

TRANSITION AND RELEASE AGREEMENT

~~THIS TRANSITION AND RELEASE AGREEMENT, dated August , 2013, by and among To facilitate a smooth transition and then the termination of their employment relationship, bgC3 LLC (the "Company"), William H. Gates ("WHG"), Melinda F. Gates ("MFG"), Watermark Estate Management Services, LLC ("WEMS"), the Bill & Melinda Gates Foundation ("BMGF") on behalf of its Managers and the Individuals (as defined below in Section 2.1), and Dr. Boris Nikolic ("Dr. Nikolic"), a single person, agree as follows:~~

RECITALS:

A. ~~The Company and Dr. Nikolic entered into an employment agreement dated , regarding Dr. Nikolic's employment with Company dated (the "Employment Agreement").~~

B. ~~The parties hereto Company and Dr. Nikolic desire wish to enter into this Transition and Release Agreement ("Agreement") in order to facilitate a smooth transition and termination of the employment relationship between the Company and Dr. Nikolic as well as the termination of the business and financial relationships of Dr. Nikolic with the parties hereto and certain of their affiliated entities.~~

C. ~~Nothing in this Agreement is intended as or should be construed as an admission of liability by any party hereto Company or Dr. Nikolic, and neither party has any information or reason to believe that any liability exists as it relates to the employment relationship and decision to terminate such relationship.~~

AGREEMENTS

~~NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and other provisions contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows: Provided that Dr. Nikolic executes and does not revoke this Agreement, the parties agree as follows:~~

1. **Employment Through Separation Date and Post-Employment Cooperation.** In partial consideration of the Waiver and Release contained in Section 2, the Restrictive Covenants contained or referenced in Section 4, and the other terms and conditions of this Agreement, Company agrees to change the "at-will" status of Dr. Nikolic's employment to a length of term employment relationship, which is anticipated to run from August 19, 2013 through July 1, 2014, provided that Dr. Nikolic is performing his duties in a manner satisfactory to Company; provided further however: (i) the parties may mutually agree to extend the last date of Dr. Nikolic's employment with Company beyond July 1, 2014, (ii) Dr. Nikolic may voluntarily choose to terminate his employment with Company sooner than July 1, 2014, and (iii) Company may choose (or decide) to have Dr. Nikolic stop performing services prior to July 1, 2014, and any such decision shall in no way negate the agreements made by the parties to this Agreement. Dr.

Commented [D1]: Not sure of the reason for this whole section as it effectively provides that the date of termination can be extended only by mutual agreement but can be shortened by either party acting alone. So how is this really not just an at-will employment?
Darren
2013-08-01 17:43:00

Nikolic's last day of employment shall be the "Separation Date". Dr. Nikolic claims and shall claim no further right of employment by Company after the Separation Date.

2. Waiver and Release.

2.1

a. Dr. Nikolic, on behalf of himself and his heirs, executors, administrators and assigns, expressly waives against Company, Watermark Estate Management Services, LLC, and their present ~~and~~ former ~~and future~~ affiliates, ~~related entities~~ (including without limitation any other entities owned or controlled by William H. Gates III), predecessors, successors and assigns, the Bill & Melinda Gates Foundation, and their present and former owners, officers, directors, stockholders, managers, employees, agents, trustees, representatives, general and limited partners, members and attorneys, and William H. Gates III and Melinda F. Gates (the "Individuals") and their respective present and former employees, agents, representatives, and attorneys (all of which are collectively referred to as the "Gates Released Parties"), any and all claims, damages, causes of action or disputes, whether known or unknown, based upon acts or omissions occurring or that could be alleged to have occurred at the time of or prior to the execution of this Agreement (the "Gates Released Claims"); and further releases, discharges and acquits the Gates Released Parties, individually and in their representative capacities, from any and all Gates Released Claims. This waiver and release includes, but is not limited to, any and all claims for wages, employment benefits, and damages of any kind whatsoever arising out of any contracts, expressed or implied (including without limitation the Employment Agreement and any amendments thereto); any covenant of good faith and fair dealing; estoppel or misrepresentation; discrimination or retaliation on any unlawful basis, including, without limitation, harassment; privacy; defamation; wrongful termination or constructive discharge; any federal, state, local or other governmental statute or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Washington Law Against Discrimination, the Age Discrimination in Employment Act, as amended ("ADEA"), the Older Workers' Benefit Protection Act of 1990 ("OWBPA"), the Employee Retirement Income Security Act, as amended ("ERISA"), any wage payment statute; or any other legal limitation on the employment relationship (collectively sometimes the "Release"). Excluded from this Release are claims Dr. Nikolic may have with regard to vested benefits under ERISA, or any other claim that may not be released under this Agreement by law; additionally, ~~despite Dr. Nikolic's acceptance of this Release,~~ nothing in this Release will prevent Dr. Nikolic from (i) initiating or causing to be initiated on his behalf any complaint, charge, claim or proceeding against Company before any local, state or federal agency, court or other body challenging the validity of the waiver of claims under the Age Discrimination in Employment Act or the Older Workers Benefit Protection Act contained in this Release (but no other portion of the Release) or (ii) initiating or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission ("EEOC"). Dr. Nikolic represents and warrants that he is the sole and exclusive owner of Dr. Nikolic's rights in and to all Gates Released Claims, ~~and that no other party has any right, title or interest whatsoever in any of the matters referred to herein,~~ and that he is unaware of any basis to assert any form of charge or claim of unlawful discrimination.

Commented [D2]: So this is saying that BN can only hope for 11 months of employment at best, unless the company terminates him early, which the Company appears to be able to do for any reason or no reason at all. If Dr. Nikolic is terminated early he still only gets the same severance as if he were terminated in 11 months. Does not seem particularly fair.
Darren
2013-08-01 17:44:00

Commented [D3]: What are the actual terms and conditions of Dr. Nikolic's continued employment? If the parties are intending for there to be an agreement for a term, then the agreement should specify compensation and bonus, enumerate the limited bases to terminate for "cause" and set forth any consequences of termination which are not covered in this agreement.
Darren
2013-08-01 17:45:00

Commented [D4]: This is an expansive general release and waiver that is granted in favor of not only specific named parties but unnamed parties and future parties. What is the purpose, for example, of requiring a release of "future affiliates and future related entities"? Also, language is a little non-sequitur - for example what is a "former predecessor"? Not sure how you release future parties, some of which may not even exist as of the date this agreement is to be executed. Very onerous to provide a general release in favor of unnamed parties. Perhaps there is some party against whom BN might have a claim and does not intend to release. Would be ok to release all of the unnamed parties in their representative capacities but only for claims relating to BN's employment with the Company and the termination of the same or some specific related matters. This Agreement needs to more narrowly define the scope of the release if it is not going to specifically identify the persons who are to benefit from the release.
Darren
2013-08-01 17:47:00

b. ~~Each of the~~ Except as stated herein, ~~neither party having any basis or reason to believe that Dr. Nikolic has engaged in any inappropriate conduct,~~ ~~Company,~~ ~~on behalf of its Managers and the Individuals, BMGF, and WEMS, on behalf of itself, himself, and herself, and the heirs, executors, administrators, successors and assigns thereof, expressly waives against Dr. Nikolic and his heirs, executors, administrators, successors and assigns (all of which are collectively referred to as the "Nikolic Released Parties"), any and all claims, damages, causes of action or disputes, whether known or unknown, based upon acts or omissions occurring or that could be alleged to have occurred at the time of or prior to the execution of this Agreement (the "Nikolic Released Claims"); and further releases, discharges and acquits the Nikolic Released Parties, individually and in their representative capacities, from any and all Nikolic Released Claims. This waiver and release includes, but is not limited to, any and all claims of any kind whatsoever arising out of any contracts, expressed or implied (including without limitation the Employment Agreement and any amendments thereto); any covenant of good faith and fair dealing; estoppel or misrepresentation; harassment; privacy; or defamation. releases Dr. Nikolic from any and all liability arising out of any acts and/or omissions during the course of his employment; however, expressly excluded from this Release are any claims that Company may have based on affirmative misconduct by Dr. Nikolic not known to Company at the time of Execution of this Agreement, including, but not limited to, acts of fraud, breach of confidentiality as defined in any confidentiality agreement previously signed by Dr. Nikolic, conversion of property, compromise to computer or other security, embezzlement, misrepresentation or wrongful inducement.~~

