms of this Agreement being disclosed by Bluejay in any filings made with the U.S. Securities and Exchange Commission.

**Article 19. NOTICE**

Any notice required or permitted under the terms of this Agreement, or any statute or law requiring the giving notice, must be in writing and delivered in person, or by email, registered air mail or registered courier service, if properly posted or sent to the relevant party at the address below or to such changed address as may be given by either Party to the other by such written notice. Any such notice shall be deemed to have been given upon receipt or upon the third (3rd) day after having been dispatched in the manner hereinbefore provided, whichever is earlier.

(a) To Bluejay at:

Address: 360 Massachusetts Avenue, Suite 203, Acton, MA 01720  
Attention: Finance Department  
Telephone: +1 844 327 7078  
E-Mail: procurement@bluejaydx.com

(b) To Toray at:

Address: Pharmaceuticals & Medical Products Business Planning Dept.  
2-1-1, Nihonbashi-Muromachi, Chuo-ku, Tokyo 103-8666 JAPAN  
  
Attention: Hideaki Inada, General Manager  
Telephone: +81-3-3245-8657  
E-Mail: hideaki.inada.e3@mail.toray

**Article 20. RELATIONSHIP**

The Parties shall be independent contractor to each other. Nothing herein shall be deemed to create the relationship of employer or employee, partnership, association or joint venture of any nature. Neither Party shall have the right, power or authority to assume or create any obligation, express or implied, for which the other Party may become liable.

**Article 21. NO ASSIGNMENT**

Neither Party may assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other Party. Any assignment in violation of this provision shall be null and void.

**Article 22. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or relating in any way to this Agreement, whether sounding in contract, tort, statute or otherwise, shall be governed by and construed according to the laws of New York without regard to the conflicts of law principles thereof that would result in application of the laws of any other jurisdiction. The United Nations Convention on the International Sale of Goods shall not be applicable to this Agreement.

**Article 23. DISPUTE RESOLUTION**

All disputes or claims arising out of or relating in any way to this Agreement, whether sounding in contract, tort, statute or otherwise, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat and venue of arbitration shall be in Tokyo, Japan, if initiated by Bluejay and in New York, NY, the USA, if initiated by Toray. The language of the arbitration shall be English. The award rendered by the arbitrator(s) shall be final and binding upon the parties. Notwithstanding aforementioned, either Party may apply to a court of competent jurisdiction for an order for lawful preservative or conservatory measures, including interim injunctive relief (whether prohibitory or mandatory) in cases of due urgency only.

**Article 24. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the Parties relative to the matters described herein, except the confidentiality agreement executed between the Parties dated 22<sup>nd</sup> of April, 2020. Any amendment hereto must be in writing and signed by the duly authorized representative of both Parties.

[Signature page follows.]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the A&R Effective Date.

Bluejay Diagnostics, Inc.

Toray Industries, Inc,

/s/ Neil Dey

/s/ Jun Hayakawa

Name: Neil Dey

Name: Jun Hayakawa

Title: Chief Executive Officer

Title: Deputy General Manager

Pharmaceuticals & Medical Products Division

Date: October 23, 2023

Date: October 23, 2023

**BLUEJAY DIAGNOSTICS, INC.**

- and -

**TORAY INDUSTRIES, INC.**

**MASTER SUPPLY AGREEMENT**

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This MASTER SUPPLY AGREEMENT (this “**Agreement**”) is entered into on the Effective Date (defined in clause 1) between the following parties (each, a “**Party**”, and collectively, the “**Parties**”):

- (1) **Bluejay Diagnostics, Inc.**, a company incorporated in the State of Delaware, U.S.A., with its principal place of business at 360 Massachusetts Avenue, Suite 203, Acton, MA, 01720, U.S.A. (“**Bluejay**”); and
- (2) **Toray Industries, Inc.**, a company incorporated in Japan with its registered address at 1-1, Nihonbashi-muromachi, 2-chome, Chuo-ku, Tokyo 103-8666, Japan (“**Toray**”).

**BACKGROUND:**

- (A) Bluejay is in the business of the development, design, manufacturing, and sales of certain fluorescence immunoanalyzers and cartridges for medical research and clinical purposes as well as commercial purposes;
- (B) Toray is in the business of, among other things, the manufacture and supply of intermediate products for certain protein detection chips for medical devices and providing technical support;
- (C) Bluejay has entered into a License and Supply Agreement dated 6 October 2020 with Toray for the purpose of Toray’s licensing certain Intellectual Property necessary and/or useful for, among other things, manufacturing certain products made using the Toray Chip Intermediates in Japan (that agreement, as amended and restated by an Amended and Restated License Agreement between Bluejay and Toray dated 20 October 2023, the “**License Agreement**”);
- (D) Bluejay and Toray desire to split the terms and conditions of purchase and supply of the Toray Chip Intermediates that was agreed in the original Bluejay-Toray License Agreement therefrom and substantially reinstate such agreed terms and conditions in this Agreement; and
- (E) Toray is willing to manufacture and supply the Toray Chip Intermediates (as defined in clause 1) to Bluejay, and Bluejay is willing to purchase the Toray Chip Intermediates from Toray, in accordance with this Agreement.

