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LSU FILE _____

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PATENT AND KNOW HOW LICENSE AGREEMENT LSU FILE _____

This Agreement is effective as of the _____ day of __, 200____ (the "Effective Date"), between _____, a corporation incorporated in the State of _____, with offices located at _____ ("LICENSEE"), and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public constitutional corporation, organized and existing under the laws of the State of Louisiana ("LSU"). LICENSEE and LSU agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 "AFFILIATE" of LICENSEE shall mean a company or other person controlling, controlled by, or under common control with LICENSEE, where "control" shall mean the direct or indirect control by ownership or otherwise of more than fifty percent (50%) of the outstanding voting shares or voting rights, or other similar measure of control.

1.2 "FIELD OF USE" means **[Insert definition such as diagnostics, therapeutics, research reagents, or other specific uses or "all fields of use"]**

1.3 "FIRST COMMERCIAL SALE" means the first sale of any LICENSED PRODUCT or the first commercial use of any LICENSED PROCESS by LICENSEE or a SUBLICENSEE, other than a sale of a LICENSED PRODUCT or the use of a LICENSED PROCESS for use in trials, such as field trials or clinical trials, being conducted to obtain FDA or other governmental approvals to market LICENSED PRODUCTS or otherwise commercially use LICENSED PROCESSES.

1.4 "KNOW HOW" means any information, data, process, method, or know how that is developed by {inventor} of LSU on or before the Effective Date, and that is useful in practicing any invention taught or claimed in the patents or patent applications that fall within PATENT RIGHTS. However, KNOW HOW shall not include any rights in any patent or patent application; nor shall KNOW HOW include any information or know how developed by LSU or an LSU employee after the Effective Date.

1.5 "LICENSED PRODUCT(S)" means a product or part of a product in the licensed FIELD OF USE:

- (a) for which, absent this Agreement, the making, using, importing or selling, would infringe, induce infringement, or contribute to infringement of an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any such product or product part is made, used, imported, offered for sale or sold;
- (b) that is manufactured using a LICENSED PROCESS or is employed to practice a LICENSED PROCESS; or
- (c) that is otherwise covered by or included in licensed Know How.

1.6 “LICENSED PROCESS(ES)” means any process or method that is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS, or any process or method that is covered in whole or in part within KNOW HOW.

1.7 “NET SALES” means the amount billed or invoiced on sales, rental, lease, or use, however characterized, by LICENSEE and SUBLICENSEES for LICENSED PRODUCTS and LICENSED PROCESSES, less

- (a) discounts allowed in amounts customary in the trade;
- (b) sales tax, tariffs, duties and use tax included in bills or invoices with reference to particular sales and actually paid by LICENSEE to a governmental unit;
- (c) outbound transportation prepaid or allowed; or
- (d) amounts refunded or credited on returns.

No deductions shall be made for the cost of collections or for commissions, whether paid to independent sales agents or employees of LICENSEE.

Whenever the term “LICENSED PRODUCT” may apply to a product during various stages of manufacture, use, sale, or other transfer, NET SALES shall be based on the amount derived from the sale, distribution or use of such LICENSED PRODUCT at the stage of its highest billed or invoiced value to an arms-length third party.

1.8 “PATENT COUNTRY” means any country in which at least one unexpired patent application or patent within PATENT RIGHTS is currently pending or issued.

1.9 “PATENT RIGHTS” means LSU’s legal rights under the patent laws of the United States or relevant foreign countries for all of the following:

- (a) the United States and foreign patents and/or patent applications listed in Appendix A; nonprovisional applications claiming priority under 35 U.S.C. § 119(e) from any provisional applications listed in Appendix A; and divisionals and continuations (except continuations-in-part) of any of the above applications;
- (b) United States and foreign patents issued from the applications described above in part (a);
- (c) claims in all foreign patent applications, and in resulting patents, that are directed to subject matter specifically described in the United States patents and/or patent applications described in (a) or (b) above;
- (d) claims in all patent applications, and in the resulting patents, that are directed to subject matter specifically described as of the Effective Date in the LSU Office of Technology Transfer files listed in Appendix A; and

- (e) any reissued or reexamined patents based upon the United States patents described in (a), (b) or (d) above.

1.10 “ROYALTY PERIOD(S)” means the three-month periods ending on the last days of March, June, September, and December.

1.11 “SUBLICENSEE(S)” means any person or entity sublicensed by LICENSEE under this Agreement.

1.12 “TERRITORY” means **[Insert definition, such as: “all countries” or “worldwide” or only “United States” or “all Patent Countries” or otherwise]**

ARTICLE 2 - GRANT OF LICENSE

2.1 Subject to the terms and conditions of this Agreement, LSU hereby grants to LICENSEE an exclusive royalty-bearing license under the PATENT RIGHTS and KNOW HOW, with the right to grant sublicenses, in the FIELD OF USE in the TERRITORY to make, have made, import, use, offer for sale and sell LICENSED PRODUCTS and LICENSED PROCESSES. In each PATENT COUNTRY, this license is under PATENT RIGHTS and KNOW HOW. In all countries other than the PATENT COUNTRIES, this license is under KNOW HOW only.

2.2 The license granted to LICENSEE shall extend to an AFFILIATE of LICENSEE as well, provided that LSU first receives written notice, signed on behalf of both LICENSEE and the AFFILIATE: (1) stating that the AFFILIATE intends to exercise such rights, and (2) agreeing that the AFFILIATE and LICENSEE shall be solidarily liable for all obligations to LSU under the Agreement arising from the activities of that AFFILIATE. The activities of the AFFILIATE under the Agreement shall then be deemed to be the activities of LICENSEE. The rights of an AFFILIATE under the Agreement shall terminate if LICENSEE’s rights under the Agreement terminate. An AFFILIATE may not sublicense, assign, or otherwise transfer any rights under the Agreement.

2.3 LSU retains the right, on behalf of itself and all other non-profit academic research institutions to practice the PATENT RIGHTS and KNOW HOW for any non-profit purpose, including sponsored research and collaborations.

2.4 This Agreement shall extend until expiration of the last-to-expire of the licensed PATENT RIGHTS, unless sooner terminated as provided in another specific article of this Agreement. If no such patent ever issues, the term shall be until twenty years from the Effective Date.

2.5 In a particular PATENT COUNTRY, in the event that: (1) all issued claims within PATENT RIGHTS are judicially held invalid or unenforceable or that no patents within PATENT RIGHTS ever issue; and (2) no claims within PATENT RIGHTS are still pending in any application; and (3) all applicable appeals and appeal delays have run; then thereafter in that country the license shall be one to KNOW HOW only; and the royalty rate under Paragraph 3.1.1(b) in that country shall, from that point forward (but not retroactively), be the “nonPATENT COUNTRY” rate.

2.6 Nothing in the Agreement shall be construed as granting by implication, estoppel, or otherwise any licenses or rights under any patents, patent applications, or know how other than the express license under the PATENT RIGHTS or under KNOW HOW granted in Paragraph 2.1, regardless of whether such patents, patent applications, or know how are dominant of or subordinate to any rights within the PATENT RIGHTS.

2.7 [Government funding?] LICENSEE agrees that LICENSED PRODUCTS used, leased or sold in the United States shall be manufactured substantially in the United States.