Commented [D5]: This is an expansive general release and waiver that is granted in favor of not only specific named parties but unnamed parties and future parties. What is the purpose, for example, of requiring a release of "future affiliates and future related entities"? Also, language is a little non-sequator - for example what is a "former predecessor"? Not sure how you release future parties, some of which may not even exist as of the date this agreement is to be executed. Very onerous to provide a general release in favor of unnamed parties. Perhaps there is some party against whom BN might have a claim and does not intend to release. Would be ok to release all of the unnamed parties in their representative capacities but only for claims relating to BN's employment with the Company and the termination of the same or some specific related matters. You need to define the scope of the release if you are not going to specifically identify the persons who are to benefit from the release.
Darren
2013-08-01 14:43:00

2.2 ~~Each of the parties hereto Dr. Nikolic~~ represents and warrants that ~~such party he~~ has not filed or caused to be filed any lawsuit, arbitration, complaint, or charge with respect to any claim this Agreement purports to waive. Dr. Nikolic understands that nothing in this Agreement prevents him from filing or prosecuting a charge with any administrative agency with respect to any such claims; however, ~~Each party hereto Dr. Nikolic~~ further understands and agrees that ~~such party he~~ will not seek and hereby waives any claim for personal damages and/or other personal relief. ~~Each party hereto Dr. Nikolic~~ agrees to cause the withdrawal or dismissal with prejudice of any claim ~~such party he~~ has purported to waive under this Agreement. This Section shall not apply to claims challenging the validity of this Release in connection with federal Age Discrimination in Employment Act ("ADEA") claims. ~~If Dr. Nikolic is ever awarded or recovers any amount as to a claim he has purported to waive in this Agreement, Dr. Nikolic agrees that the amount of any award or recovery shall be tendered by him to the Company or setoff against any award or recovery associated with any successful challenge to the validity of this Release in connection with ADEA claims.~~

Commented [D6]: This release on the other hand is very narrow and subject to exceptions for unknown misconduct. This release should mirror the language of the release to be granted by BN. This release should be granted by all of the parties that BN released to the extent possible. How does the Company grant a release on behalf of its managers? The managers act on behalf of the Company and not the other way around. How does the company have any ability to bind BG and MG? If the release is to be meaningful, it should be firm and irrevocable with no carveouts or exceptions. If the company is seeking a general release, then this release should also be a general release. The release should at least be granted by The Company, BG, MG, BMGF and WEMS, who should be actual signatories to the agreement
Darren
2013-07-31 18:43:00

3. Property. Dr. Nikolic agrees: (i) that at any time upon the Company's request, and without request upon his Separation Date, he will immediately return to the Company, and cause to be fully deleted and expunged all copies from all computer systems, back up drives or servers, email servers, smart phones, Microsoft Tablet or related device, and any other data storage media in his possession or control (electronic or otherwise), ~~and/or in the possession or control of third parties to whom he may have provided such information without authorization,~~ any and all property (other than property which rightfully belongs to Dr. Nikolic) that Dr. Nikolic received or took from or was given access to by any Released PartGates Released Party or any Company vendor or contractor, or that specifically relates to any Gates Released Party and that Dr. Nikolic

generated in the course of Dr. Nikolic's relationship with and in connection with his performing his employment duties to the with Company, its related entities and the Bill & Melinda Gates Foundation, including without limitation all files, memoranda, keys, cellular phones, credit cards, manuals, employee handbooks, security technology and other company equipment, data, photographs, records and other documents, including emails and other electronically recorded documents and data, and physical property; and (ii) to certify that he has done so. ~~Dr. Nikolic represents and warrants that he is not aware of any person or entity that is in unauthorized or wrongful possession of any Confidential Information, Confidential Materials (both as defined below), or other property of Company, the Bill & Melinda Gates Foundation or the Individuals. Anything to the contrary provided in this Section 3 notwithstanding, Dr. Nikolic shall be entitled to retain copies of any records that may be necessary or appropriate for personal tax and accounting purposes or as may otherwise be required to enable him to comply with applicable law or regulations.~~

4. Restrictive Covenants.

4.1

a. ~~For purposes of this Agreement, "Restrictive Covenants" shall mean Dr. Nikolic represents and warrants that Dr. Nikolic has not violated~~ any provision of any agreement signed by Dr. Nikolic in favor of the Company, its related entities, the Bill & Melinda Gates Foundation, or the Individuals pertaining to confidentiality of information or ownership of intellectual property (collectively referred to as "**Restrictive Covenants**"), including without limitation the Employment Agreement, and any amendments thereto. Dr. Nikolic agrees that he shall comply fully with the terms and conditions of the Restrictive Covenants, which shall remain in full force and effect and are incorporated into this Agreement by reference. Dr. Nikolic further agrees that he shall keep the existence of this Agreement, its terms and conditions, confidential; except that Dr. Nikolic may disclose this Agreement and its terms to his legal counsel, tax advisor, other professional advisors and domestic partner (if any), provided such individuals also agree to maintain the confidentiality of this Agreement and its terms, and as otherwise provided by law. The parties agree that violation by Dr. Nikolic of any obligation that he has under any Restrictive Covenant or Section 4 of this Agreement will cause the Company, or the Gates Released Parties or other entities or persons harm, some or much of which is difficult to quantify, such as present and future economic harm; and/or may be intangible, such as reputational harm or other negative impacts on various relationships, efforts to determine actual damages, or potential unknown incidental and/or consequential costs. In the event that Dr. Nikolic violates any obligation that he has under any Restrictive Covenant or Section 4 of this Agreement, Dr. Nikolic agrees that he owes and shall pay the Company and that the Company will be entitled to recover from his any damages as determined by an arbitrator pursuant to Paragraph 9 below.

b. In the event Company, the Individuals, BMGF or WEMS violates any obligation under this Agreement, each of the Company, the Individuals, BMGF and WEMS agrees that it, he or she owes and shall pay Dr. Nikolic, and that Dr. Nikolic will be entitled to recover from the party that violates such obligation, Company any damages as determined by an arbitrator pursuant to Paragraph 9 below.

Commented [D7]: There has to be a carve-out for property that properly belongs to Dr. Nikolic; also, the phrase generated in the course of Dr. Nikolic's employment also has to be limited to me generated in the course of and specifically relating to confidential and non-public matters with respect to his employment. It is too broad
Darren
2013-08-01 14:59:00

Commented [D8]: This is too broad and expansive. Should be simply that he has to return any property that does not rightfully belong to Dr. Nikolic and which rightfully belongs to the Company that he may have received or have taken from the Company, etc.
Darren
2013-08-01 15:02:00

Commented [D9]: Dr. Nikolic should not be required to make representations as to whether others' possession of information or materials is wrongful and whether the information or materials they possess is confidential or not. This creates a basis to rescind the severance deal.
Darren
2013-08-01 15:06:00

Commented [D10]: There should be a reciprocal set of provisions in Section b that mirror the provisions in Section a. Those provisions are currently missing from this Section.
Darren
2013-08-01 18:07:00