**1. DEFINITIONS**

**1.1** In this Agreement:

“**Affiliate**” means, with respect to a Party, any person that directly or indirectly controls or is controlled by or is under common control with the Party, where the words “control” or “controlled” mean ownership of (a) 50% or more of the voting rights of that person or (b) the right to elect the majority of the board of directors or other such similar governing body;

“**Annual Rolling Forecast**” has the meaning defined in clause 4.1;

“**Applicable Laws**” means all national, supra-national, federal, state, local, foreign or provincial laws, rules, regulations, orders, decrees, directives, requirements, standards, and case law as well any interpretation or administration of any of the foregoing and any guidance, guidelines, requirements, and regulations of any regulatory authorities and any industry codes of practice in effect from time to time applicable to the activities performed under this Agreement and the handling of Toray Chip Intermediates in any part of the world, including any relevant environmental, health, and safety laws and regulations;

“**Bluejay Indemnitee**” has the meaning set forth in clause 10.1;

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“**Calendar Quarter**” means each of the three (3) month periods from 1 January through 31 March, 1 April through 30 June, 1 July through 30 September, and 1 October through 31 December;

“**Delivery Date**” means the date specified in a Purchase Order on which Toray is required to deliver a specific quantity of Toray Chip Intermediates to the designated delivery place;

“**Delivery Location**” means Sanyoseiko, Co., Ltd. with its ship-to address at Shimowada Factory, 1150 Shimowada, Nanaho-machi, Otsuki-shi, Yamanashi 409-0622 JAPAN or any other such location or address as Bluejay may notify Toray of from time to time;

“**Designated Manufacturer**” means a manufacturer designated by Bluejay by notice to Toray;

“**Disputed Product**” has the meaning defined in clause 7.2(c);

“**Effective Date**” means the date the last Party signed this Agreement;

“**Toray Indemnitee**” has the meaning set forth in clause 10.2;

“**Intellectual Property**” means all intellectual property rights in any part of the world, including any and all rights in or to patents (including supplementary protection certificates), utility models, inventions, registered and unregistered trade and service marks, business and trade names and get-up, domain names, designs (whether registered or not), semiconductor and topography rights, copyrights and neighbouring rights, database rights, confidential information, and Know-How as well as (in each case) rights of a similar or corresponding character and in all applications and rights to apply for protection of any of the foregoing;

“**Kamakura Techno-Science**” means Kamakura Techno-Science, Inc., a company incorporated in Japan with its registered address at 10-1, Teburo 6-chome, Kamakura, Kanagawa 248-0036, Japan, and which is an indirectly wholly owned Affiliate of Toray;

“**Know-How**” means any information, improvements, practices, processes, procedures, methods, techniques, knowledge, skills, experiences, results, formulas, algorithms, and trade secrets;

“**Liabilities**” has the meaning set forth in clause 10.1;

“**License Agreement**” has the meaning set forth in Background paragraph (C);

“**Lot Number**” means an identifier assigned to each batch of manufactured Toray Chip Intermediates for general identification purposes, such as a series or combination of letters, numbers, or other typographical symbols;

“**Price**” means the price per Toray Chip Intermediates stipulated in Schedule 4 in Japanese yen (as amended, if amended in accordance with clause 5.1);

“**Purchase Order**” means a Bluejay purchase order substantially in the form attached as Schedule 5, or as otherwise agreed between the Parties;

“**Purchase Order Date**” means the date a Purchase Order is issued to Toray in accordance with the first sentence of clause 3.1;

“**Quality Agreement**” means the Quality Agreement relating to the Toray Chip Intermediates entered into between Sanyoseiko and Toray, subject to Bluejay’s prior approval of the content thereof, on or around the Effective Date;

“**Sanyoseiko**” means Sanyoseiko Co., Ltd, a company incorporated in Japan with its head office at 1435 Ozawa, Saruhashi-machi, Otsuki-shi, Yamanashi 409-0616, which is a Designated Manufacturer as of the Effective Date;

“**Site**” means each factory or other site where the Toray Chip Intermediates are formulated, manufactured, assembled, stored, or otherwise handled by Toray. As of the Effective Date, the Site is located at Kamakura Techno-Science;

“**Specifications**” means the complete and accurate description of the contents, appearance, features, functionality, quality and other characteristics of the Toray Chip Intermediates all as described in Schedule 2;

“**Term**” has the meaning set forth in clause 8.1;

“**Third Party Claims**” has the meaning set forth in clause 10.1; and

“**Toray Chip Intermediates**” means the items described in Schedule 1.