2.8 [Government funding?] LSU further reserves to the United States Government all rights that may be required by research funding agreements between LSU and the United States Government pursuant to 35 U.S.C. §200 *et seq.* and applicable implementing regulations.

ARTICLE 3 - CONSIDERATION

3.1.1 LICENSEE shall pay running royalties and fees to LSU until the expiration date of the last to expire of PATENT RIGHTS or until this Agreement is otherwise terminated. Running royalties and fees shall include:

- (a) License Issue Fee of _____ (\$_____). Such License Issue Fee shall be nonrefundable and is due thirty (30) days from the Effective Date of this Agreement.
- (b) Running royalties equal to _____ percent (___%) of NET SALES in each PATENT COUNTRY, and _____ percent (___%) of NET SALES in a nonPATENT COUNTRY. The higher PATENT COUNTRY rate (i.e., ___%) shall apply to any LICENSED PRODUCTS that is made, used, sold offered for sale, or imported in any PATENT COUNTRY, regardless of whether other acts concerning that LICENSED PRODUCTS occur outside a PATENT COUNTRY. If LICENSEE makes any sales to any party affiliated with LICENSEE, or in any way directly or indirectly related to or under the common control with LICENSEE, at a price less than the regular price charged to arm's length third parties, the running royalties payable to LSU shall be computed on imputed NET SALES equal to the regular price charged to arm's-length third parties;
- (c) _____ Percent (___%) of any consideration that is not based on NET SALES (e.g., sublicense issue fees, sublicense maintenance fees, etc.) that LICENSEE receives from SUBLICENSEES or assignees in consideration for rights to practice under the PATENT RIGHTS or KNOW HOW, excepting only research and development funding;
- (d) Reimbursement of LSU's past and future out-of-pocket patenting costs related to the PATENT RIGHTS;
- (e) **{milestone payments, if any, to be inserted here}.**

3.1.2 LICENSEE shall pay to LSU an annual license maintenance fee ("Annual Fee"). This Annual Fee shall be due on the last day of June of the years specified below. LICENSEE may credit each

Annual Fee in full against all running royalties otherwise due LSU for the same calendar year for which the specific Annual Fee is due. This credit may not otherwise be carried forward or carried back for any other ROYALTY PERIOD.

The Annual Fees are:

- (1) In _____: \$ _____;
- (2) In _____: \$ _____;
- (3) In _____: \$ _____; and
- (4) In ___ and in each year thereafter during the term of this Agreement:
\$ _____.

- 3.2** LICENSEE shall be responsible for the payment of all taxes, duties, levies, and other charges, subject to the deduction from NET SALES allowed by Paragraph 1.7(b).
- 3.3** LICENSEE is not obligated to pay multiple running royalties to LSU if any LICENSED PRODUCT or LICENSED PROCESS is covered by more than one claim of PATENT RIGHTS, or by more than one patent application or patent within PATENT RIGHTS.
- 3.4** Payments due to LSU shall be paid to the "Louisiana State University" in United States dollars in Baton Rouge, Louisiana, sent as provided in Article 13 or at such other place as LSU may reasonably designate consistent with the laws and regulations controlling in any country. At LSU's request, LICENSEE shall remit payments either by wire transfer or by check drawn upon a United States bank.
- 3.5** In computing running royalties, LICENSEE shall convert any revenues it receives in foreign currency into its equivalent in United States dollars at the exchange rate LICENSEE, using its standard accounting procedures, uses to make reports to relevant regulatory and taxing authorities, as long as such accounting procedures are consistent with fair business practices and generally accepted accounting principles.
- 3.6** Running royalty payments shall be made on a quarterly basis with submission of the reports required by Article 4. All amounts due under this Agreement, including amounts due for the payment of patent expenses, shall, if overdue, bear interest until payment at a per annum rate five percent (5%) above the prime rate in effect at the JP Morgan Chase Bank or its successor on the due date, or at the highest allowed rate if a lower rate is required by law. The payment of such interest shall not foreclose LSU from exercising any other rights it may have resulting from any late payment.
- 3.7** All amounts paid to LSU by LICENSEE under this Agreement shall be non-refundable.
- 3.8** If LSU and LICENSEE disagree in good faith as to whether certain payments are due to LSU, then the procedures of this Paragraph 3.8 shall be followed to place the disputed amounts into escrow. If these procedures are followed, then LICENSEE shall not be deemed to be in default for failure to make the disputed payments timely. If these

procedures are not followed, however, then LICENSEE shall be deemed to be in default for failure to make payments timely under the Agreement, regardless of whether or not it is ultimately determined that the disputed amounts were actually due under the Agreement.

3.8.1 All undisputed amounts shall be paid to LSU as otherwise provided.

3.8.2 All disputed amounts shall be paid to an escrow agent mutually acceptable to LSU and LICENSEE. Disputed amounts that are past due shall be paid to the escrow agent within thirty (30) days after the establishment of an escrow account with a mutually acceptable escrow agent. Disputed amounts that are not yet due but that become due during pendency of the dispute shall be paid to the escrow agent on or before the dates those amounts are otherwise due under the Agreement. LSU shall be given prompt confirmation of the date and amount of any such payments made.

3.8.3 The escrow agent shall place the funds in a safe, interest-bearing instrument or account jointly approved by LSU and LICENSEE; or if LSU and LICENSEE are unable thus to agree, in a safe, interest-bearing instrument or account chosen by the escrow agent. Any interest thus received shall ultimately be distributed by the escrow agent in the same proportions as the distribution of the principal amount. A reasonable fee for the escrow agent's services may first be deducted from the interest.

3.8.4 The escrow agent shall release the funds in escrow only in accordance with the joint, written instructions of both LSU and LICENSEE; or in accordance with an order of the court or an award of the arbitrator under Paragraph 14.2.

Add the following provisions and Appendix B (with Schedule A and Exhibits 1 and 2) for licenses involving equity being taken by LSU:

3.9 If equity is being taken by LSU from LICENSEE for partial consideration, then the following provisions apply:

3.9.1 Upon the issuance by LICENSEE of equity interest in LICENSEE (whether in the form of capital stock or otherwise) for an aggregate value of not less than \$["FINANCING THRESHOLD"] (for new money only, exclusive of conversion of indebtedness) to one or more venture capital funds or institutional investors (such funds and investors, the "INVESTORS") and in one or more rounds of equity financing (the "REQUIRED FUNDING EVENT"), LICENSEE shall transfer to LSU that number of shares of voting common stock (or, if there is no voting common stock, the same type and class of equity security issued to the founders and employees of LICENSEE) (such voting common stock or, if there is none, the other type and class of equity security specified in the parenthetical, the "COMMON STOCK") that represents not less than _____[PERCENTAGE]% of the "fully-diluted" equity of LICENSEE (such fullydiluted percentage, the "APPLICABLE PERCENTAGE"), taking into account all of the equity or rights to acquire equity issued in the most recent round of equity financing (including all such equity or rights issued in one or more unconditional tranches of such round). LICENSEE shall make such transfer

pursuant to, and subject to the terms of, the form of Stock Transfer Agreement attached hereto as Appendix B (the “STOCK TRANSFER AGREEMENT”). For purposes of this Paragraph 3.9.1, (1) “fully diluted” means the sum of (a) the number of all shares of capital stock or other equity interest of LICENSEE issued and outstanding, (b) the number of shares of capital stock or other equity interest subject to, or reserved in respect of, any outstanding right to acquire capital stock or other equity interest in LICENSEE, and (c) all shares of capital stock or other equity or profits interest reserved in respect of any plan or other arrangement for the issuance of capital stock or other equity or profits interest or rights to acquire the same, including, without limitation, any stock option, restricted stock or profits interest plan in place as of the date of the REQUIRED FUNDING EVENT; and (2) “round of equity financing” means the sale of capital stock or other equity interest issued in one or more tranches at the same per share or unit price and with identical rights with respect to liquidation preference, conversion, anti-dilution protection, dividend or profits preference, redemption and voting, as applicable.

