

LSU EXPRESS LICENSE FOR FACULTY START-UPS

THIS EXCLUSIVE LICENSE (“Agreement”) is made and entered into as of the [_____] day of [____], 20[___] (“**Effective Date**”) by and between 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**”) and [____], a [corporation/limited liability company/etc.] existing under the laws of the State of [____] and having its principal offices at [_____] (“**Licensee**”).

WITNESSETH:

WHEREAS LSU exclusively owns all right, title and interest in the Invention and the Patent Rights (defined below); and

WHEREAS LSU desires to license the Patent Rights in a manner that will benefit the public, enhance economic development, and facilitate the distribution of useful new products and processes; and

WHEREAS Licensee is a start-up company with at least one LSU faculty member as a founder; and

WHEREAS Licensee desires to obtain a license to use the Invention and commits to a thorough, vigorous, and diligent program of commercializing products and processes based upon or embodying the Invention under the terms and conditions set forth herein; and

WHEREAS Licensee has submitted a detailed business plan indicating strategies to develop and commercialize the Invention;

NOW, THEREFORE, LSU and Licensee, in consideration of the foregoing and the mutual promises contained herein and intending to be legally bound hereby, agree as follows:

1. DEFINITIONS

As used herein:

- 1.1 “**Affiliate**” shall mean a corporation, limited liability company or other business entity controlling, controlled by or under common control with Licensee; with “control” meaning the direct or indirect ownership of more than fifty percent (50%) of the voting or other interests in such corporation, company or other entity or the power to direct or cause the direction of the management or policies of such entity.

- 1.2 “**Clinically-Approved Product**” shall mean any Product for which FDA approval or clearance (or any foreign equivalent thereof), which is granted or withheld on the basis of the results of human clinical trials of such Product, is required prior to Sale of such Product for use by humans.
- 1.3 “**FDA**” shall mean the United States Food and Drug Administration.
- 1.4 “**Field of Use**” shall mean all fields of use.
- 1.5 “**Invention**” shall mean the invention that is described in LSU Invention Disclosure Number [_____] and claimed in U.S. Patent Application Serial Number [_____] , filed on [_____] , titled [_____] , and naming as inventors [_____] .
- 1.6 “**Liquidity Event**” shall be defined as that term is commonly understood by investors and shall include, but not be limited to, an initial public offering or acquisition, merger, or sale of substantially all of the business or assets of the product line using the Invention.
- 1.7 “**Net Selling Price**” shall mean the actual gross invoice price of Products Sold by Licensee and any Sublicensee, less only usual trade discounts actually allowed to unaffiliated persons or entities, sales tax which the Licensee or Sublicensee must pay, customs duties and transportation and insurance charges, if included in the gross invoice price, and any and all Federal, foreign, state or local taxes (except income tax) actually incurred by the Licensee or Sublicensee on such Sales.
- 1.8 “**Other Product**” shall mean any Product that is not a Clinically-Approved Product.
- 1.9 “**Patent Rights**” shall mean LSU’s rights in the Patents, as defined in Paragraph 1.10.
- 1.10 “**Patent**” shall mean any pending patent application or issued patent disclosing and claiming the Invention, including a reissue patent, a patent issuing from a continuation application, divisional application or continuation-in-part application (to the extent that the claimed subject matter of such continuation-in-part is disclosed and enabled in the parent Patent), and any corresponding foreign patent application or foreign patent.
- 1.11 “**Product(s)**” shall mean any method(s) or product(s) covered by one or more pending or issued claims in the Patent Rights.
- 1.12 “**Sale(s)**”, “**Sell**”, or “**Sold**” shall mean any sale, transfer, lease, license, use, permission to use, or other transfer of the right of possession or other conveyance by Licensee or any Sublicensee.
- 1.13 “**Sublicensee**” shall mean the holder of any sublicense granted by Licensee as provided in Article 5, including but not limited to an Affiliate.

1.14 “Territory” shall mean worldwide.

2. GRANT OF LICENSE

2.1 Subject to Paragraph 2.2 and the other terms of this Agreement, LSU hereby grants to Licensee an exclusive, nontransferable license (except as provided in Section 27.1), with the right of sublicense as set forth in Article 5, under the Patent Rights to make, have made, sell, offer for sale, use, and import Products throughout the Territory in the Field of Use.