4.2 Dr. Nikolic acknowledges that in the course of his employment with Company, its ~~related entities/affiliates~~, and the Bill & Melinda Gates Foundation, ~~Dr. Nikolic he~~ has acquired considerable knowledge about ~~the~~ Company, its ~~affiliates known to Dr. Nikolic/related entities~~, the Bill & Melinda Gates Foundation, Company managed premises, ~~the~~ Individuals (as defined in Section 2.1) and members of the Individuals' family, ~~the~~ home and business of the Individuals, and ~~the~~ friends, guests, business associates or acquaintances of the Individuals. For the purposes of this Transition Agreement "Confidential Information" means all information learned by Dr. Nikolic in any way related to ~~the~~ Company, its related entities, the Bill & Melinda Gates Foundation, the Individuals and members of the Individuals' family, ~~the~~ home and business of the Individuals, and ~~the~~ friends, guests, business associates or acquaintances of the Individuals whether such information is written, oral or ~~observed~~. Without limiting the generality of the foregoing, "Confidential Information" includes information of any nature, with or without further written designation, relating to: (a) the personal lives, schedules, habits, property, financial affairs, business, social or personal practices and interests, family, guests, business associates or acquaintances, travel and/or events associated with ~~the~~ Company or the Individuals; (b) any buildings, improvements or facilities located at or being constructed on property owned or controlled by ~~the~~ Company, the Individuals or the Bill & Melinda Gates Foundation; (c) the work performed by Dr. Nikolic or others at ~~the~~ Company's, the Individuals' or the Bill & Melinda Gates Foundation's ~~direction~~; (d) the subject matter of the communications between Dr. Nikolic or others and Company, the Bill & Melinda Gates Foundation or the ~~Individuals~~; (e) any systems developed or under development for use at ~~the~~ Company's, the Individuals', related entities', the Bill & Melinda Gates Foundation's or ~~the~~ Company managed premises' properties, including without limitation, any information about existing or proposed information processing (IT) equipment, systems and software; audio visual equipment, systems and software; and security equipment, systems and software; and (f) technical and non-technical information related to the actual or prospective business or activities of ~~the~~ Company or the Individuals, ~~affiliates known to Dr. Nikolic, related entities~~, the Bill & Melinda Gates Foundation or ~~the~~ Company managed premises including, without limitation, information related to patents, copyrights and trade secrets, branding, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, manufacturing, purchasing, customer lists, price lists, business forecasts, products, services, sales and merchandising and marketing plans and information. "Confidential Materials" shall mean all tangible materials containing Confidential Information, including without limitation, summaries, notes, blueprints, drawings, photographs, slides, negatives, databases, written or printed documents or information recorded on digital or electronic media, whether machine-readable or user-readable. No Confidential Information or Confidential Materials shall be used by Dr. Nikolic except as is reasonably necessary to perform his duties of employment or as otherwise expressly authorized by the Company. ~~Except as is reasonably necessary to perform his duties of employment,~~ Dr. Nikolic shall not disclose ~~or permit the disclosure of~~ any Confidential Information or Confidential Materials to any third party without ~~the~~ Company's explicit written approval in advance of any such disclosure, except as may be required by law or pursuant to a lawful subpoena or other order issued a government authority or by a court of competent jurisdiction. Without limiting the generality of the foregoing, unless expressly asked in writing by ~~the~~ Company for his assistance, which assistance would be subject to a written agreement signed by ~~the~~ Company, Dr. Nikolic shall not (a) be involved in contributing to or the

Commented [D11]: The definition of Confidential Information needs to be scaled down. First, unless specifically designated as confidential in writing, it has to be information that is obviously confidential or of a type that is typically considered to be confidential. It has to be non-public information. It can't be information that somehow comes into the public domain through no violation by Dr. Nikolic. It cannot be information that Dr. Nikolic can demonstrate that he knew prior to learning of it. It can't be information provided to Dr. Nikolic independently by a person not under a contractual or legal obligation to refrain from disclosing it to him.
Darren
2013-08-01 18:10:00

Commented [D12]: Again, this can't be work that is publicly disclosed or is obviously not confidential.
Darren
2013-08-01 18:12:00

Commented [D13]: see comments above. It can't be that the subject matter of any communications are confidential. The scope of these restrictions need to be narrowed substantially.
Darren
2013-08-01 18:13:00

preparation of any book, article, story, video or film about or relating to the Company, any of its affiliates known to Dr. Nikolic~~related entities~~, the Bill & Melinda Gates Foundation, the Individuals and members of the Individuals' family, the home and business of the Individuals, or the friends, guests, business associates or acquaintances of the Individuals or any of their business, social or personal interests or give interview(s) (on or off the record) regarding such matters; or (b) produce or contribute to any written, oral, electronic, or other accounts, fictionalized or otherwise, that relate to or resemble his employment with the Company, its affiliates that are known to Dr. Nikolic~~related entities~~, the Bill & Melinda Gates Foundation Individuals, or services for the Individuals or the Individuals themselves or members of the Individuals' family. Dr. Nikolic understands and agrees that there may be no adequate remedy at law for the Company or other entities or persons protected under this Section 4.2 in the event of its breach, or threatened breach, and any such entity or person, in addition to any other remedies available at law or in equity, shall be entitled to injunctive relief to prevent any breach of this obligation or to minimize the consequences thereof. Notwithstanding the foregoing, if Dr. Nikolic should breach the provisions of this Section 4.2, the Company, the Bill & Melinda Gates Foundation and the Individuals shall be entitled, in addition to but not as a limit on any other remedies available to the Company, the Bill & Melinda Gates Foundation and the Individuals, to recover automatically any proceeds or remuneration of any nature whatsoever that Dr. Nikolic receives in regard to or as a result of the disclosure of any such confidential information. The Bill & Melinda Gates Foundation and Individuals are third-party beneficiaries of this Agreement.

4.3

a. Dr. Nikolic shall refrain from making, expressing or implying any derogatory or disparaging comments regarding any ~~Released-PartGates Released Party~~ to the press or to any individual or entity, by any mode or medium of communication. Failure to abide by this provision shall be deemed a material breach of this Agreement; provided, however, that nothing in this provision will prevent Dr. Nikolic from giving truthful testimony if properly subpoenaed to testify under oath or if otherwise required by law. In the event Dr. Nikolic is subpoenaed to testify under oath relating to any matter regarding any of the ~~Released-PartGates Released Parties~~, he agrees to and shall (unless prohibited by law) provide notice and a copy of such subpoena to the Managers of the Company as soon as practicable upon receipt, but no later than 3 business days after receipt, or, if reasonably possible, within one business day following receipt in the event that the return date of the subpoena is less than 5 days. Dr. Nikolic agrees that he will not provide any information about any ~~Released-PartGates Released Parties~~ absent a proper subpoena and in a formal, court reported context, unless otherwise required by law or in connection with an arbitration or court proceeding arising out of this Agreement or the Severance Agreement. By way of example, and not limitation, Dr. Nikolic agrees that he shall not provide any declaration testimony in any matter relating to any of the ~~Released-PartGates Released Parties~~, unless otherwise required by law or in connection with an arbitration or court proceeding arising out of this Agreement or the Severance Agreement:

b. The Company, its Managers, ~~and~~ the Individuals, BMGF, WEMS, and all the officers, directors, and employees of the foregoing shall refrain from making, expressing or implying any derogatory or disparaging comments regarding any Dr.-Nikolic Released Parties to the press or to any individual or entity by any mode or medium of

Commented [D14]: Regarding friends, guests, business associates, and acquaintances, if the matter does not have any Gates relationship and the matter was not within Dr. Nikolic's knowledge as a result of his Gates relationship, then the matter should not be subject to this prohibition. That is to say, this is again too expansive and covers unidentified persons. It must therefore be limited properly.
Darren
2013-08-01 18:17:00

Commented [D15]: Proceeds should be the limit of liability and not in addition to other remedies. Otherwise delete this provision.
Darren
2013-08-01 15:46:00

Commented [D16]: There should be a reciprocal covenant against disclosure and use of confidential information and confidential materials concerning Dr. Nikolic with provisions for injunctive relief as well.
Darren
2013-08-01 15:42:00

Commented [D17]: They need to be actual parties to this agreement, not Third-Party Beneficiaries. Dr. Nikolic should have privity with WHG, MBG, BMGF and WEMS and all should be parties to this Agreement.
Darren
2013-08-01 18:19:00

Commented [D18]: This needs to be limited. If we are dealing with anyone other than the Gates family, BMGF, WEMS, the Company or its managers, then this restriction can only apply to those persons in the context of their Gates relationship. Also, it can only apply to the extent that Dr. Nikolic knows that the person is a Released Party, particularly when there are unnamed Released Parties.
Darren
2013-08-01 18:20:00

communication. Failure to abide by this provision shall be deemed a material breach of this Agreement, provided, however, that nothing in this provision will prevent the Company, its Managers, ~~and~~ the Individuals, BMGF, WEMS and the officers, directors and employees thereof from giving truthful testimony if properly subpoenaed to testify under oath. In the event the Company, its Managers and the Individuals are subpoenaed to testify under oath relating in any way to Dr. Nikolic, the Company, its Managers and the Individuals shall (unless prohibited by law) provide notice and a copy of such subpoena to Dr. Nikolic as soon as practicable upon receipt but in no event later than 3 business days after receipt, ~~and~~ or, if reasonably possible, within one business day following receipt in the event that the return date of the subpoena is less than 5 days. Each of the Company, its Managers, the Individuals, BMGF, WEMS and the officers, directors and employees of the foregoing agrees that such person will not provide any information about any Nikolic Released Parties absent a proper subpoena and in a formal, court reported context, unless otherwise required by law or in connection with an arbitration or court proceeding arising out of this Agreement or the Severance Agreement. By way of example, and not limitation, Each of the Company, its Managers, the Individuals, BMGF, WEMS and the officers, directors and employees of the foregoing agrees that such party shall not provide any declaration testimony in any matter relating to any of the Nikolic Released Parties, unless otherwise required by law or in connection with an arbitration or court proceeding arising out of this Agreement or the Severance Agreement.