3.9.2 Notwithstanding the foregoing, in the event either (a) no REQUIRED FUNDING EVENT shall have occurred by the date _____ [NO. OF MONTHS] months after the date of this AGREEMENT (the “EQUITY DEADLINE”), or (b) LICENSEE shall have entered into any agreement or other arrangement prior to such date that will result in a CHANGE OF CONTROL that does not constitute a REQUIRED FUNDING EVENT, LICENSEE shall instead transfer to LSU the APPLICABLE PERCENTAGE of the then fully-diluted equity of LICENSEE in the form of COMMON STOCK. LICENSEE shall make such transfer pursuant to, and subject to the terms of, the STOCK TRANSFER AGREEMENT as of (1) in the case of the foregoing clause (a), the EQUITY DEADLINE, or (2) in the case of the foregoing clause (b), the date immediately prior to the date of closing of the transaction giving rise to the operation thereof. For purposes of this Paragraph 3.9.2, a “CHANGE OF CONTROL” means (i) the acquisition of LICENSEE by another person or entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of 50% or more of the outstanding voting power of LICENSEE, or (ii) a sale, exchange or other transfer of all or substantially all of the assets of LICENSEE.

3.9.3 Notwithstanding the foregoing, in the event LICENSEE, prior to the REQUIRED FUNDING EVENT, enters into any agreement that constitutes a RELATED PARTY TRANSACTION, LICENSEE shall cause the party with which it enters the RELATED PARTY TRANSACTION to issue to LSU the APPLICABLE PERCENTAGE of the “fully-diluted” equity of that party in voting common stock (or, if there is no common stock, the same type and class of equity security issued to the related INVESTORS) (such voting COMMON STOCK or, if there is none, the other type of class of equity security specified in the parenthetical, the “INVESTOR COMMON STOCK”) as of the date immediately prior to the closing of the RELATED PARTY TRANSACTION. For purposes hereof, a “RELATED PARTY TRANSACTION” means a transaction in which LICENSEE grants to a RELATED PARTY a sublicense to all or a substantial portion of the rights conveyed to LICENSEE by operation of this AGREEMENT to the LICENSED KNOW HOW or LICENSED PATENT RIGHTS. For purposes of this Paragraph 3.9.3, “RELATED PARTY” means any one or more INVESTORS or any entity that is owned at least fifty percent (50%) by any such INVESTORS. Nothing in this Paragraph 3.9.3 shall be interpreted to diminish the obligations of LICENSEE as set forth in Paragraphs 3.9.1 and 3.9.2.

3.9.4 Following the transfer to LSU by LICENSEE of the APPLICABLE PERCENTAGE of the “fully-diluted” equity of LICENSEE, LICENSEE (or in the case of Paragraph 3.9.3, the RELATED PARTY) shall maintain LSU’s ownership of the COMMON STOCK or the INVESTOR COMMON STOCK, as the case may be, at the APPLICABLE PERCENTAGE on a “fully-diluted” basis until the cash received by LICENSEE thereafter in one or more rounds of equity financing equals or exceeds no less than \$_____.

3.9.5 On and after the date of this AGREEMENT and continuing as long as LSU is the owner of any COMMON STOCK or any INVESTOR COMMON STOCK, as the case may be, LICENSEE and its successors, and in the case of Paragraph 3.9.3, the RELATED PARTY and its successors, shall provide the same financial reporting to LSU as is provided to any owner of COMMON STOCK or any other capital stock or other equity of LICENSEE, RELATED PARTY, or the successors thereof, as the case may be.

3.9.6 On and after the date of this AGREEMENT and continuing as long as LSU is the owner of any COMMON STOCK or any INVESTOR COMMON STOCK, as the case may be, LICENSEE and its successors, and in the case of Paragraph 3.9.3, the RELATED PARTY and its successors, shall not change its type of legal organization to a different type of legal organization, e.g., from a corporation to a limited liability company, without the prior written consent of LSU.

3.9.7 LSU shall have co-sale rights with respect to the COMMON STOCK or the INVESTOR COMMON STOCK, as the case may be, owned by it no less favorable than the co-sale rights of any owner of COMMON STOCK or any other capital stock or other equity of LICENSEE, RELATED PARTY, or the successors thereof, as the case may be.

ARTICLE 4 - REPORTS

4.1 LICENSEE shall provide to LSU a written annual report on or before July 31 of each calendar year. The annual report shall include: reports of progress and of the amount of capital expended on research and development, regulatory approvals, manufacturing, sublicensing, marketing and sales during the preceding twelve (12) months, and plans for the coming year. Each annual report shall be accompanied by the current certificate(s) of insurance in compliance with Paragraph 10.3.

4.2 After the FIRST COMMERCIAL SALE, LICENSEE shall also provide quarterly reports to LSU. Within thirty (30) days after each ROYALTY PERIOD closes (including the close of the ROYALTY PERIOD immediately following any termination of this Agreement), LICENSEE shall report to LSU for that ROYALTY PERIOD:

- (a) number of LICENSED PRODUCTS manufactured and sold by LICENSEE and all SUBLICENSEES;
- (b) total billings for LICENSED PRODUCTS sold by LICENSEE and all SUBLICENSEES;

- (c) accounting for all LICENSED PROCESSES used or sold by LICENSEE and all SUBLICENSEES;
- (d) deductions applicable as provided in the definition for NET SALES in Paragraph 1.7;
- (e) any consideration due on additional payments from SUBLICENSEES under Paragraph 3.1(c);
- (f) total running royalties due; and
- (g) names and addresses of all SUBLICENSEES.

LICENSEE shall include the amount of all payments due, and the various calculations used to arrive at those amounts, including the quantity, description (nomenclature and type designation as described in Paragraph 4.3 below), country of manufacture and country of sale of LICENSED PRODUCTS. If no payment is due, LICENSEE shall so report. LICENSEE shall direct its authorized representative to certify that each report is correct to the best of LICENSEE's knowledge and information. Failure to provide reports as required under this Article shall be a material breach of this Agreement.

4.3 LICENSEE covenants that it will promptly establish and consistently employ a system of specific nomenclature and type designations for LICENSED PRODUCTS and LICENSED PROCESSES to permit identification and segregation of various types where necessary. LICENSEE shall consistently employ, and shall require SUBLICENSEES to consistently employ, the system when rendering invoices thereon. On request, LICENSEE shall promptly explain to LSU, or its auditors, all details reasonably necessary to understand such nomenclature system, all additions thereto and changes therein.