## 1.2 Other Definitional and Interpretative Provisions

In this Agreement, unless expressly stated otherwise:

- (a) all capitalized terms used in this Agreement shall, unless otherwise specified in this Agreement, have the same meanings ascribed to them in the License Agreement;
- (b) the provisions under the headings of “Insurance”, “Intellectual Property Rights”, “Compliance and Ethical Conduct” and “Confidentiality and Limitation on Use” in the License Agreement shall also apply in this Agreement *mutatis mutandis*;
- (c) “**Agreement**” means this document and includes its recitals and Schedules and all Purchase Orders entered into by the Parties;
- (d) references to this Agreement or any other document include references to this Agreement or that document as varied, supplemented, or replaced from time to time;
- (e) references to days means calendar days. However, any right, duty or obligation in this Agreement that falls on a Saturday, Sunday, bank holiday or public holiday in the United States or Japan shall be deemed to fall on the immediately following business day;
- (f) headings are inserted for convenience only and shall be ignored in construing this Agreement;
- (g) references to the singular include the plural, and vice versa;
- (h) any phrase introduced by the terms “include”, “includes”, “including”, “in particular” or any other similar expression (whether or not they are followed by “without limitation” or the like) shall be construed as illustrative and does not limit the sense of the words preceding these terms; and



- (i) ambiguities, if any, in this Agreement will not be construed against either Party, irrespective of which Party may be deemed to have authored the ambiguous provision. This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favour of or against either Party.

**2. SALES AND PURCHASE OF TORAY CHIP INTERMEDIATES**

- 2.1 During the term of this Agreement, Bluejay shall purchase Toray Chip Intermediates from Toray, and Toray shall supply Toray Chip Intermediates to the Designated Manufacturer, in accordance with Purchase Orders under clause 3 and the other terms and conditions of this Agreement.
- 2.2 The Chip Products manufactured using Toray Chip Intermediates must not be used for Commercial Sales.
- 2.3 Toray shall manufacture the Toray Chip Intermediates in accordance with the Specifications, the Quality Agreement, and the other terms and conditions of this Agreement.

**3. PURCHASE ORDERS**

- 3.1 Bluejay shall issue a Purchase Order in accordance with the timing provided for in clause 4.2. The Purchase Order must contain, at a minimum:
  - (a) the quantity of Toray Chip Intermediates being ordered;
  - (b) the Price;
  - (c) the total cost of the Toray Chip Intermediates (being quantity multiplied by Price) exclusive of any taxes and disbursements;
  - (d) a Purchase Order number;
  - (e) the Purchase Order Date;
  - (f) the Delivery Date (which must not be earlier than four (4) weeks after the Purchase Order Date) for each specific quantity of Toray Chip Intermediates; and
  - (g) the Delivery Location.
- 3.2 A Purchase Order given in accordance with clause 3.1 shall become binding if: Toray notifies Bluejay of its acceptance in writing; or on the passing of fourteen (14) days after Toray's receipt of the Purchase Order and Toray has not expressly rejected the Purchase Order by written notice to Bluejay. Toray may amend the shipment date with Bluejay's prior written consent. Toray shall not unreasonably reject or withhold the acceptance of a Purchase Order. No Purchase Order may be changed or cancelled, except that Bluejay may increase the quantity of Toray Chip Intermediates in the Purchase Order with Toray's written approval. If any term of a Purchase Order conflicts with a provision of this Agreement, the provision of this Agreement shall prevail.
- 3.3 A Purchase Order accepted in accordance with the preceding clause is the only authorization and obligation for Toray to manufacture Toray Chip Intermediates for Bluejay, and Toray will not be required to manufacture Toray Chip Intermediates, and Bluejay will not be required to pay Toray for manufacturing and selling Toray Chip Intermediates, otherwise than in accordance with such an accepted Purchase Order.