5. Indemnification.

a. Dr. Nikolic agrees that any inaccuracies in any of his representations, warranties, or covenants in this Agreement will constitute a material breach of this Agreement by Dr. Nikolic, providing the Company or any affected Gates Released Party with any and all rights and remedies any such party has or may have in law or equity against Dr. Nikolic. Dr. Nikolic agrees to indemnify, defend, save and hold the Company or any affected Gates Released Party and each of their respective current and former officers, directors, employees, partners, legal counsel and other representatives and agents harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and costs), that arise out of or are connected with, or are related in any way to any inaccuracies in Dr. Nikolic's representations, warranties, and/covenants contained in this Agreement. Dr. Nikolic agrees that the indemnification, defend, save and hold harmless obligations that he has undertaken pursuant to this Section 5 will be enforceable regardless of whether he has or purports to have a claim against any Gates Released Party.

b. The Company, the Individuals, BMGF and WEMS agrees that they it-shall have the same obligations to Dr. Nikolic as those set forth in Paragraph 5(a) above, including the indemnity, defense and hold harmless obligations therein, in the event that there are any inaccuracies in its representations, warranties or covenants in this Agreement. Said obligations shall be joint and several obligations of the Company, the Individuals, BMGF and WEMS.

6. Further Consideration Opportunity.

As further consideration for Dr. Nikolic's representations, warranties, and covenants herein, and in the Severance, Waiver and Release Agreement discussed below, and subject to the conditions precedent set forth below, provided that Dr. Nikolic performs his duties in a manner satisfactory to the Company through the Separation Date, the Company agrees as follows:

6.1

a. The Company shall provide Dr. Nikolic a Severance Payment in an amount of equal to the average of his last two year's base salary and bonus, if any, in the total gross amount of _____ Dollars, less applicable deductions and withholding. The Severance Payment shall be paid out as follows: (i) the gross sum of _____ Dollars shall be paid on the Company's next practicable payroll after the Effective Date (if any) of the Severance, Waiver and Release Agreement attached hereto as Exhibit A; and (ii) the gross sum of _____ Dollars on Company's _____ payroll date. Payment shall be made by mailing such payment by check to Dr. Nikolic at the address written below or by direct deposit to his last identified bank account.

b. Upon written notice by Dr. Nikolic to [bgC3] within __ days of the Effective Date, if any, of the Severance Agreement attached hereto, Dr. Nikolic may request to purchase from [bgC3] (a) up to 30% of [bgC3]'s equity interests in Foundation Medicine and (b) up to 30% of [bgC3]'s equity interests in ResearchGate, in each case in cash at a price per share or unit equivalent to the original price per share or unit paid by [bgC3] (collectively, the "Investment Opportunity"). Upon delivery of such notice, subject to any applicable requirements or restrictions set forth in applicable law or any existing agreements or documents relating to [bgC3]'s investment in such entities, (i) [bgC3] shall prepare customary documents evidencing the transfers of such equity interests, (ii) Dr. Nikolic shall execute and deliver any agreements or instruments required by applicable law or any existing agreements or documents relating to [bgC3]'s investment in such entities, and any other agreements or instruments as [bgC3], Foundation Medicine or ResearchGate may otherwise reasonably request, and (iii) the closing of such purchases shall occur no later than [45] days after the delivery of such notice, subject to extension by mutual agreement. *[Note: the foregoing is subject to review of the transfer restrictions applicable to the Foundation Medicine and ResearchGate investments and other legal review.]*

6.3 As conditions precedent to being entitled to receive any of the "Severance Payment" or the Investment Opportunity set forth in this Section 6, within twenty-one (21) days of the Separation Date, Dr. Nikolic (or his estate, as applicable) must (i) sign and deliver and thereafter not revoke a Severance, Waiver and Release Agreement ~~substantially~~ in the form attached hereto as Exhibit A ~~or a form otherwise acceptable to Company~~; (ii) be and remain in full compliance with the terms of this Agreement, ~~and any other covenants Company entered into with Dr. Nikolic~~; and (iii) have provided the certificate required by Section 3. The Company shall have no obligation to make any payments or provide any benefits to the Dr. Nikolic hereunder unless and until after the Effective Date (as defined in the Severance, Waiver and Release Agreement required by this Section 6).

6.4 This Section 6 supersedes any and all agreements, understandings or arrangements relating to severance, transition or other amounts payable to Dr. Nikolic upon

Commented [D19]: This small clause provides an enormous out for any of the severance obligations. It is too open ended. If there is to be any basis to avoid honoring the severance obligations there must be very explicit and defined reasons, rather than failure to perform duties in a manner satisfactory to the company.
Darren
2013-08-01 16:14:00

Commented [D20]: Specify amount. Are they saying only one year's salary and bonus? Is that what was discussed?
Darren
2013-08-01 16:16:00

Commented [D21]: how much is paid immediately after severance agreement is signed?
Darren
2013-08-01 16:17:00

Commented [D22]: how much is paid on this payroll date and how long after the severance agreement is signed is this to be paid?
Darren
2013-08-01 16:17:00

Commented [D23]: Why make an entire severance agreement with almost identical provisions to the Transition Agreement. Seems like overkill and unnecessary. Why not simply require an additional set of mutual releases to be executed after Dr. Nikolic's employment ends, require Dr. Nikolic and the parties to the Transition Agreement to re-affirm in writing the surviving obligations of the Transition Agreement and Dr. Nikolic to provide a certificate that there has been no breach of the Transition Agreement and containing the certification required in Section 3.
Darren
2013-08-01 18:29:00

Commented [D24]: Wasn't this supposed to be an option to purchase the equivalent of the interests with a right to put the same to bgC3 so that 30% of the profit would be paid to Dr. Nikolic? Would this not also avoid any specific transfer restrictions imposed by those investment entities? Right now, it appears that the status of even the option grant is subject to question.
Darren
2013-08-01 18:29:00

Commented [D25]: Why make an entire severance agreement with almost identical provisions to the Transition Agreement. Seems like overkill and unnecessary. Why not simply require an additional set of mutual releases to be executed after Dr. Nikolic's employment ends, require Dr. Nikolic and the parties to the Transition Agreement to re-affirm in writing the surviving obligations of the Transition Agreement and Dr. Nikolic to provide a certificate that there has been no breach of the Transition Agreement and containing the certification required in Section 3.
Darren
2013-08-01 18:30:00

termination including any and all such agreements, understandings or arrangements with the Company, its ~~affiliates/related entities~~, or the Individual(s), all of which shall be deemed cancelled and terminated upon execution of this Agreement.

7. Severability. The provisions of this Agreement are severable, and if any provision of it is found to be unlawful or unenforceable, it shall be deemed narrowed to the extent required to make it lawful and enforceable. If such modification is not possible, such provision shall be severed from the Agreement and the remaining provisions shall remain fully valid and enforceable to the maximum extent consistent with applicable law provided, however, that Section 2 may not be severed from the Agreement.

8. Review Period and Effective Date. Dr. Nikolic may take up to twenty-one (21) calendar days from receipt of this Agreement to consider its terms, after which time the offer of this Agreement shall expire and may no longer be accepted. Dr. Nikolic may execute this Agreement before expiration of the twenty-one (21) day period, in which case Dr. Nikolic shall be deemed to have waived the remainder of the consideration period. To accept this Agreement, Dr. Nikolic must execute and confidentially deliver the Agreement to bgC3 LLC, 4000 Carillon Point, Kirkland, WA 98033, attention – CONFIDENTIAL - Larry Cohen. Dr. Nikolic has a period of seven (7) calendar days after executing the Agreement to revoke the Agreement, should he wish to do so. To revoke, Dr. Nikolic must deliver a notice revoking acceptance of the Agreement to Larry Cohen at the offices of the Company noted above within the seven-day revocation period. This Agreement shall become effective on the eighth (8th) day after Dr. Nikolic executes this Agreement, provided that Dr. Nikolic has not revoked the Agreement (“**Effective Date**”).