4.4 LICENSEE shall keep, and shall require all SUBLICENSEES to keep, true and accurate records containing data reasonably required for the computation and verification of payments due under this Agreement. LICENSEE shall, and it shall require all SUBLICENSEES to:

- (1) open such records for inspection upon reasonable notice during business hours by either LSU auditor(s) or an independent certified accountant selected by LSU, for the purpose of verifying the amount of payments due; and
- (2) retain such records for six (6) years from date of origination.

The terms of this Article shall survive any termination of this Agreement. LSU is responsible for all expenses of such inspection, except that if any inspection reveals an underpayment greater than five percent (5%) of the amounts due LSU for any ROYALTY PERIOD, then LICENSEE shall pay all expenses of that inspection and the amount of the underpayment and interest to LSU within twenty (20) days of written notice thereof. LICENSEE shall also reimburse LSU for reasonable expenses required to collect any amount underpaid.

ARTICLE 5 - DILIGENCE

5.1 LICENSEE has the responsibility to develop LICENSED PRODUCTS into marketable products.

5.2 LICENSEE shall use commercially reasonable efforts (including, without limitation, commitment of funding and personnel) to bring one or more LICENSED PRODUCTS to market or one or more LICENSED PROCESSES to commercial use through a thorough, vigorous and diligent program for exploiting the PATENT RIGHTS; and to continue active, diligent marketing efforts for one or more LICENSED PRODUCTS or LICENSED PROCESSES throughout the life of this Agreement.

5.3 As part of the diligence required by Paragraph 5.2, LICENSEE agrees to reach the following commercialization and research and development milestones for the LICENSED PRODUCTS and LICENSED PROCESSES (together the "MILESTONES") by the following dates:

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____

Add the following for licenses with clinical trials:

For the purposes of this Agreement, initiation of a clinical trial shall mean the effective date of the clinical trial research agreement in which the first patient or subject is to be treated with a LICENSED PRODUCT or a LICENSED PROCESS under a protocol approved both by an appropriate Institutional Review Board and by an appropriate drug regulatory agency with a therapeutic agent or process that has been manufactured according to the applicable Good Manufacturing Practices (GMP) guidelines provided by the relevant regulatory agency.

5.4. LICENSEE shall inform LSU in writing, on or before the deadline for meeting any MILESTONE, whether such MILESTONE has been met.

5.5 If LICENSEE fails to meet any MILESTONE within sixty (60) days after the date specified in Paragraph 5.3, LSU may notify LICENSEE of this material breach. If LICENSEE does not achieve the MILESTONE within thirty (30) days of receipt of this notice, LSU may terminate this Agreement.

ARTICLE 6 - SUBLICENSING

6.1 LICENSEE shall notify LSU in writing and shall send LSU a copy of every sublicense agreement and each amendment thereto within thirty (30) days after execution.

6.2 LICENSEE shall contemporaneously certify to LSU in writing that each sublicense:

- (1) is consistent with the terms and conditions of this Agreement;
- (2) contains the SUBLICENSEE'S acknowledgment of the disclaimer of warranty and limitation on LSU's liability, as provided by Article 9 below; and
- (3) contains provisions under which the SUBLICENSEE accepts duties at least equivalent to those accepted by the LICENSEE in the following Articles:

4.4 duty to keep records

9.4 duty to avoid improper representations or responsibilities

10.1 duty to defend, hold harmless, and indemnify LSU

10.3 duty to obtain and maintain insurance

14.5 duty to properly mark LICENSED PRODUCTS with patent notices

14.7 duty to refrain from the use of LSU's name

14.8 duty to control exports and comply with applicable laws

6.3 LICENSEE shall not receive from a SUBLICENSEE anything of value other than cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of LSU.

6.4 Each sublicense granted by LICENSEE under this Agreement shall provide for its termination upon termination of this Agreement. Each sublicense shall terminate upon termination of this Agreement unless LICENSEE has previously assigned its rights under the sublicense to LSU and LSU has agreed at LSU's sole discretion in writing to such assignment.

6.5 LICENSEE shall cause every sublicense to provide LICENSEE the right to assign its rights under the sublicense to LSU. Any such assignment is subject to the limitations of Article 14.11 herein and, to be effective, LSU must first accept at its sole discretion such assignment in writing.

6.6 No SUBLICENSEE shall have the right to grant further sublicenses without the express written permission of LSU.

6.7 Failure of LICENSEE to meet any of the obligations in this Article 6 shall be considered a material breach or default of this Agreement under Paragraph 11.3.

ARTICLE 7 - PATENT PROSECUTION AND MAINTENANCE

7.1 LSU has the right to control all aspects of drafting, filing, prosecuting, and maintaining all patents and patent applications within the PATENT RIGHTS, including foreign filings and Patent Cooperation Treaty filings. LICENSEE shall, at its own expense, perform all actions and execute or cause to be executed all documents necessary to support such filing, prosecution, or maintenance.

7.2 LSU shall notify LICENSEE of all official communications received by LSU relating to the filing, prosecution and maintenance of the patents and patent applications within the PATENT RIGHTS, including any lapse, revocation, surrender, invalidation or abandonment of any of the patents or patent applications which form the basis for the PATENT RIGHTS, and shall make reasonable efforts to allow LICENSEE to review and comment upon such communications.

7.3 LICENSEE shall reimburse LSU for all past and future legal fees and other costs relating to the filing, prosecution, interference proceedings and maintenance of the PATENT RIGHTS, except as specifically provided in Paragraph 7.4. Such reimbursement shall be made within thirty (30) days of receipt of LSU's invoice and shall bear interest, if overdue, at the rate specified in Paragraph 3.6 above.

7.4 LICENSEE may elect to not reimburse LSU for fees and costs related to a particular patent application or patent within PATENT RIGHTS in a particular country, subject to the terms of this Paragraph 7.4. If LICENSEE makes such an election, LICENSEE shall provide reasonable notice to LSU in writing. LSU may then elect to continue the prosecution or maintenance of such application or patent at LSU's sole expense, provided that such patent applications and issued patents thereafter shall be excluded from the definition of PATENT RIGHTS.

ARTICLE 8 - ENFORCEMENT

8.1 Each party shall promptly advise the other in writing of any known acts of potential infringement of the PATENT RIGHTS by a third party. LICENSEE has the first option to police the PATENT RIGHTS against infringement by third parties within the TERRITORY in the FIELD OF USE, but LICENSEE shall notify LSU in writing twenty (20) days before filing any suit. This right to police includes defending any action for declaratory judgment of noninfringement or invalidity; and prosecuting, defending or settling all infringement and declaratory judgment actions at LICENSEE's expense and through counsel of LICENSEE's selection, except that LICENSEE shall make any such settlement only with the advice and consent of LSU. LSU shall provide reasonable assistance to LICENSEE with respect to such actions, but only if LICENSEE reimburses LSU for out-of-pocket expenses incurred in connection with any such assistance rendered at LICENSEE'S request or reasonably required by LSU and if LICENSEE notifies LSU in writing twenty days before filing any suit. LSU retains the right to participate, with counsel of its own choosing and at its own expense, in any action under this Paragraph 8.1. LICENSEE shall defend, indemnify and hold harmless LSU with respect to any claims or counterclaims asserted by an alleged infringer reasonably related to the enforcement of the PATENT RIGHTS, under this Paragraph 8.1 or otherwise, including but not limited to antitrust claims or counterclaims.