2.2 As applicable, notwithstanding anything to the contrary contained herein and pursuant to 35 U.S.C. 200-212 (together with its corresponding regulations, the “Bayh-Dole Act”), the United States government retains for itself a non-exclusive, non-transferable, irrevocable, fully paid-up license under the Patent Rights to practice and have practiced the Invention on behalf of the United States government throughout the Territory. Furthermore, this Agreement and the licenses granted herein are expressly subject to all applicable United States government rights as provided by the Bayh-Dole Act and any regulations issued thereunder, as may be amended from time to time.

2.3 Licensee shall not export any Products or enter into any sublicense or assignment of the license (as provided in Paragraph 27.1) without fully and completely complying with any and all United States export or munitions control laws and regulations.

2.4 Any provision of this Agreement to the contrary notwithstanding, LSU reserves an irrevocable, nonexclusive, royalty-free license under the Patent Rights to make and use the Invention for educational or research or development activities, whether practiced by LSU alone or with one or more third parties.

2.5 Any rights related to the Products not expressly granted to Licensee hereunder are reserved by LSU.

3. CONSIDERATION

3.1 As consideration for the licenses granted and described in Article 2, Licensee shall pay LSU the following:

3.1.1 royalties as set forth in Article 4.

3.1.2 patent costs and expenses incurred prior to the Effective Date (“Past Patent Expenses”). As of the Effective Date, the Past Patent Expenses totaled \$_____. Such Past Patent Expenses shall be paid in accordance with the following schedule:

- (i) One third of Past Patent Expenses, due on or before one year from the Effective Date;
- (ii) One third of Past Patent Expenses, due on or before two years from the Effective Date; and
- (iii) The final third of Past Patent Expenses, due on or before three years from the Effective Date.

3.1.3 future patent costs and expenses pursuant to Paragraph 8.1

3.1.4 an annual maintenance fee (“Annual Fee”) according to the following schedule. The Annual Fee is due for each complete calendar year beginning with the third complete calendar year following the Effective Date, and is due on or before January 31st for the previous calendar year. The Annual Fee may be credited in full against running royalties due under Article 4 for the same calendar year for which the specific Annual Fee is due. This credit may not otherwise be carried forward or back for any other year. This credit may not be used to offset any other payment due LSU, except for running royalties under Article 4. The Annual Fees are:

- | | |
|--|----------|
| (a) 3 rd through 5 th calendar years: | \$5,000 |
| (b) 6 th through 9 th calendar years: | \$10,000 |
| (c) 10 th calendar year and
each calendar year thereafter: | \$15,000 |

- 3.2 All payments to LSU under this Agreement shall be made in U.S. Dollars at LSU’s address for notices under Article 20.
- 3.3 As additional consideration for the licenses granted hereunder and as a condition precedent to the effectiveness of any assignment of this Agreement pursuant to Section 27.1, Licensee shall pay LSU a one-time amount equal to one percent (1.0%) of the value of the first Liquidity Event as defined in Paragraph 1.6. Such payment shall be made in cash no later than thirty (30) days from the date of such Liquidity Event.
- 3.4 Licensee shall provide LSU with an updated copy of a list of Licensee’s shareholders (or members, partners, etc., as appropriate) and Licensee’s capitalization (“**Capitalization Table**”) annually not later than March 1 of each calendar year, and also within thirty (30) days following any changes thereto. At a minimum, the Capitalization Table will contain an accurate accounting of all securities issued by Licensee, regardless of type (common and preferred shares, options, warrants, etc.), in the amount distributed to each individual and/or entity holder thereof and reserved for issuance. LSU at its sole discretion may

reasonably request additional information regarding an equity holder for purposes of conflict of interest management.

4. ROYALTIES

4.1 Licensee shall pay LSU a running royalty based on the Net Selling Price of Products Sold by Licensee and each Sublicensee in the amounts shown below:

4.1.1 Two percent (2%) of the Net Selling Price of Clinically-Approved Products; and

4.1.2 Four percent (4%) of the Net Selling Price of Other Products.

4.2 Payment of running royalties for Sales made during each calendar quarter or portion thereof shall be made within thirty (30) days after the last day of the calendar quarter. Licensee shall submit to LSU with each such quarterly payment a statement reflecting the total gross Sales by Licensee and all Sublicensees, the Net Selling Price for each Product Sold by Licensee and all Sublicensees, and any and all applicable deductions under Paragraph 1.7 used to calculate Net Selling Price. In the event that, after first Sale of any Product, there are no Sales made during a given calendar quarter, Licensee shall provide LSU with a statement within thirty (30) days after the last day of such calendar quarter reporting that no Sales were made during such quarter.