9. Dispute Resolution. Subject to the Company’s right to seek equitable or injunctive relief in court, any and all disputes that arise under this Agreement that are not informally resolved shall be resolved by final and binding arbitration by a sole, neutral arbitrator in Seattle, Washington, under the applicable rules of the American Arbitration Association governing employment disputes. In any such dispute, no party shall be entitled to the benefit of any principle of contract construction premised upon the relative bargaining power of the parties, the identity of the party partly or wholly responsible for drafting the portion of the Agreement giving rise to the dispute, *contra proferentum*, contracts of adhesion, or any similar contract construction principle. In any arbitration or litigation arising from this Agreement, the prevailing party shall be entitled to costs and attorneys’ fees; provided, however, that this sentence shall not apply to any claim Dr. Nikolic may have challenging the validity of this Agreement under the ADEA or OWBPA. This Agreement shall be governed by and interpreted under the laws of the State of Washington, including without limitation the statutory statute of limitations periods defined under state law for “actions,” but excluding the State of Washington’s choice of law rules.

10. Other. Nothing in this Agreement is intended as or should be construed as an admission of liability by any of the parties to the Agreement or any other person or party. This Agreement may be modified only in writing signed by ~~Dr. Nikolic and the Manager of Company~~ all of the parties to this Agreement.

11. Knowing and Voluntary Agreement. Dr. Nikolic hereby warrants and represents that Dr. Nikolic: (1) has carefully read this Agreement and finds the manner in which it is written understandable; (2) knows the contents hereof; (3) has been advised to consult with Dr. Nikolic’s

Commented [D26]: Need to verify that there are no other rights under any other agreements which need to survive. This purports to terminate all other severance and post-employment rights. Any other agreements should not be deemed cancelled, but should only superseded to the extent that they conflict with the provisions of this Agreement.
Darren
2013-08-01 16:32:00

Commented [D27]: There is no notice provision in this Agreement
Darren
2013-08-01 16:36:00

personal advisor and attorney regarding this Agreement and its effects prior to executing this Agreement and has done so or waives the right to do so; (4) understands that in signing this Agreement he forever releases the Company and the Gates Released Parties from all claims, damages, and disputes that may have arisen before the date of this Agreement as set forth in this Agreement, including any claims under the ADEA or OWBPA (other than claims challenging the validity of this Agreement under the ADEA or OWBPA), or other statutes; (5) understands the Agreement's contents and its final and binding effect (6) has been given twenty-one days to review and analyze this entire Agreement and seven days to revoke acceptance should he wish to do so; and (7) has signed the Agreement as his free and voluntary act. Dr. Nikolic acknowledges that in executing this Agreement,

12. No party hereto ~~Dr. Nikolic does not~~ relies upon any representation or statement by any person Released Party concerning the subject matter of this Agreement, except as expressly set forth in the text of this Agreement.

[WHG, MBG, BMGF, WEMS ALL NEED TO BE SIGNATORIES TO THIS AGREEMENT]

bgC3 LLC

Signature _____
By Larry Cohen
Its Manager

Dr. Boris Nikolic

Date

Date _____
Address: _____

**EXHIBIT A
SEVERANCE, WAIVER AND RELEASE AGREEMENT**

DRAFT

[THIS AGREEMENT IS NEARLY IDENTICAL TO THE TRANSITION AGREEMENT. RATHER THAN HAVE TWO SEPARATE IDENTICAL AGREEMENTS SIGNED AT DIFFERENT TIMES, WOULD IT NOT BE SIMPLER TO HAVE THE TRANSITION AGREEMENT ALSO SERVE AS THE SEVERANCE AGREEMENT AND TO MAKE THE SEVERANCE PAYMENTS AND INVESTMENT BENEFIT SUBJECT TO THE REQUIREMENTS THAT:

MUTUAL RELEASES IDENTICAL TO THOSE CONTAINED IN THE TRANSITION AGREEMENT BE SIGNED AFTER DR. NIKOLIC'S EMPLOYMENT ENDS, ALL PARTIES RE-AFFIRM THE SURVIVING PROVISIONS OF THE TRANSITION AGREEMENT AFTER DR. NIKOLIC'S EMPLOYMENT ENDS AND DR. NIKOLIC SIGN A CERTIFICATE THAT THERE HAS BEEN NO BREACH OF THE TRANSITION AGREEMENT AND CERTIFYING AS TO THE MATTERS IN SECTION 3 OF THE TRANSITION AGREEMENT

IF FOR SOME REASON A SEPARATE SEVERANCE AGREEMENT IS REQUIRED, THEN THE PROVISIONS OF THIS SEVERANCE AGREEMENT SHOULD BE CONFORMED TO THE ABOVE REVISIONS AND COMMENTS IN THE TRANSITION AGREEMENT

SEVERANCE, WAIVER AND RELEASE AGREEMENT

This Severance, Waiver and Release of Claims Agreement ("Severance Agreement") is hereby offered and executed by bgC3 LLC (the "**Company**") and accepted and executed by DR. BORIS NIKOLIC ("**Dr. Nikolic**"), a single person, in accordance with the Transition and Release Agreement dated __, 2011 between Dr. ~~Boris~~-Nikolic and the **Company** [**CONFORM TO ADD ALL PARTIES TO THE TRANSITION AGREEMENT**] (the "**Transition and Release Agreement**")bgC3 LLC ("**Company**").

RECITALS

A. **The** Company and Dr. Nikolic are parties to the Transition and Release Agreement.

B. The Transition and Release Agreement provides for certain payments to Dr. Nikolic upon termination of Dr. Nikolic's employment under certain circumstances, provided that Dr. Nikolic signs and delivers to **the** Company within 21 days of the Separation Date described in the Transition and Release Agreement a Severance, Waiver and Release Agreement in ~~substantially~~the form of this Severance Agreement, and does not revoke the same.

C. Dr. Nikolic desires for **the** Company to make payments in accordance with the Transition and Release Agreement and therefore executes this Severance Agreement.

Commented [D28]: In that the releases and related provisions in this Severance Agreement need to be signed by WHG, MBG, BMGF and WEMS, then they need to be parties to this Agreement at least for the limited purposes of being subject to those provisions.
Darren
2013-08-01 18:45:00

D. Nothing in this Severance Agreement is intended as or should be construed as an admission of liability by the Company or Dr. Nikolic, and neither party has any information or reason to believe that any liability exists as it relates to the employment relationship and decision to terminate such relationship.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and other provisions contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENTS

1. Employment Through Separation Date. The last day of Dr. Nikolic's employment with or service to Company in any capacity was _____, 2014 ("**Separation Date**"). Dr. Nikolic claims and shall claim no further right of employment by Company after the Separation Date.

2. Wages and Benefits. Dr. Nikolic agrees that he has received all compensation, benefits and other amounts owed him by virtue of his employment with Company, including salary through _____, 2014 ("**Last Paid Workday**"). Dr. Nikolic will be paid any unpaid portion of his regular compensation, as applicable, from the Last Paid Workday through the Separation Date, less applicable taxes and withholdings, on bgC3's next regular payday following the Separation Date. Coverage under Company's group medical, vision and dental plan shall extend through and end on the last day of the month in which the Separation Date falls and Dr. Nikolic may thereafter exercise whatever rights Dr. Nikolic has for continued coverage under COBRA at Dr. Nikolic's sole expense. Any funds Dr. Nikolic has in Company's 401(k) plan shall be handled in accordance with the terms and conditions of that plan. Dr. Nikolic will be reimbursed for business related expenses that are reimbursable under the usual practices of Company that were incurred prior to the Separation Date, provided that requests for reimbursements for such items are submitted in accordance with Company's policy within thirty (30) days after the Separation Date. Except as stated in this Agreement, all compensation and benefits, including any life insurance or long-term disability insurance coverage, shall cease on the Separation Date.