8.2 If LICENSEE undertakes to enforce or defend the PATENT RIGHTS by litigation in any country, LICENSEE may withhold up to fifty percent (50%) of running royalties (as described in Article 3.1.1(b)) due to LSU for sales in such country in which the litigation is pending to reimburse up to fifty percent (50%) of LICENSEE's out-of-pocket litigation expenses, including reasonable attorneys' fees, but not including salaries of LICENSEE's employees. Such pending litigation does not affect any other payment due to LSU under this Agreement. If LICENSEE recovers damages in the patent litigation, the award shall be applied first to satisfy LICENSEE'S unreimbursed expenses and legal fees for the litigation, next to reimburse LSU for any payments under Article 3 which are past due or were withheld pursuant to this Article 8, and then to reimburse LSU for any other unreimbursed expenses and legal fees for the litigation. The remaining balance shall be divided equally between LICENSEE and LSU.

8.3 If LICENSEE fails to take action to abate an alleged infringement of a patent within the PATENT RIGHTS within sixty (60) days of a request by LSU to do so (or within a shorter period if required to preserve the legal rights of LSU under applicable law) then LSU has the right to take such action (including prosecution of a suit) at LSU's expense, and LICENSEE shall use reasonable efforts to cooperate in such action, at LICENSEE's expense. LSU has full authority to settle on such terms as LSU determines, except that LSU shall not reach any settlement whereby it provides a license for future activities to a third party under the PATENT RIGHTS in the TERRITORY in the FIELD OF USE without the consent of LICENSEE, which consent LICENSEE may withhold for any reason. LSU retains one hundred percent (100%) of any recovery or settlement under this Paragraph 8.3 after reimbursement of LSU's out-of-pocket expenses and payment to LICENSEE of any unrecovered expenses that LICENSEE pays at LSU's request to third parties in furtherance of such action (such payment not to exceed the recovery or settlement amounts LSU actually receives).

ARTICLE 9 - NO WARRANTIES; LIMITATION ON LSU'S LIABILITY

9.1 LSU, its board members, officers, employees and agents make no representations or warranties that PATENT RIGHTS are or will be held valid or enforceable, nor that the manufacture, importation, use, offer for sale, sale or other distribution of any LICENSED PRODUCTS or the use of LICENSED PROCESSES will be free from infringement of third party patent rights or other third party rights; nor respecting the scope of any of the PATENT RIGHTS.

9.2 LSU, ITS BOARD MEMBERS, OFFICERS, EMPLOYEES AND AGENTS MAKE NO REPRESENTATIONS, AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUME NO RESPONSIBILITIES WHATEVER WITH RESPECT TO DESIGN, DEVELOPMENT, MANUFACTURE, USE, SALE OR OTHER DISPOSITION BY LICENSEE OR SUBLICENSEES OF LICENSED PRODUCTS OR LICENSED PROCESSES.

9.3 LICENSEE AND SUBLICENSEES ASSUME THE ENTIRE RISK AS TO PERFORMANCE OF LICENSED PRODUCTS AND LICENSED PROCESSES. In no event shall LSU, including its board members, officers, employees and agents, be responsible or liable for any direct, indirect, special, incidental, or consequential damages or lost profits or other economic loss or damage with respect to LICENSED PRODUCTS or LICENSED PROCESSES, to LICENSEE, SUBLICENSEES or any other person or entity regardless of legal theory. The above limitations on liability apply even

though LSU, its board members, officers, employees or agents may have been advised of the possibility of such damage.

9.4 LICENSEE shall not, and shall require that its SUBLICENSEES do not, make any statements, representations or warranties whatsoever to any person or entity, or accept any liabilities or responsibilities whatsoever from any person or entity that are inconsistent with this Article 9.

ARTICLE 10 - INDEMNITY; INSURANCE

10.1 LICENSEE shall defend, indemnify and hold harmless and shall require all SUBLICENSEES to defend, indemnify and hold harmless LSU, its board members, officers, employees and agents, from and against any and all claims of any kind arising out of or related to the exercise of any rights granted LICENSEE under this Agreement or the breach of this Agreement by LICENSEE.

10.2 LSU is entitled to participate at its option and expense through counsel of its own selection, and may join in any legal actions related to any such claims, demands, damages, losses and expenses under Paragraph 10.1 above.

10.3 (a) Prior to the occurrence of any of the activities specified in subparagraph (b), LICENSEE shall purchase and maintain in effect a commercial general liability insurance policy, including product liability coverage, in the amount determined as set forth in subparagraph (c). Such policy shall provide reasonable coverage for all claims with respect to any LICENSED PROCESS used and any LICENSED PRODUCTS manufactured, used, sold, licensed, or otherwise distributed by LICENSEE.

(b) LICENSEE shall obtain the requisite insurance coverage prior to any manufacture of, use of, distribution of, sale of, offer for sale of, importation of, or commercial activity involving any LICENSED PRODUCT or LICENSED PROCESS, including use in any clinical trial.

(c) LICENSEE shall obtain the requisite insurance coverage in amounts consistent with industry practice applicable to the activity to be undertaken with the LICENSED PRODUCT or LICENSED PROCESS. LICENSEE shall provide LSU with written notice of the amount of insurance LICENSEE intends to obtain and which LICENSEE believes to be consistent with industry practice. LSU shall have the right to review this amount and shall have the right to require LICENSEE to increase the amount, consistent with current industry practice.

[OPTION for subparagraph C – if any use, distribution, or sale or other commercial use is anticipated to occur shortly (no more than 120 days) after agreement is signed and LSU and LICENSEE have already agreed upon the amount of coverage, the following can be substituted and included in the licensing agreement:]

(c) LICENSEE shall obtain the requisite insurance coverage with a policy limit of at least \$_____ per occurrence, with aggregate limits at least \$_____ per year. The maximum deductible may not exceed \$_____.

- (d) All insurance obtained pursuant to this Paragraph shall be with an insurer with a current A.M. Best rating of A+8 or better.
- (e) All insurance obtained pursuant to this Paragraph shall specify as additional insureds the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, including its board members, officers, agents and employees.
- (f) Prior to commencing any of the activities described in subparagraph (b), LICENSEE shall furnish to LSU a certificate of insurance evidencing that it has obtained the amount and type of insurance required pursuant to this Paragraph.
- (g) LICENSEE shall furnish current certificate(s) of insurance evidencing the required insurance coverage on an annual basis in the annual report due each July 31 under the provisions of Paragraph 4.1. At any time, LSU shall have the right to review the amount of insurance and to require LICENSEE to increase the amount, consistent with the current industry practice.
- (h) The provisions of this paragraph shall apply equally to any SUBLICENSEE (including any other authorized transferee of LICENSEE's interest which, for purposes of this paragraph only, shall be considered a SUBLICENSEE). Any contract or agreement between LICENSEE and SUBLICENSEE shall require that SUBLICENSEE comply with all insurance requirements provided for in this Paragraph in the same manner required of LICENSEE, including, but not limited to, the requirements for determining the amount, obtaining, and providing evidence of insurance to LSU. No SUBLICENSEE shall commence any of the activities described in subparagraph (b) without complying with the provisions of this Paragraph in the same manner required of LICENSEE.

ARTICLE 11 - TERM AND TERMINATION

11.1 If LICENSEE ceases to carry on its business (or that part of its business pertaining to LICENSED PRODUCTS and LICENSED PROCESSES), then this Agreement shall terminate upon written notice by LSU.