- 3.4 No change to any Purchase Order or cancellation thereof may be made, except that the increase in the ordered quantity of Toray Chip Intermediates may be approved by Toray in writing.
- 3.5 Toray shall reference the Purchase Order number on all packing slips (including bills of lading) and invoices (including commercial invoices) relating to Toray Chip Intermediates ordered under the Purchase Order. Any term of any such packing slip, bill of lading, invoice, or other such document that differs from or is contrary to the terms of this Agreement is void, unless agreed otherwise in writing by authorized representatives of the Parties.
4. **FORECASTS AND PRODUCTION GUARANTEES**
- 4.1 Forecasts. Within two (2) weeks after the Effective Date, Bluejay shall submit to Toray a written non-binding forecast, in English, of the quantity of Toray Chip Intermediates Bluejay estimates Bluejay will order over the following four Calendar Quarters (each such forecast, an “**Annual Rolling Forecast**”). By one (1) month before the expiry of that Annual Rolling Forecast, Bluejay shall submit to Toray a new Annual Rolling Forecast for the next four (4) Calendar Quarters, and the same will apply thereafter. Bluejay acknowledges and agrees that Toray’s production capacity for Toray Chip Intermediates is maximum of: (a) twenty thousand (20,000) units per year; and (b) two thousand (2,000) units per month, and that Bluejay will submit to Toray the Annual Rolling Forecast within such maximum quantity.
- 4.2 Purchase Orders. Bluejay shall submit written Purchase Orders for Toray Chips to Toray at least three (3) months prior to the delivery, provided, however, that the first (1<sup>st</sup>) and second (2<sup>nd</sup>) Purchase Orders shall be submitted at least six (6) weeks prior to the shipment.
- 4.3 Safety Stock. Toray shall use its commercially reasonable efforts to manage and maintain its inventories of all raw materials, components, and packaging as are reasonably necessary to be able to manufacture the Toray Chip Intermediates based on the latest Annual Rolling Forecast. Toray shall use commercially reasonable efforts to procure strategic supply for any raw materials that have a lead-time in excess of the period of the Annual Rolling Forecast for a raw material that may be reasonably expected to be in short supply based on industry trends within the three (3) month quantity forecasted in the applicable Annual Rolling Forecast. Toray shall bear the costs and expenses associated with managing, procuring, and maintaining such safety stock.
- 4.4 Failure to Supply. If Toray fails to deliver the quantities of Toray Chip Intermediates specified in any binding Purchase Order by more than sixty (60) days of the Delivery Date set forth therein (limited to such failures directly attributable, in whole or in part, to Toray), then Toray shall discuss the possibility of reducing the Price for such Purchase Order.
- 4.5 Changes. Toray shall provide Bluejay with ninety (90) days’ prior written notice if Toray intends to implement any material changes to Toray Chip Intermediates, with respect to their packaging, components, composition, manufacturing site, country of origin, or manufacturing process. If Toray is to make any such change, the Parties shall, by separate written agreement, amend the Price and Specifications accordingly.
5. **PRICE**
- 5.1 The Price as of the Effective Date is set out in Schedule 4 and thereafter may only be amended by a written agreement signed by authorized representatives of the Parties.
- 5.2 The Price does not include any import duties or use or excise tax of any jurisdiction, all of which (if and to the extent applicable) are the responsibility of Bluejay.

5.3 If there is a severe change in market conditions, which includes a drastic change in the USD/JPY exchange rate, the Parties shall, at either Party's request, review the Price and discuss any necessary adjustments to the Price (if any) in good faith.

6. **PAYMENT**

6.1 Toray shall invoice Bluejay for Toray Chip Intermediates by sending a written invoice in English to the 'bill to' email address specified in the Purchase Order or other such address as designated by Bluejay. Each invoice must include the applicable Purchase Order number, quantity of Toray Chip Intermediates delivered, their Lot Numbers, and other information reasonably requested by Bluejay.

6.2 Bluejay shall pay Toray within thirty (30) days of the acceptance date by Toray of Purchase Order in accordance with the invoice issued under clause 6.1.

6.3 Bluejay and Toray shall be responsible for their own bank charges incurred for such payment transfer.

7. **QUALITY ASSURANCE, ACCEPTANCE AND DELIVERY**

7.1 **Quality Control Release**

- (a) Toray shall manufacture the Toray Chip Intermediates in accordance with the Specifications.
- (b) Toray shall promptly inspect all Toray Chip Intermediates manufactured by Toray to confirm they comply with the Specifications and notify Bluejay of the results by sending a certificate of analysis prior to shipment of the product.
- (c) Toray shall label and package Toray Chip Intermediates that pass inspection in accordance with Schedule 3.
- (d) If a Toray Chip Intermediate does not pass inspection, Toray shall investigate the failure and correct the issues. Toray shall promptly report to Bluejay, including upon Bluejay's request from time to time, on the status and progress of such failed Toray Chip Intermediates.