4.3 Licensee shall be directly responsible for paying all royalties due hereunder to LSU, and LSU shall not be required to look to any Sublicensee or other entity for payment.

4.4 Running royalties on Sales that are made in currencies other than U.S. Dollars shall be calculated using the appropriate foreign exchange rate for such currency as published in the Wall Street Journal on the last day of the calendar quarter for which such royalties are due and payable.

4.5 If either party terminates this Agreement prior to its expiration as set forth in Article 19 below, all outstanding royalties through the date of termination shall be paid to LSU within thirty (30) days.

4.6 All non-U.S. taxes or any other fees or duties related to royalty payments shall be paid by Licensee and are not deductible from payments due LSU.

5. SUBLICENSES

5.1 Subject to this Article and Paragraph 2.3, Licensee may grant sublicenses pursuant to written sublicense agreements, provided that each sublicense agreement contains a

provision that such sublicense and the rights thereby granted are personal to the Sublicensee and such sublicense may not be further assigned or sublicensed. Licensee agrees to deliver to LSU a true and correct copy of each and every sublicense agreement entered into by Licensee within thirty (30) days after execution thereof, and shall promptly advise LSU in writing of any modification or amendment or termination of each sublicense agreement, and shall supply a copy to LSU.

- 5.2 Any sublicense granted pursuant to this Article 5 shall be in accordance with and subject to the terms, conditions and limitations of this Agreement, including but not limited to the same protections for LSU's name, export compliance, insurance requirement, disclaimers, and indemnification as set forth herein.
- 5.3 As provided in Paragraph 4.1, royalties shall be payable by Licensee on all Products Sold by Licensee and any Sublicensee, and such royalty payment provisions shall be included in all sublicense agreements.
- 5.4 Should Licensee grant any sublicense in accordance with this Article 5, Licensee shall pay LSU a cash amount equivalent to a percentage of any sublicensing consideration paid by Sublicensee to Licensee in consideration for the grant of such sublicense, excluding only royalty payments covered in Paragraph 4.1 and payments to Licensee for *bona fide* research and development performed by Licensee. Licensee shall pay LSU a percentage of such sublicensing consideration according to the following schedule:
 - 5.4.1 Fifty percent (50%) for any sublicense granted by Licensee within twelve months of the Effective Date;
 - 5.4.2 Forty percent (40%) for any sublicense granted by Licensee between twelve and twenty-four months from the Effective Date;
 - 5.4.3 Thirty percent (30%) for any sublicense granted by Licensee between twenty-four and thirty-six months from the Effective Date;
 - 5.4.4 Twenty percent (20%) for any sublicense granted by Licensee between thirty-six and forty-eight months from the Effective Date; and
 - 5.4.5 Ten percent (10%) for any sublicense granted by Licensee after forty-eight months from the Effective Date.

Such payment shall be due no later than thirty (30) days from date Licensee receives the payment from the Sublicensee.

- 5.5 Licensee acknowledges and agrees that (i) the use of a sublicense shall not relieve the Licensee of any of its obligations, duties or limitations under this Agreement; and (ii) any

action or omission of a Sublicensee shall have the same consequence or effect as if such action or omission was Licensee's own.

5.6 Sublicenses to Affiliates shall be subject to this Article 5, except for Paragraph 5.4.

6. REPORTS AND AUDIT RIGHTS

6.1 Annually, not later than March 1 of each calendar year following first Sale of Product, Licensee shall furnish to LSU a statement showing the Net Selling Price for each Product, and the number of Products Sold by Licensee and each Sublicensee during the preceding calendar year or portion thereof, and the royalties payable thereon, calculated in the manner set forth in Article 4. In addition, such annual report shall detail the following, when applicable, for the preceding calendar year or portion thereof: (i) gross income on Sales of Product; (ii) the stage of development of all Products; (iii) the date of first commercial Sale or use of a Product; (iv) a description of any sublicensing activities and sublicensing payments received and whether any of such sublicenses were granted to small business concerns as defined by the Small Business Administration; (v) the status of substantial United States manufacture of Products as required under the Bayh-Dole Act if applicable; (vi) the commercial name of any FDA-approved Products; (vi) evidence of insurance as required pursuant to Paragraph 13.1; and (vii) the status of, or progress towards, all Milestones under Section 7 and Appendix A.