11.2 If LICENSEE fails to make any payment due to LSU, LSU shall have the right to terminate this Agreement effective on thirty (30) days' written notice, unless LICENSEE makes all such payments within the thirty (30) day period. If LICENSEE has not made all such payments to LSU by the time the thirty (30) day period expires, LSU may terminate this Agreement upon written notice to LICENSEE.

11.3 Upon any material breach or default of this Agreement by LICENSEE other than those occurrences listed in Paragraphs 5.5, 11.1 and 11.2 (the terms of which shall take precedence over this Paragraph 11.3, where applicable), LSU shall have the right to terminate this Agreement effective on sixty (60) days' written notice to LICENSEE. Such termination shall become automatically effective upon expiration of the sixty (60) day period unless LICENSEE cures the material breach or default before the sixty (60)-day period expires.

11.4 In the event LICENSEE brings a civil action seeking, through ordinary, declaratory or any other form of relief, to invalidate any patent licensed under this Agreement, LSU may immediately terminate this Agreement upon written notice to LICENSEE.

11.5 LICENSEE has the right to terminate this Agreement at any time on sixty (60) days' written notice to LSU, with or without cause. In such a case, LICENSEE shall:

- (a) pay all amounts due LSU through the effective date of the termination;
- (b) submit a final report in compliance with Paragraph 4.2;
- (c) return any confidential or tradeseecret materials provided to LICENSEE by LSU in connection with this Agreement; or, with prior written approval by LSU, destroy such materials, and certify in writing that such materials have all been returned or destroyed ;
- (d) suspend its use of the LICENSED PROCESS(ES) AND LICENSED PRODUCT(S);
- (e) provide LSU with all unpatented data and know-how developed by LICENSEE in the course of LICENSEE's efforts to develop LICENSED PRODUCTS and LICENSED PROCESSES. LSU shall have the right to use such data and know-how for any purpose whatsoever, including the right to transfer same to future licensees; and
- (f) provide LSU with a copy of any regulatory data or information filed with any U.S. or foreign government agency with respect to LICENSED PRODUCTS and LICENSED PROCESSES.

11.6 Upon any termination of this Agreement, and except as expressly provided herein to the contrary, all rights and obligations of the parties hereunder shall cease, except any previously accrued rights and obligations and further as follows:

- (1) Obligations to pay running royalties and other sums accruing hereunder through the day of termination, and to make a final report under Paragraph 4.2;
- (2) LSU's rights to inspect books and records as described in Article 4, and LICENSEE's obligations to keep such records for the required time;
- (3) Obligations to hold harmless, defend and indemnify LSU and its board members, officers, employees and agents, and to maintain insurance, and all other obligations under Article 10;
- (4) Any cause of action or claim of LICENSEE or LSU accrued or to accrue because of any breach or default by the other party hereunder;
- (5) The provisions of Articles 1, 9, 13 and 14; and

- (6) All other terms, provisions, representations, rights and obligations contained in this Agreement that by their sense and context are intended to survive until performance thereof by either or both parties.

ARTICLE 12 - REGISTRATION AND RECORDATION

12.1 If the terms of this Agreement, or any assignment or license under this Agreement are or become such as to require that the Agreement or license or any part thereof be registered with or reported to a national or supranational agency of any area in which LICENSEE or SUBLICENSEES would do business, then LICENSEE will, at its own expense, undertake such registration or report. Prompt notice and appropriate verification of the act of registration or report or any agency ruling resulting from it will be supplied by LICENSEE to LSU.

12.2 LICENSEE shall also carry out, at its expense, any formal recordation of this Agreement or any license herein granted that the law of any country requires as a prerequisite to enforceability of the Agreement or license in the courts of any such country or for other reasons, and shall promptly furnish to LSU appropriately verified proof of recordation.

ARTICLE 13 - NOTICES

13.1 Any notice, request, report or payment required or permitted under this Agreement shall be effective when deposited in the United States Mail, first class prepaid to the address set forth below, or such other address as such party specifies by written notice given in conformity herewith. Any notice, request, report or payment given by any other means is not effective until actually received by an authorized representative of a party.

To LSU: { Director }
 { Office of Intellectual Property }
 { Address; building and office }
 { Street Address }
 { Campus Name }
 [City, State, ZIP }

To LICENSEE: { LICENSEE, Inc. }
 { Street address }
 { City, State ZIP }

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 This Agreement shall be construed, governed, interpreted and applied according to the laws of the United States and of the State of Louisiana, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

14.2 In the event of a controversy or claim arising out of or relating to this Agreement, the PATENT RIGHTS, or the KNOW HOW, or to the breach, validity, or termination of this Agreement or to the validity, infringement, or enforceability of PATENT RIGHTS, the parties shall first negotiate in good faith for a period of sixty days to try to resolve the controversy or claim. If the controversy or claim is unresolved after these negotiations, the parties shall then make good-faith efforts for sixty days to mediate the controversy or claim in Baton Rouge, Louisiana before a mediator selected by the International Institute for Conflict Prevention and Resolution, (New York, New York) (“CPR”), under CPR’s Mediation Procedure then in effect. If the controversy or claim is unresolved after mediation, on the written demand of either party any controversy arising out of or relating to this Agreement or to the breach, termination, or validity of this Agreement shall be settled by binding arbitration in Baton Rouge, Louisiana in accordance with CPR’s Rules for Non-Administered Arbitration of Patent and Trade Secret Disputes then in effect, before a single arbitrator. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. All applicable statutes of limitation and defenses based on the passage of time shall be tolled while the procedures described in this Paragraph 14.2 are pending. LSU and LICENSEE shall each take such action, if any, required to effectuate this tolling. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement. Otherwise, any controversy arising under or relating to this Agreement, or the breach, termination, or validity of this Agreement, may be adjudicated only in a court, state or federal, having jurisdiction over the subject matter and including Baton Rouge, Louisiana within its territorial district. Both parties consent to the jurisdiction and venue of such a court. A party's right to demand arbitration of a particular dispute arising under or related to this Agreement, or the breach, termination, or validity of this Agreement, shall be waived if that party either: (1) brings a lawsuit over that controversy or claim against the other party in any state or federal court; or (2) does not make a written demand for mediation, arbitration, or both within 60 days of service of process on that party of a summons or complaint from the other party instituting such a lawsuit in a state or federal court of competent jurisdiction. As a condition precedent to any mediation, arbitration or lawsuit brought by LICENSEE, an AFFILIATE, or any SUBLICENSEE challenging the validity of a United States patent within Licensed Patents, where that validity is challenged in whole or in part on the basis of prior art consisting of patents or printed publications, the challenger of that validity must first request reexamination of the challenged patent in the United States Patent and Trademark Office based on that prior art, and must await either the denial of the reexamination request, or if the request is granted, the conclusion of reexamination proceedings, before filing any such lawsuit or bringing any such mediation or arbitration.

14.3 LSU and LICENSEE agree that this Agreement sets forth their entire understanding concerning the subject matter of this Agreement, and that no modification of the Agreement will be effective unless both LSU and LICENSEE agree to it in writing. LICENSEE shall reimburse LSU for any legal expenses incurred in connection with negotiating any amendments to this Agreement that may be requested by LICENSEE, regardless of whether the amendment is ultimately executed by the parties.