7.2 **Quality Control Incoming Inspection**

- (a) Inspection. Bluejay shall inspect, or have the Designated Manufacturer inspect, the Toray Chip Intermediate within fourteen (14) days after delivery of the Toray Chip Intermediate in accordance with the Specifications and the inspection report described in the Quality Agreement.
  - (i) If Bluejay or the Designated Manufacturer discovers with respect to any Toray Chip Intermediate any deficiency in quantity or inconformity with the Specifications or the Quality Agreement, Bluejay shall (or shall have the Designated Manufacturer) give written notice thereof to Toray within fourteen (14) days after delivery of the Toray Chip Intermediate. If Bluejay does not give any such notice to Toray, Bluejay shall be deemed to have waived all claims for any deficiency in quantity.
  - (ii) If Bluejay or the Designated Manufacturer later discovers any such inconformity with the Specifications or the Quality Agreement within the Product Warranty period provided for in clause 9.2, Bluejay shall (or shall have the Designated Manufacturer) give written notice thereof to Toray within ten (10) days after that discovery.

- (iii) With respect to each occasion Toray Chip Intermediates are delivered in accordance with a Purchase Order, if Bluejay does not give Toray a notice under sub-clause (ii) above, Bluejay shall be deemed to have accepted those Toray Chip Intermediates and to have waived all claims for any deficiency or inconformity with the Specifications.
- (b) Storage. Bluejay shall take care of, store and keep Toray Chip Intermediates delivered to it in good condition and free from all damage and contamination which might detract from the appearance or performance of those Toray Chip Intermediates. For this purpose, Bluejay shall adhere to the storage conditions set forth in the Quality Agreement for Toray Chip Intermediates, except where the Toray Chip Intermediates may be required to undergo additional processes for the purpose of Bluejay's selling (for non-commercial purposes) completed products containing the Toray Chip Intermediates to Bluejay's customers. These processes may include, without limitation, labelling and kit assembly where the completed product may experience ambient temperatures. These processes may be subject to validation to ensure that the performance and stability of the completed product are substantially equivalent to completed product that does not go through the additional processes.
- (c) Remedy for Disputed Toray Chip Intermediates. If Toray notifies Bluejay, within fourteen (14) days after issuance of Bluejay's notice under sub-clause (a), that Toray does not agree with Bluejay's determination that the Toray Chip Intermediate does not conform to the Specifications, then the Parties shall attempt, in good faith, to resolve such dispute. If Toray and Bluejay cannot resolve such dispute within thirty (30) days after the issuance of Toray's notice, either Party may request an independent laboratory that is acceptable to both Parties to test the Toray Chip Intermediate in dispute ("**Disputed Product**"). The laboratory's findings will be final, binding and not subject to challenge or appeal. If such laboratory finds that the Disputed Product conforms to the Specifications, Bluejay shall pay the fees of such laboratory related to such testing and shall promptly pay for the Disputed Product. If such laboratory finds that the Disputed Product does not conform to the Specifications, Toray shall: (i) pay the fees of such laboratory related to such testing; and (ii) promptly (within six (6) weeks after the laboratory has issued its findings) replace the defective Toray Chip Intermediate at its expense or refund the purchase cost of the Toray Chip Intermediate.
- (d) Remedy for non-Disputed Toray Chip Intermediates. If Toray does not give the notice provided for in sub-clause (c) above within the period provided for in sub-clause (c), Toray shall be deemed to have no objection to Bluejay's notice given under sub-clause (a) above, and Toray shall promptly (within six (6) weeks after the issuance of Bluejay's notice under sub-clause (a)) replenish the shortage (in case of a deficiency in quantity) or, at its discretion after discussion with Bluejay, replace the defective Toray Chip Intermediates at its expense or refund the purchase cost of such Toray Chip Intermediates.

### 7.3 **Bluejay's Site Inspection Right**

If Toray delivers a Toray Chip Intermediate that does not conform with the Specifications or was not manufactured in compliance with Schedule 2, then Bluejay (or a person designated by Bluejay) may inspect such areas and facilities of the Site that relate to the manufacture and testing of the Toray Chip Intermediate. In this case, Bluejay must provide no less than ninety-six (96) hours' notice and, upon obtaining prior consent from Toray (which consent Toray shall not unreasonably withhold, condition or delay), conduct the inspection without unreasonable disruption of Toray's operations during Toray's business hours on the date specified in the notice or such other date as may be agreed between Bluejay and Toray. For clarity, any proprietary or confidential information that Bluejay learns or obtains during the Site inspection constitutes Toray's Confidential Information and shall be subject to the confidentiality and non-use obligations under the License Agreement.