Commented [D29]: Isn't this covered by the release.
Darren
2013-08-01 16:59:00

3. Consideration.

3.1 In consideration of Dr. Nikolic's representations, warranties, and covenants herein, Company agrees as follows:

a. Company shall provide Dr. Nikolic a Severance Payment in the total gross amount of _____ Dollars, less applicable deductions and withholding. The Severance Payment shall be paid out as follows: (i) the gross sum of _____ Dollars shall be paid on Company's next practicable payroll after the Effective Date (if any) of the Severance, Waiver and Release Agreement attached hereto as Exhibit A; and (ii) the gross sum of _____ Dollars on Company's _____ payroll date. Payment shall be made by mailing such payment by check to Dr. Nikolic at the address written below or by direct deposit to his last identified bank account. [CONFORM TO REVISIONS AND COMMENTS MADE

Commented [D30]: The provisions of this Section 2 need to be carved out of the release.
Darren
2013-08-01 17:00:00

REGARDING THE SAME PROVISION IN THE TRANSITION AGREEMENT]

b. Upon written notice by Dr. Nikolic to [bgC3] within __ days of the Effective Date, if any, of the Severance Agreement attached hereto, Dr. Nikolic may request to purchase from [bgC3] (a) up to 30% of [bgC3]'s equity interests in Foundation Medicine and (b) up to 30% of [bgC3]'s equity interests in ResearchGate, in each case in cash at a price per share or unit equivalent to the original price per share or unit paid by [bgC3] (collectively, the "Investment Opportunity"). Upon delivery of such notice, subject to any applicable requirements or restrictions set forth in applicable law or any existing agreements or documents relating to [bgC3]'s investment in such entities, (i) [bgC3] shall prepare customary documents evidencing the transfers of such equity interests, (ii) Dr. Nikolic shall execute and deliver any agreements or instruments required by applicable law or any existing agreements or documents relating to [bgC3]'s investment in such entities, and any other agreements or instruments as [bgC3], Foundation Medicine or ResearchGate may otherwise reasonably request, and (iii) the closing of such purchases shall occur no later than [45] days after the delivery of such notice, subject to extension by mutual agreement. *[Note: the foregoing is subject to review of the transfer restrictions applicable to the Foundation Medicine and ResearchGate investments and other legal review.]* [CONFORM TO REVISIONS AND COMMENTS MADE REGARDING THE SAME PROVISION IN THE TRANSITION AGREEMENT]

3.2 In consideration of the terms and conditions herein, Dr. Nikolic enters into this Severance Agreement.

4. Waiver and Release.

4.1 Dr. Nikolic, on behalf of himself and, heirs, executors, administrators and assigns, expressly waives against Company, Watermark Estate Management Services, LLC, the Bill & Melinda Gates Foundation and their present, former and future affiliates, related entities (including without limitation any other entities owned or controlled by William H. Gates III), predecessors, successors and assigns, and their present and former owners, officers, directors, stockholders, managers, employees, agents, trustees, representatives, general and limited partners, members and attorneys, and William H. Gates III and Melinda F. Gates (the "**Individuals**") and their respective present and former employees, agents, representatives, and attorneys (all of which are collectively referred to as "**Released Parties**"), any and all claims, damages, causes of action or disputes, whether known or unknown, based upon acts or omissions occurring or that could be alleged to have occurred at the time of or prior to the execution of this Agreement ("**Released Claims**"); and further releases, discharges and acquits Released Parties, individually and in their representative capacities, from any and all Released Claims. This waiver and release includes, but is not limited to, any and all claims for wages, employment benefits, and damages of any kind whatsoever arising out of any contracts, expressed or implied (including without limitation the Employment Agreement and any amendments thereto); any covenant of good faith and fair dealing; estoppel or misrepresentation; discrimination or retaliation on any unlawful basis, including, without limitation, harassment; privacy; defamation;

wrongful termination or constructive discharge; any federal, state, local or other governmental statute or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Washington Law Against Discrimination, the Age Discrimination in Employment Act, as amended (“ADEA”), the Older Workers’ Benefit Protection Act of 1990 (“OWBPA”), the Employee Retirement Income Security Act, as amended (“ERISA”), any wage payment statute; or any other legal limitation on the employment relationship (collectively sometimes the “Release”). Excluded from this Release are claims Dr. Nikolic may have with regard to vested benefits under ERISA, or any other claim that may not be released under this Agreement by law; additionally, despite Dr. Nikolic’s acceptance of this Release, nothing in this Release will prevent Dr. Nikolic from (i) initiating or causing to be initiated on his behalf any complaint, charge, claim or proceeding against Company before any local, state or federal agency, court or other body challenging the validity of the waiver of claims under the Age Discrimination in Employment Act or the Older Workers Benefit Protection Act contained in this Release (but no other portion of this Release) or (ii) initiating or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission (“EEOC”). Dr. Nikolic represents and warrants Dr. Nikolic is the sole and exclusive owner of all Released Claims, and that no other party has any right, title or interest whatsoever in any of the matters referred to herein, and that he is unaware of any basis to assert any form of charge or claim of unlawful discrimination. [CONFORM TO REVISIONS AND COMMENTS MADE REGARDING THE SAME PROVISION IN THE TRANSITION AGREEMENT]

4.2 Dr. Nikolic represents and warrants that he has not filed or caused to be filed any lawsuit, arbitration, complaint, or charge with respect to any claim this Agreement purports to waive. Dr. Nikolic understands that nothing in this Agreement prevents his from filing or prosecuting a charge with any administrative agency with respect to any such claims; however, Dr. Nikolic further understands and agrees that he will not seek and hereby waives any claim for personal damages and/or other personal relief. Dr. Nikolic agrees to cause the withdrawal or dismissal with prejudice of any claim he has purported to waive under this Agreement. This Section shall not apply to claims challenging the validity of this Release in connection with federal Age Discrimination in Employment Act (“ADEA”) claims. If Dr. Nikolic is ever awarded or recovers any amount as to a claim he has purported to waive in this Agreement, Dr. Nikolic agrees that the amount of any award or recovery shall be tendered by him to the Company or setoff against any award or recovery associated with any successful challenge to the validity of this Release in connection with ADEA claims. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SAME PROVISION IN THE TRANSITION AGREEMENT]

4.3 Except as stated herein, neither party having any basis or reason to believe that Dr. Nikolic has engaged in any inappropriate conduct, Company, on behalf of its Managers and the Individuals, releases Dr. Nikolic from any and all liability arising out of any acts and/or omissions during the course of his employment; however, expressly excluded from this Release are any claims that Company may have based on affirmative misconduct by Dr. Nikolic not known to Company at the time of Execution of this Agreement, including, but not limited to, acts of fraud, breach of confidentiality as defined in any confidentiality agreement previously signed by Dr. Nikolic, conversion of property, compromise to computer or other security,

embezzlement, misrepresentation or wrongful inducement. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SAME PROVISION IN THE TRANSITION AGREEMENT]

5. Property. Dr. Nikolic represents and warrants that he has returned to Company, and caused to be fully deleted and expunged all copies from all computer systems, back up drives or servers, email servers, smart phones, Kindle [IN TRANSITION AGREEMENT THIS WAS IDENTIFIED AS A MICROSOFT TABLET] or related device, and any other data storage media in his possession or control (electronic or otherwise), and/or in the possession or control of third parties to whom he may have provided such information without authorization, any and all property that Dr. Nikolic received or took from or was given access to by any Released Party or any Company vendor or contractor, or that Dr. Nikolic generated in the course of Dr. Nikolic's relationship with Company and its related entities, including without limitation all files, memoranda, keys, cellular phones, credit cards, manuals, employee handbooks, security technology and other company equipment, data, photographs, records and other documents, including emails and other electronically recorded documents and data, and physical property. Dr. Nikolic represents and warrants that he is not aware of any person or entity that is in unauthorized or wrongful possession of any Confidential Information, Confidential Materials (both as defined below), or other property of Company, the Bill & Melinda Gates Foundation or the Individuals. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SIMILAR PROVISION IN THE TRANSITION AGREEMENT]

6. Restrictive Covenants.

6.1

a. Dr. Nikolic represents and warrants that Dr. Nikolic has not violated any provision of any agreement signed by Dr. Nikolic in favor of Company, its related entities, the Bill & Melinda Gates Foundation, or the Individuals pertaining to confidentiality of information or ownership of intellectual property (collectively referred to as "**Restrictive Covenants**"), including without limitation the Employment Agreement, and any amendments thereto. Dr. Nikolic agrees that he shall comply fully with the terms and conditions of the Restrictive Covenants, which shall remain in full force and effect and are incorporated into this Agreement by reference. Dr. Nikolic further agrees that he shall keep the existence of this Agreement, its terms and conditions, confidential; except that Dr. Nikolic may disclose this Agreement and its terms to his legal counsel, tax advisor, and domestic partner (if any), provided such individuals also agree to maintain the confidentiality of this Agreement and its terms, and as otherwise provided by law. The parties agree that violation by Dr. Nikolic of any obligation that he has under any Restrictive Covenant or Section 4 of this Agreement will cause Company, Released Parties or other entities or persons harm, some or much of which is difficult to quantify, such as present and future economic harm; and/or may be intangible, such as reputational harm or other negative impacts on various relationships, efforts to determine actual damages, or potential unknown incidental and/or consequential costs. In the event that Dr. Nikolic violates any obligation that he has under any Restrictive Covenant or Section 4 of this Agreement, Dr. Nikolic agrees that he owes and shall pay Company and that Company will be entitled to recover from his any damages as determined by an arbitrator pursuant to Section 10 below. [CONFORM TO REVISIONS AND