If a non-disclosure, material transfer or other agreement is in place between LSU and LICENSEE at the time this Agreement is executed, consider mention of such agreement and

whether the other agreement is intended to continue in effect; or if the present Agreement is intended to supersede the prior agreement.

14.4 If a court of competent jurisdiction or an arbitrator finds any term of this Agreement invalid, illegal or unenforceable, that term will be curtailed, limited or deleted, but only to the extent necessary to remove the invalidity, illegality or unenforceability, and without in any way affecting or impairing the remaining terms.

14.5 LICENSEE agrees to mark all LICENSED PRODUCTS sold in the United States with all applicable United States patent numbers. All LICENSED PRODUCTS shipped to or sold in other countries shall be marked to comply with the patent laws and practices of the countries of manufacture, use and sale.

14.6 No waiver by either party of any breach of this Agreement, no matter how long continuing nor how often repeated, is a waiver of any subsequent breach thereof, nor is any delay or omission on the part of either party to exercise or insist on any right, power, or privilege hereunder a waiver of such right, power or privilege.

14.7 LICENSEE agrees to refrain from using and to require SUBLICENSEES to refrain from using the name of LSU in publicity or advertising without the prior written approval of LSU. Reports in scientific literature and presentations of joint research and development work are not considered to be “publicity” for this purpose. Notwithstanding this provision, without prior written approval of LSU, LICENSEE and SUBLICENSEES may use LSU’s name in any submission to a government agency as required by law.

14.8 LICENSEE shall comply with all applicable laws and regulations. By way of example, LICENSEE understands and acknowledges that the transfer of certain commodities and technical data is subject to United States laws and regulations controlling the export of such commodities and technical data, including the Export Administration Regulations of the United States Department of Commerce. These laws and regulations prohibit or require a license for the export of certain types of technical data to specified countries. LICENSEE shall comply with all United States laws and regulations controlling the export of commodities and technical data, and shall be solely responsible for any violation of such laws and regulations by LICENSEE or its SUBLICENSEES, and shall defend, indemnify and hold harmless LSU and its board members, officers, employees and agents if any legal action of any nature results from the violation. LICENSEE agrees to comply with the Health Insurance Portability and Accountability Act, and to defend and hold harmless LSU and its board members, officers, employees and agents if any legal action of any nature results from any violation thereof.

14.9 The relationship between the parties is that of independent contractors. Neither party is an agent or employee of the other in connection with the exercise of any rights hereunder, and neither has any right or authority to assume or create any obligation or responsibility on behalf of the other.

14.10 Inventorship for any future inventions, whether resulting from access to LSU's know-how and inventions or otherwise, will be determined by the U.S. Patent laws, 35 U.S.C. §1 *et seq.* If LICENSEE should invoke the CREATE Act (pursuant to 35 U.S.C. §103(c)) to overcome any prior art rejections during the prosecution of LICENSEE-owned patent applications, then all

patents obtained by LICENSEE by asserting that this license is a joint research agreement under the CREATE Act will be jointly owned by LSU and LICENSEE, and LSU's rights in such patents will automatically become part of the PATENT RIGHTS licensed under this Agreement.

14.11 Neither party hereto is in default of any provision of this Agreement for any failure in performance resulting from acts or events beyond the reasonable control of such party, such as Acts of God, acts of civil or military authority, civil disturbance, war, strikes, fires, natural catastrophes or other "force majeure" events.

14.12 LICENSEE may not assign this Agreement without the prior written consent of LSU and shall not pledge any of the license rights granted in this Agreement as security for any creditor. Any attempted pledge of any of the rights under this Agreement or any attempted assignment of this Agreement without the prior written consent of LSU will be void from the beginning. No assignment by LICENSEE will be effective until the intended assignee agrees in writing to accept all of the terms and conditions of this Agreement.

14.13 If during the term of this Agreement, LICENSEE makes or attempts to make an assignment for the benefit of creditors, or if proceedings in voluntary or involuntary bankruptcy or insolvency are instituted on behalf of or against LICENSEE, or if a receiver or trustee is appointed for the property of LICENSEE, LSU may, at its option, terminate this Agreement and revoke the license(s) herein granted by written notice to LICENSEE. LICENSEE shall notify LSU of any such event mentioned in this Paragraph 14.13 as soon as reasonably practicable, and in any event within five (5) days after any such event.

14.14 Whereas LSU is an academic institution, LSU shall be free to make such publications as LSU sees fit concerning the technology disclosed in the PATENT RIGHTS or in KNOW HOW.

14.15 If it becomes necessary for one party to employ the services of an attorney for the protection and enforcement of its rights under the Agreement, or to compel performance of the other party's obligations under the Agreement, upon final judgment or award by a court of competent jurisdiction or by an arbitrator, the court or arbitrator in its discretion may order the defaulting party to pay the other party's reasonable attorney's fees at both trial and appellate levels.

14.16 LSU will entertain requests by LICENSEE to allow LSU employees, acting independently of their employment at LSU, to serve as consultants to LICENSEE. The terms and conditions of such a consulting agreement shall be negotiated between LICENSEE and the prospective consultant, and shall be consistent with the laws of the State of Louisiana and the rules, regulations, and policies of LSU, including without limitation, Permanent Memorandum 11. It is understood that LSU employees who act as consultants may not ordinarily grant rights in intellectual property to an outside employer.

Add the following if any LSU employees are principals in the LICENSEE, or otherwise have an equity interest or a management, director, or employment position in the LICENSEE:

ARTICLE 15 - CONFLICT OF INTEREST MANAGEMENT

15.1 This Agreement is subject to the provisions of LSU's Permanent Memorandum 67, and the Louisiana Code of Governmental Ethics.

15.2 Unless LSU provides appropriate formal written approvals, all development, manufacture, and marketing of LICENSED PRODUCTS and LICENSED PROCESSES will take place without the use of LSU funds, facilities, other resources of LSU, or funds administered by LSU.

15.3 LICENSEE shall cooperate with LSU in developing and implementing appropriate plans for management of potential conflicts of interest and conflicts of LSU employees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives.

LICENSEE

BOARD OF SUPERVISORS OF
LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL
COLLEGE

By _____
(authorized representative)

By _____
(authorized representative)

Typed Name _____

Typed Name _____

Title _____

Title _____

Date _____

Date _____

Version 01.12.07

APPENDIX A

TO THE LICENSE AGREEMENT FOR LSU FILE _____
EFFECTIVE THE _____ DAY OF _____, 20____
BETWEEN _____
AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL COLLEGE

PATENTS, PATENT APPLICATIONS, and KNOW HOW

Add the following if LSU is taking equity for consideration:

APPENDIX B

TO THE LICENSE AGREEMENT FOR LSU FILE _____
EFFECTIVE THE _____ DAY OF _____, 20____
BETWEEN _____
AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL COLLEGE

STOCK TRANSFER AGREEMENT

THIS STOCK TRANSFER AGREEMENT (this “**Agreement**”) is entered into as of the _____ day of _____, 20__, by and among _____, a _____ **[corporation][limited liability company]** (the “**Company**”), and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public constitutional corporation, organized and existing under the laws of the State of Louisiana (“**LSU**”).