#### 7.4 **Delivery; Cost of Delivery**

Subject to the receipt of the payment under clause 6.2, after taking the quality control procedures provided for in clause 7.1, Toray shall store Toray Chip Intermediates safely at the Site until delivery, and then:

- (a) in the case of domestic shipment within Japan, deliver them to the Delivery Location Ex Works (Incoterms 2020) by the Delivery Date. Toray shall handle such shipments on behalf of Bluejay. Toray shall invoice Bluejay for only actual charges and costs, in Japanese Yen. Invoices shall be sent to Bluejay on a quarterly basis, together with any other information reasonably requested by Bluejay, and Bluejay shall pay Toray in Japanese Yen within thirty (30) days of the invoice date. Bluejay shall bear its own bank charges incurred for such payment transfer; or
- (b) in the case of international shipment, deliver them to the Delivery Location FOB when loaded onto the plane (Incoterms 2020) by the Delivery Date. Toray shall use and manage a freight forwarding service provider designated by Bluejay for all international shipments of Toray Chip Intermediates. Toray shall use that freight forwarding service provider as the sole method of international shipment unless directed otherwise by Bluejay.

#### 7.5 **Transfer of Title; Risk of Loss**

Title to and risk of loss of Toray Chip Intermediates passes from Toray to Bluejay upon delivery in accordance with the preceding clause.

### 8. **TERM AND TERMINATION**

#### 8.1 **Term**

This Agreement takes effect on the Effective Date and is effective until the earlier of: (a) the date Market Approval is obtained for Chip Products from the FDA; or (b) the second (2<sup>nd</sup>) anniversary of the Effective Date, unless terminated in accordance with clause 8.2 (the “**Term**”). The Parties may extend the Term with their mutual written consent for a further period of up to six (6) months. At least six (6) months prior to the expiry of the Term, the Parties shall decide the period by which the Term is to be extended.

#### 8.2 **Termination for Cause**

Either Toray or Bluejay may terminate this Agreement with immediate effect by giving the other Party prior written notice if:

- (a) the other Party has failed to cure its breach of a material provision of this Agreement within thirty (30) days after receiving notice of the breach from the terminating Party; or

- (b) the other Party enters into any arrangement of composition with its creditors or goes into liquidation, insolvency, bankruptcy, receivership or reorganization proceedings, except that, in case of non-voluntary proceedings, when such non-voluntary proceedings are not dismissed within ninety (90) days, or if the other Party terminates its corporate existence by merger, consolidation or otherwise; or
- (c) the party terminates the License Agreement under Article 15 thereof.

### 8.3 **Survival**

Termination or expiration of this Agreement will not relieve either Party of any liability which accrued under this Agreement prior to the termination or expiration date, nor preclude either Party from pursuing all rights and remedies it may have under this Agreement at law or in equity with respect to any breach of this Agreement, nor prejudice either Party's right to obtain performance of any obligation arising under this Agreement. This clause 8.3 and clauses 16 through 22 shall survive any termination or expiration of this Agreement. Clause 9.2 shall remain in effect with respect to any applicable Toray Chip Intermediates for the warranty period applicable to those Toray Chip Intermediates. Clause 10 shall be valid for one (1) year from the time of delivery of the Toray Chip Intermediate.

## 9. **REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS**

### 9.1 **General Warranties**

Each Party hereby represents and warrants to the other Party as of the Effective Date that: (a) it is a corporation duly organized, validly existing, and in good standing under Applicable Laws; (b) it has obtained all necessary consents, approvals and authorizations of all regulatory authorities and other persons required to be obtained by it in connection with this Agreement; and (c) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate actions on its part.

### 9.2 **Product Warranties**

Toray represents and warrants, as of each date Toray Chip Intermediates are actually delivered in accordance with clause 7.4, that each Toray Chip Intermediate conforms to the Specifications in Schedule 2. The representations and warranties provided for in the preceding sentence are the "**Product Warranties**". The Product Warranties are valid with respect to each Toray Chip Intermediate for the period of six (6) months commencing from the date they are actually delivered in accordance with clause 7.4. Notwithstanding the foregoing, Toray shall not be liable for the quality of each Toray Chip Intermediate: (a) when Toray Chip Intermediates have been stored by Bluejay or the Designated Manufacturer in improper conditions; or (b) when Toray Chip Intermediates have been damaged during the labelling or re-packaging process.

### 9.3 **No Debarment**

Each Party hereby certifies that it will not employ or otherwise use, and has not employed or otherwise used, in any capacity the services of any person debarred under Section 335(a) of Title 21 of the United States Code in connection with performing any activities under this Agreement.

### 9.4 **Disclaimers**

The representations and warranties provided for in this clause 9 are in lieu of any and all other warranties and representations (express, implied, or statutory), and each Party hereby disclaims any and all other warranties or representations (express, implied or statutory), including any implied warranties of merchantability or fitness for a particular purpose, or for non-infringement of a patent, trademark or other Intellectual Property.