COMMENTS MADE TO THE SIMILAR PROVISION IN THE TRANSITION AGREEMENT]

b. In the event Company violates any obligation under this Agreement, Dr. Nikolic will be entitled to recover from Company any damages as determined by an arbitrator pursuant to Section 10 below. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SIMILAR PROVISION IN THE TRANSITION AGREEMENT]

4.2 Dr. Nikolic acknowledges that in the course of his employment with Company, its related entities, and the Bill & Melinda Gates Foundation, he has acquired considerable knowledge about Company, its related entities, Company managed premises, Individuals (as defined in Section 2.1) and members of the Individuals' family, home and business of the Individuals, and friends, guests, business associates or acquaintances of the Individuals. For the purposes of this Transition Agreement "Confidential Information" means all information learned by Dr. Nikolic in any way related to Company, its related entities, Individuals and members of the Individuals' family, home and business of the Individuals, the Bill & Melinda Gates Foundation and friends, guests, business associates or acquaintances of the Individuals whether such information is written, oral or observed. Without limiting the generality of the foregoing, "Confidential Information" includes information of any nature, with or without further written designation, relating to: (a) the personal lives, schedules, habits, property, financial affairs, business, social or personal practices and interests, family, guests, business associates or acquaintances, travel and/or events associated with Company or the Individuals; (b) any buildings, improvements or facilities located at or being constructed on property owned or controlled by Company, the Individuals or the Bill & Melinda Gates Foundation; (c) the work performed by Dr. Nikolic or others at Company's, the Individuals' or the Bill & Melinda Gates Foundation direction; (d) the subject matter of the communications between Dr. Nikolic or others and Company, the Bill & Melinda Gates Foundation or the Individuals; (e) any systems developed or under development for use at Company's, the Individuals', related entities' or Company managed premises' properties, including without limitation, any information about existing or proposed information processing (IT) equipment, systems and software; audio visual equipment, systems and software; and security equipment, systems and software; and (f) technical and non-technical information related to the actual or prospective business or activities of Company or the Individuals, related entities, the Bill & Melinda Gates Foundation or Company managed premises including, without limitation, information related to patents, copyrights and trade secrets, branding, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, manufacturing, purchasing, customer lists, price lists, business forecasts, products, services, sales and merchandising and marketing plans and information. "Confidential Materials" shall mean all tangible materials containing Confidential Information, including without limitation, summaries, notes, blueprints, drawings, photographs, slides, negatives, databases, written or printed documents or information recorded on digital or electronic media, whether machine-readable or user-

readable. No Confidential Information or Confidential Materials shall be used by Dr. Nikolic except as expressly authorized by Company. Dr. Nikolic shall not disclose or permit the disclosure of any Confidential Information or Confidential Materials to any third party without Company's explicit written approval in advance of any such disclosure. Without limiting the generality of the foregoing, unless expressly asked in writing by Company for his assistance, which assistance would be subject to a written agreement signed by Company, Dr. Nikolic shall not (a) be involved in contributing to or the preparation of any book, article, story, video or film about or relating to Company, its related entities, the Bill & Melinda Gates Foundation, Individuals and members of the Individuals' family, home and business of the Individuals, or friends, guests, business associates or acquaintances of the Individuals or any of their business, social or personal interests or give interview(s) (on or off the record) regarding such matters; or (b) produce or contribute to any written, oral, electronic, or other accounts, fictionalized or otherwise, that relate to or resemble his employment with Company, its related entities, the Bill & Melinda Gates Foundation Individuals, or services for Individuals or Individuals themselves or members of the Individuals' family. Dr. Nikolic understands and agrees that there may be no adequate remedy at law for Company or other entities or persons protected under this Section 4.2 in the event of its breach, or threatened breach, and any such entity or person, in addition to any other remedies available at law or in equity, shall be entitled to injunctive relief to prevent any breach of this obligation or to minimize the consequences thereof. Notwithstanding the foregoing, if Dr. Nikolic should breach the provisions of this Section 4.2, Company, the Bill & Melinda Gates Foundation and Individuals shall be entitled, in addition to but not as a limit on any other remedies available to Company, the Bill & Melinda Gates Foundation and Individuals, to recover automatically any proceeds or remuneration of any nature whatsoever that Dr. Nikolic receives in regard to or as a result of the disclosure of any such confidential information. The Bill & Melinda Gates Foundation and Individuals are third-party beneficiaries of this Agreement. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SAME PROVISION IN THE TRANSITION AGREEMENT]

~~Dr. Nikolic acknowledges that in the course of his employment with Company, its related entities, and the Bill & Melinda Gates Foundation, he has acquired considerable knowledge about Company, its related entities, the Bill & Melinda Gates Foundation, Company managed premises, Individuals (as defined in Section 2.1) and members of the Individuals' family, home and business of the Individuals, and friends, guests, business associates or acquaintances of the Individuals. For the purposes of this Transition Agreement "Confidential Information" means all information learned by Dr. Nikolic in any way related to Company, its related entities, the Bill & Melinda Gates Foundation, the Individuals and members of the Individuals' family, home and business of the Individuals, and friends, guests, business associates or acquaintances of the Individuals whether such information is written, oral or observed. Without limiting the generality of the foregoing, "Confidential Information" includes information of any nature, with or without further written designation, relating to: (a) the personal lives, schedules, habits, property, financial affairs, business, social or personal practices and interests, family, guests, business associates or acquaintances, travel and/or events associated with Company or the Individuals; (b) any buildings, improvements or facilities located at or being constructed on property owned or controlled by Company, the Individuals or the Bill & Melinda Gates Foundation; (c) the work performed by Dr. Nikolic or others at Company's, the Individuals' or~~

the Bill & Melinda Gates Foundation's direction; (d) the subject matter of the communications between Dr. Nikolic or others and Company, the Bill & Melinda Gates Foundation or the Individuals; (e) any systems developed or under development for use at Company's, the Individuals', related entities', the Bill & Melinda Gates Foundation's or Company managed premises' properties, including without limitation, any information about existing or proposed information processing (IT) equipment, systems and software; audio-visual equipment, systems and software; and security equipment, systems and software; and (f) technical and non-technical information related to the actual or prospective business or activities of Company or the Individuals, related entities, the Bill & Melinda Gates Foundation or Company managed premises including, without limitation, information related to patents, copyrights and trade secrets, branding, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, manufacturing, purchasing, customer lists, price lists, business forecasts, products, services, sales and merchandising and marketing plans and information. "Confidential Materials" shall mean all tangible materials containing Confidential Information, including without limitation, summaries, notes, blueprints, drawings, photographs, slides, negatives, databases, written or printed documents or information recorded on digital or electronic media, whether machine-readable or user-readable. No Confidential Information or Confidential Materials shall be used by Dr. Nikolic except as expressly authorized by Company. Dr. Nikolic shall not disclose or permit the disclosure of any Confidential Information or Confidential Materials to any third party without Company's explicit written approval in advance of any such disclosure. Without limiting the generality of the foregoing, unless expressly asked in writing by Company for his assistance, which assistance would be subject to a written agreement signed by Company, Dr. Nikolic shall not (a) be involved in contributing to or the preparation of any book, article, story, video or film about or relating to Company, its related entities, the Bill & Melinda Gates Foundation, Individuals and members of the Individuals' family, home and business of the Individuals, or friends, guests, business associates or acquaintances of the Individuals or any of their business, social or personal interests or give interview(s) (on or off the record) regarding such matters; or (b) produce or contribute to any written, oral, electronic, or other accounts, fictionalized or otherwise, that relate to or resemble his employment with Company, its related entities, the Bill & Melinda Gates Foundation Individuals, or services for Individuals or Individuals themselves or members of the Individuals' family. Dr. Nikolic understands and agrees that there may be no adequate remedy at law for Company or other entities or persons protected under this Section 4.2 in the event of its breach, or threatened breach, and any such entity or person, in addition to any other remedies available at law or in equity, shall be entitled to injunctive relief to prevent any breach of this obligation or to minimize the consequences thereof. Notwithstanding the foregoing, if Dr. Nikolic should breach the provisions of this Section 4.2, Company, the Bill & Melinda Gates Foundation and Individuals shall be entitled, in addition to but not as a limit on any other remedies available to Company, the Bill & Melinda Gates Foundation and Individuals, to recover automatically any proceeds or remuneration of any nature whatsoever that Dr. Nikolic receives in regard to or as a result of the disclosure of any such confidential information. The Bill & Melinda Gates Foundation and Individuals are third party beneficiaries of this Agreement.