This Agreement implements the terms of Paragraph 3.9, including subparts, of that certain License Agreement by and between the Company and LSU effective as of the _____ day of _____, 20__ (the “**License Agreement**”). Capitalized terms in this Agreement shall have the meanings ascribed to such terms in the License Agreement unless provided otherwise herein.

In accordance with Paragraph 3.9 of the License Agreement and in further consideration of the mutual promises, covenants and terms hereinafter set forth, the Company and LSU hereby agree as follows:

1. Issuance of Common Stock to LSU. Subject to the terms set forth in this Agreement, the Company hereby issues and transfers to LSU the number of **[shares][units]** of Common Stock set forth on Schedule A (the “**LSU Common Stock**”), which as of the date hereof represents the APPLICABLE PERCENTAGE of all the current issued and outstanding **[shares of capital stock][units]** of the Company on a fully diluted basis. “**Fully diluted**” for purposes of this Agreement shall have the meaning set forth in Paragraph 3.9.1 of the License Agreement. All **[shares][units]** of the LSU Common Stock are evidenced by certificates duly issued and executed by the Company in the name of LSU and shall be delivered to LSU simultaneous with its execution of this Agreement.

2. LSU Common Stock Rights. The LSU Common Stock shall possess all rights and privileges granted to holders of Common Stock as provided in the Company’s Certificate of **[Incorporation][Formation]** filed with the _____ Secretary of State on _____, 20__ (the “**Certificate**”), the Company’s **[Bylaws][Operating Agreement]** adopted _____, 20__, and applicable law.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to LSU as follows as of the date hereof:

(a) Organization; Good Standing; Qualification. The Company is a _____ duly organized and validly existing under, and by virtue of, the laws of the State of _____ and is in good standing under such laws. The Company has the

requisite [**corporate**] power to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is in good standing and qualified to do business as a foreign corporation in Louisiana and every other jurisdiction where required by law.

(b) Stock. The Company has _____ shares of Common Stock duly authorized, of which _____ are issued and outstanding. [**Describe other classes of capital stock, if any, authorized and all outstanding, options, warrants, etc.**]

(c) [Corporate] Power. The Company has all requisite legal and [**corporate**] power and authority to enter into this Agreement, to issue and transfer the shares of LSU Common Stock hereunder and to carry out and perform its obligations under the terms of this Agreement.

(d) Authorization. Issuance of all [**shares**][**units**] of the LSU Common Stock has been duly authorized, and all such [**shares**][**units**] are validly issued, fully paid and nonassessable, and free of any liens, encumbrances, or security interests whatsoever; *provided, however*, that the LSU Common Stock may be subject to restrictions on transfer under state and/or federal securities laws [**describe other restrictions on transfer, if any**].

(e) Certificate; Bylaws. A true and complete copy of the Certificate, including all amendments thereto, is attached hereto as Exhibit 1. A true and complete copy of the Bylaws of the Company, including all amendments thereto, is attached hereto as Exhibit 2.

(f) The Company has the full right, power and authority to enter into this Agreement and to make the representations and warranties contained herein, and this Agreement constitutes the valid and binding obligation of the Company enforceable in accordance with its terms.

(g) No consent, approval or authorization of, or designation, declaration or filing with, any governmental authority or other person, firm or entity on the part of the Company is required in connection with the valid execution, delivery or performance of this Agreement by the Company.

4. Representations and Warranties of LSU. LSU hereby represents and warrants to the Company as follows:

(a) (i) Except for the transfer of a portion of the LSU Common Stock as permitted by Paragraph 4(a)(iii), the LSU Common Stock is being (and with respect to any additional LSU Common Stock issued to LSU in the future pursuant to Paragraph 3.9 of the License Agreement, will be) acquired for LSU's own account, for investment and not with a view to, or for the purpose of resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act of 1933 as amended ("**Securities Act**") or applicable state securities laws.

(ii) LSU does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or otherwise dispose of the LSU Common Stock except for transfers to inventor(s) pursuant to Paragraph 4(a)(iii).

(iii) At the request of LSU, a portion of the LSU Common Stock may be transferred to and registered in the name of the inventor(s) as permitted by the Regulations of LSU.

(b) LSU understands that the [shares][units] LSU Common Stock has not been registered under the Securities Act by reason of their issuance in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act.

(c) LSU has the full right, power and authority to enter into this Agreement and to make the representations and warranties contained herein, and this Agreement constitutes valid and binding obligations of LSU enforceable in accordance with its terms.

(d) No consent, approval or authorization of, or designation, declaration or filing with, any governmental authority on the part of LSU is required in connection with the valid execution, delivery or performance of this Agreement by LSU.

(e) LSU is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

5. Legend. LSU understands and acknowledges that the certificates representing the LSU Common Stock will be endorsed with the following legend:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND EXCEPT FOR THE TRANSFER OF A PORTION OF THE LSU COMMON STOCK AS PERMITTED BY PARAGRAPH 4(A)(iii) OF THE STOCK TRANSFER AGREEMENT BETWEEN THE COMPANY AND LSU DATED AS OF _____, 20____, MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES, THE TRANSFER IS MADE IN COMPLIANCE WITH RULE 144 PROMULGATED UNDER SUCH ACT OR SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT.

The Company need not register a transfer of any shares of LSU Common Stock, and may also instruct its transfer agent not to register the transfer of any [shares][units] of LSU Common Stock, unless the conditions specified in the foregoing legend are satisfied.

6. Miscellaneous.

(a) Governing Law. This Agreement shall be governed in all respects by the laws of the State of Louisiana. The parties agree that any action brought by any party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in East Baton Rouge Parish, Louisiana.

(b) Survival. The representations, warranties, covenants and agreements made herein shall survive the execution of this Agreement and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Company or LSU.

- (c) Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. The Company may not assign this Agreement.
- (d) Entire Agreement. This Agreement, including the Exhibits to this Agreement and the License Agreement, constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof. Any prior agreements, understandings or representations with respect to the subject matter hereof and thereof, is superseded by this Agreement and the License Agreement and shall have no further force or effect.
- (e) Notices. All notices and other communications required or permitted hereunder shall be in writing, shall be sent via facsimile, overnight courier service or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed or sent to the parties at their respective addresses set forth on the signature page to this Agreement and shall be effective upon receipt.
- (f) Severability. In case any provision of this Agreement shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (g) Expenses. Each party shall bear its respective expenses and legal fees incurred with respect to this Agreement and the transactions contemplated herein.
- (h) Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. For purposes hereof, facsimile and electronically scanned copies hereof and facsimile and electronically scanned signatures hereof shall be authorized and deemed effective.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Stock Transfer Agreement as of the day and year first above written.

“COMPANY”

a _____ **[corporation]**

By: _____
Name: _____ Title: _____

Address:

Attention: _____

**THE BOARD OF SUPERVISORS OF
LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL
COLLEGE**

By: _____

Name: _____

Title: President

Address:

LSU System Office

LSU Campus

3810 Lakeshore Drive

Baton Rouge, LA 70808

Attention: President

SCHEDULE A
INITIAL ISSUANCE OF LSU COMMON STOCK

[shares][units]

EXHIBIT 1
CERTIFICATE OF [INCORPORATION][FORMATION] OF THE COMPANY

EXHIBIT 2
[BYLAWS][OPERATING AGREEMENT] OF THE COMPANY

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