10. **INDEMNIFICATION, LIMITATIONS ON LIABILITY**

10.1 **Indemnification by Toray**

Toray shall defend, indemnify and hold each of Bluejay, its Affiliates, and their respective directors, officers, employees and agents, together with the successors and assigns of any of the foregoing (each, a **"Bluejay Indemnitee"**) harmless from and against any and all claims, suits, actions, demands or judgments made by a third party (collectively, **"Third Party Claims"**) and all direct and reasonable liabilities, damages, settlements, penalties, fines, costs, or expenses (including reasonable attorneys' fees) (**"Liabilities"**) to the extent that such Third Party Claims and Liabilities arise directly in connection with: (a) the material breach of this Agreement by Toray; or (b) the willful misconduct or the gross negligence of Toray, unless such Third Party Claims or Liabilities arise or result from the willful misconduct or gross negligence of Bluejay. To the extent Toray engages Kamakura Techno-Science under clause 11.1(b), Toray shall cause Kamakura Techno-Science to comply with Toray's obligations under this Agreement, and Toray shall be responsible and liable for Kamakura Techno-Science's acts and omissions in relation to those obligations (for clarity, that includes reading "Toray" in items (a) and (b) in the preceding sentence as "Kamakura Techno-Science").

10.2 **Indemnification by Bluejay**

Bluejay shall defend, indemnify and hold each of Toray, its Affiliates, and their respective directors, officers, employees and agents, together with the successors and assigns of any of the foregoing (each, a **"Toray Indemnitee"**) harmless from and against any and all Third Party Claims and Liabilities to the extent that such Third Party Claims and Liabilities arise directly in connection with: (a) the material breach of this Agreement by Bluejay; or (b) the willful misconduct or the gross negligence of Bluejay, unless such Third Party Claims or Liabilities arise or result from the willful misconduct or gross negligence of Toray.

10.3 **Indemnification Procedure**

A Party seeking indemnification under either of the preceding two (2) clauses (an **"Indemnitee"**) shall notify the other Party (the **"Indemnitor"**) upon becoming aware of any Third Party Claim that may be subject to indemnification under this clause 10. Failure to provide such notice will not constitute a waiver or release of the Indemnitee's rights to indemnification, except and then only to the extent that such delay or failure materially prejudices the Indemnitor. The Indemnitee shall cooperate reasonably with the Indemnitor and its legal representatives in connection with the investigation and defense of any Third-Party Claim and/or Liability covered by this clause 10. Neither Party shall enter into any settlement, consent judgment or other voluntary final disposition of any Third Party Claim and/or Liability for which the other Party seeks indemnification under this Agreement without the prior written consent of the other Party, who shall not unreasonably withhold, condition, or delay that consent, if such settlement would: (a) impose any monetary obligation on the other Party or any of its Affiliates, (b) constitute an admission of guilt or wrong-doing by the other Party or any of its Affiliates, or (c) require the other Party or any of its Affiliates to submit to an injunction or otherwise limit the other Party's or any of its Affiliates' rights under this Agreement.

10.4 **Amount Limit.**

EACH PARTY'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR CONNECTED WITH, OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPLACEMENT, USE OR PERFORMANCE OF ANY TORAY CHIP INTERMEDIATES SHALL IN NO CASE EXCEED THE PRICE FOR SUCH TORAY CHIP INTERMEDIATES WHICH GIVES RISE TO THE CLAIM. FOR CLARITY, NOTWITHSTANDING ANYTHING CONTRARY HEREIN: (a) BLUEJAY SHALL PAY THE FULL AMOUNT OF THE PURCHASE PRICE TO TORAY IN ACCORDANCE WITH CLAUSE 6 OF THIS AGREEMENT; AND (b) THIS LIMITATION SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER CLAUSE 10 ABOVE.

10.5 **Limitation of Damages**

EXCEPT FOR LIABILITIES ARISING OUT OF THIRD PARTY CLAIMS UNDER CLAUSES 10.1 OR 10.2, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, MULTIPLE OR OTHER SIMILAR DAMAGES (INCLUDING ANY CLAIMS FOR LOST PROFITS OR REVENUES WHETHER THEY ARE DIRECT OR INDIRECT DAMAGES) ARISING FROM OR RELATING TO THIS AGREEMENT.

11. **No ASSIGNMENT**

11.1 Neither Party has the right to assign its rights, or delegate or subcontract its obligations, under this Agreement without the prior written consent of the other Party, except that:

- (a) Bluejay may delegate or subcontract its obligations under this Agreement other than the payment obligations under clause 6; and
- (b) Toray may delegate or subcontract its obligations under this Agreement to Kamakura Techno-Science.

11.2 Any assignment of such rights or delegation or subcontracting of such obligations not in accordance with clause 11.1 will be void.

12. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts (electronic transmission of scanned signatures included), each of which shall be deemed an original, but all of which shall constitute one (1) and the same instrument. After electronic transmission of scanned signatures, the Parties shall, upon one (1) Party's request, execute and exchange documents with original signatures.

13. **ENTIRE AGREEMENT**

This Agreement sets out the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior representations, understandings, agreements or arrangements between the Parties, whether oral or written. Each Party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement, or undertaking except those expressly set out in this Agreement. The Parties further agree that this Agreement has been negotiated by the Parties and shall not be construed against either Party as drafter.



14. **FORCE MAJEURE**

Neither Party will have any liability, or be deemed to be in breach of this Agreement or any Purchase Order, for any delays or failures in performance of this Agreement, except for an obligation to make a monetary payment, that result from circumstances beyond the reasonable control of that Party, including fire, flood, tidal wave, landslide, pandemic, epidemic, quarantine, embargoes, government regulations, prohibitions or interventions, wars, acts of war (whether war be declared or not), acts of terrorism, insurrection, or riots. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

15. **NO THIRD-PARTY BENEFICIARIES**

Except as expressly set forth herein, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities under this Agreement upon any person or entity other than the Parties hereto and their respective successors and assigns.

16. **NOTICES**

16.1 All notices under or in connection with this Agreement must be given in writing (which includes email) in English and either delivered in person or sent by registered air mail, registered courier service, or email to either an authorized representative of the other Party or the address or email set out below (or other address or email as notified to the other Party in advance in accordance with this clause), respectively.

16.2 For notices to Bluejay:

- (a) Address: 360 Massachusetts Avenue, Suite 203, Acton, MA, 01720;
- (b) Attention: Neil Day, President, Chief Executive Officer; and
- (c) Email address: neil.day@bluejaydx.com.

16.3 For notices to Toray:

- (a) Address: 1-1 Nihonbashi-muromachi 2-chome, Chuo-ku, Tokyo 103-8666 JAPAN;
- (b) Attention: Akira Ito Ph.D. Deputy General Manager; and
- (c) Email address: akira.ito.c2@mail.toray.

16.4 A notice given in accordance with clause 16.1 will be deemed to have been delivered: immediately if delivered in person; on the third (3<sup>rd</sup>) day after sending if given by registered air mail or registered courier service; or upon submission if delivered by email.

17. **RELATIONSHIP OF THE PARTIES**

The relationship of the Parties is that of independent contractors. Nothing in this Agreement creates, implies or evidences a partnership or joint venture between the Parties, or authorizes a Party to act as agent for the other.

18. **SEVERABILITY**

If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected, and shall remain in full force and effect.

19. **WAIVER; MODIFICATION OF AGREEMENT**

No waiver, amendment, or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representatives of both Parties. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that (or any other) right or remedy. No single or partial exercise of such right or remedy will preclude or restrict the further exercise of that (or any other) right or remedy.

20. **LANGUAGE**

This Agreement is written in English. If this Agreement is translated into another language, the English language version will prevail.

21. **GOVERNING LAW**

This Agreement, the Dispute Resolution clause contained in this Agreement, all Purchase Orders, and all disputes and claims arising in any way whatsoever out of or in connection with this Agreement, whether sounding in contract, tort, statute or otherwise, are governed by, construed and take effect in accordance with the laws of the State of New York, U.S.A., without regard to any conflict of law principles or rules that would result in the application of the laws of any other jurisdiction. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

22. **DISPUTE RESOLUTION**

All disputes or claims arising in any way whatsoever out of or in connection with this Agreement or any Purchase Order, whether sounding in contract, tort, statute or otherwise, shall be finally settled through binding, confidential arbitration without any right of appeal under the Rules of Arbitration of the International Chamber of Commerce by one (1) or three (3) arbitrators appointed in accordance with the Rules. The venue and seat of the arbitration will be Tokyo, Japan, if the arbitration is initiated by Bluejay, and New York, NY, U.S.A., if the arbitration is initiated by Toray. The language of the arbitration shall be English. The award rendered by the arbitrator or arbitrators shall be final and binding upon the Parties. Notwithstanding the foregoing provisions of this clause, either Party may apply to a court of competent jurisdiction for an order for lawful preservative or conservatory measures, including interim injunctive relief. An award issued by the arbitrator or arbitrators may be enforced in any court of competent jurisdiction.

*[Signature page follows]*

The Parties have caused this Agreement to be executed by their duly authorized officers or representatives as follows.

Bluejay Diagnostics, Inc.

Toray Industries, Inc.

/s/ Neil Dey

/s/ Jun Hayakawa

Name: Neil Dey

Name: Jun Hayakawa

Title: CEO

Title: Deputy General Manager  
Pharmaceuticals & Medical Products Division

Date: October 23, 2023

Date: October 23, 2023