6.3

a. Dr. Nikolic shall refrain from making, expressing or implying any derogatory or disparaging comments regarding any Released Party to the press or to any individual or entity, by any mode or medium of communication. Failure to abide by this provision shall be deemed a material breach of this Severance Agreement; provided, however, that nothing in this provision will prevent Dr. Nikolic from giving truthful testimony if properly subpoenaed to testify under oath. In the event Dr. Nikolic is subpoenaed to testify under oath relating to any matter regarding any of the Released Parties, he agrees to and shall (unless prohibited by law) provide notice and a copy of such subpoena to the Managers of Company as soon as practicable upon receipt, but no later than 3 business days after receipt, or within one business day following receipt in the event that the return date of the subpoena is less than 5 days. Dr. Nikolic agrees that he will not provide any information about any Released Parties absent a proper subpoena and in a formal, court reported context. By way of example, and not limitation, Dr. Nikolic agrees that he shall not provide any declaration testimony in any matter relating to any of the Released Parties. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SIMILAR PROVISION IN THE TRANSITION AGREEMENT]

~~Company, its Principals, and its Managers shall refrain from making, expressing or implying any derogatory or disparaging comments regarding Dr. Nikolic by any mode or medium of communication.~~

b. Company, its Managers and the Individuals shall refrain from making, expressing or implying any derogatory or disparaging comments regarding Dr. Nikolic to the press or to any individual or entity by any mode or medium of communication. Failure to abide by this provision shall be deemed a material breach of this Agreement, provided, however, that nothing in this provision will prevent Company, its Managers and the Individuals from giving truthful testimony if properly subpoenaed to testify under oath. In the event Company, its Managers and the Individuals are subpoenaed to testify under oath relating in any way to Dr. Nikolic, Company, its Managers and the Individuals shall (unless prohibited by law) provide notice and a copy of such subpoena to Dr. Nikolic as soon as practicable upon receipt but in no event later than 3 business days after receipt and or within one business day following receipt in the event that the return date of the subpoena is less than 5 days. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SIMILAR PROVISION IN THE TRANSITION AGREEMENT]

7. Indemnification.

a. Dr. Nikolic agrees that any inaccuracies in any of his representations, warranties, or covenants in this Severance Agreement will constitute a material breach of this Severance Agreement by Dr. Nikolic, providing Company or any affected Released Party with any and all rights and remedies any such party has or may have in law or equity against Dr. Nikolic. Dr. Nikolic agrees to indemnify, defend, save and hold Company or any affected Released Party and each of their respective current and former officers, directors, employees, partners, legal counsel and other representatives and agents harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable

attorneys' fees and costs), that arise out of or are connected with, or are related in any way to any inaccuracies in Dr. Nikolic's representations, warranties, and/covenants contained in this Severance Agreement. Dr. Nikolic agrees that the indemnification, defend, save and hold harmless obligations that he has undertaken pursuant to this provision will be enforceable regardless of whether he has or purports to have a claim against any Released Party. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SIMILAR PROVISION IN THE TRANSITION AGREEMENT]

b. Company agrees that it shall have the same obligations to Dr. Nikolic as those set forth in Paragraph 7(a) above in the event that there are any inaccuracies in its representations, warranties or covenants in this Agreement. [CONFORM TO REVISIONS AND COMMENTS MADE TO THE SIMILAR PROVISION IN THE TRANSITION AGREEMENT]

8. Severability. The provisions of this Severance Agreement are severable, and if any provision of it is found to be unlawful or unenforceable, it shall be deemed narrowed to the extent required to make it lawful and enforceable. If such modification is not possible, such provision shall be severed from this Severance Agreement and the remaining provisions shall remain fully valid and enforceable to the maximum extent consistent with applicable law provided, however, that Section 4 may not be severed from this Severance Agreement.

9. Review Period and Effective Date. Dr. Nikolic may take up to twenty-one (21) calendar days from receipt of this Severance Agreement to consider its terms, after which time the offer of this Severance Agreement shall expire and may no longer be accepted. Dr. Nikolic may execute this Severance Agreement before expiration of the twenty-one (21) day period, in which case Dr. Nikolic shall be deemed to have waived the remainder of the consideration period. To accept this Severance Agreement, Dr. Nikolic must execute and deliver this Severance Agreement to bgC3 LLC, 4000 Carillon Point, Kirkland, WA 98033, attention Larry Cohen. Dr. Nikolic has a period of seven (7) calendar days after executing this Severance Agreement to revoke this Severance Agreement, should he wish to do so. To revoke, Dr. Nikolic must deliver a notice revoking acceptance of this Severance Agreement to Larry Cohen at the offices of Company noted above within the seven-day revocation period. This Severance Agreement shall become effective on the eighth (8th) day after Dr. Nikolic executes this Agreement, provided that Dr. Nikolic has not revoked this Severance Agreement ("**Effective Date**").

10. Dispute Resolution. Subject to Company's right to seek equitable or injunctive relief in court, any and all disputes that arise under this Severance Agreement that are not informally resolved shall be resolved by final and binding arbitration by a sole, neutral arbitrator in Seattle, Washington, under the applicable rules of the American Arbitration Association governing employment disputes. In any such dispute, no party shall be entitled to the benefit of any principle of contract construction premised upon the relative bargaining power of the parties, the identity of the party partly or wholly responsible for drafting the portion of this Severance Agreement giving rise to the dispute, *contra proferentum*, contracts of adhesion, or any similar

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contract construction principle. In any arbitration or litigation arising from this Severance Agreement, the prevailing party shall be entitled to costs and attorneys' fees; provided, however, that this sentence shall not apply to any claim Dr. Nikolic may have challenging the validity of this Severance Agreement under the ADEA or OWBPA. This Severance Agreement shall be governed by and interpreted under the laws of the State of Washington, including without limitation the statutory statute of limitations periods defined under state law for "actions", but excluding the State of Washington's choice of law rules.

11. Other. Nothing in this Severance Agreement is intended as or should be construed as an admission of liability by any of the parties to this Severance Agreement or any other person or party. This Severance Agreement may be modified only in writing signed by all the parties to this Severance Agreement~~Dr. Nikolic and the Manager of Company~~.

12. Knowing and Voluntary Agreement. Dr. Nikolic hereby warrants and represents that Dr. Nikolic: (1) has carefully read this Severance Agreement and finds the manner in which it is written understandable; (2) knows the contents hereof; (3) has been advised to consult with Dr. Nikolic's personal advisor or attorney regarding this Severance Agreement and its effects prior to executing this Severance Agreement and has done so or waives the right to do so; (4) understands that in signing this Severance Agreement he forever releases Company and the Released Parties from all claims, damages, and disputes that may have arisen before the date of this Severance Agreement as set forth in this Severance Agreement, including any claims under the ADEA, OWBPA (other than claims challenging the validity of this Agreement under the ADEA or OWBPA), or other statutes; (5) understands this Severance Agreement's contents and its final and binding effect (6) has been given twenty-one days to review and analyze this entire Severance Agreement and seven days to revoke acceptance should he wish to do so; and (7) has signed this Severance Agreement as his free and voluntary act.

13. The parties hereto ~~Dr. Nikolic~~ acknowledges that in executing this Severance Agreement, no party hereto has relied ~~Dr. Nikolic does not rely~~ upon any representation or statement by any person Released Party concerning the subject matter of this Severance Agreement, except as expressly set forth in the text of this Severance Agreement.

[INCLUDE WHG, MBG, BMGF, WEMS AS SIGNATORIES]

bgC3 LLC

Signature

Dr. Boris Nikolic

By _____
Larry Cohen
Its Manager

Address: _____

Date

Date

DRAFT

DRAFT

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