6.2 Licensee shall keep at its principal place of business, and require each Sublicensee to keep at its principal place of business, true and particular accounts of all matters connected with the use of the Invention and the manufacture and Sale of Products and shall keep books of account relating to royalties payable hereunder, containing complete and accurate accounts in sufficient detail as may be necessary or proper for enabling the amount of such royalties to be reasonably ascertained, including but not limited to the necessary records to calculate Net Selling Price.

6.3 If requested in writing by LSU, Licensee and any Sublicensee shall upon reasonable notice permit LSU or its representatives to make an examination and audit during normal business hours of all records required to be kept pursuant to Paragraph 6.2. Licensee shall promptly pay LSU any amounts the audit reveals are owed to LSU, and LSU shall credit Licensee against future royalties for any amounts the audit reveals have been overpaid by Licensee. If such audit reveals underpayments to LSU in excess of five percent (5%) of the payments made to LSU by Licensee, Licensee will pay all costs associated with such audit or will reimburse LSU for all costs associated with such audit within ten (10) days of receipt of an invoice from LSU.

7. INITIAL DEVELOPMENT AND FULL USE OF INVENTION

- 7.1 As soon as reasonably practicable after the Effective Date, Licensee shall take all reasonable steps to meet the requirements of the market for the Invention by developing, marketing and offering for Sale Products in sufficient quantities to meet a reasonable commercial demand. Licensee agrees to meet the milestones set forth in Appendix A attached hereto and incorporated herein by this reference (“**Milestones**”), and shall notify LSU in writing that it has met each of such Milestones within thirty (30) days of each such event.
- 7.2 In the event that Licensee fails to timely meet the Milestones in Appendix A, Licensee shall provide LSU with a written report outlining the efforts undertaken thus far and the steps Licensee will take to meet the unsatisfied Milestone, which shall also include an adjustment in the time required to meet such Milestone (“**Time Adjustment Proposal**”). Such report shall be submitted to LSU for consideration within thirty (30) days after the failure to meet the Milestone. If Licensee fails to supply the report, or if LSU in its discretion declines to accept the Time Adjustment Proposal, or if Licensee fails to meet the new deadlines set in the Time Adjustment Proposal approved by LSU, then LSU shall have the option in its sole discretion to terminate this Agreement pursuant to Article 19 or to allow this Agreement to continue in full force and effect.
- 7.3 Until Licensee completes its first Sale of any Product and notifies LSU of same, Licensee shall provide written semi-annual reports to LSU not later than March 1 and September 1 of each calendar year detailing the progress made to bring the Invention to market, including without limitation, details of the following, when applicable: the stage of development of all Products, including any Milestones met; date of first commercial Sale or use of a Product; any sublicensing activities, sublicensing payments received, and whether any of such sublicenses were granted to small business concerns as defined by the Small Business Administration; status of substantial United States manufacture of Products as required under the Bayh-Dole Act; and, the commercial name of any FDA-approved Products. Further, in addition to the information above, each March 1 report shall include evidence of insurance as required pursuant to Paragraph 13.1.

8. PROTECTION OF INTELLECTUAL PROPERTY

- 8.1 On and after the Effective Date, Licensee shall reimburse LSU for all reasonable future expenses associated with filing, prosecuting, and maintaining any and all United States and foreign patent applications and patents within the Patent Rights (collectively “**Intellectual Property Protection**”). Such reimbursement by Licensee shall be due within thirty (30) days of receipt of LSU’s invoice. LSU shall control all aspects of drafting, filing, prosecuting, and maintaining all Intellectual Property Protection in LSU’s discretion.

- 8.2 LSU shall consult with Licensee to determine appropriate actions to protect the Invention. LSU shall also consult with Licensee prior to abandoning any applications or patents within the Patent Rights. LSU will provide Licensee with copies of all applications, correspondence to and from patent offices, and copies of draft patent applications and communications in response to patent office communications no later than 20 days from the date of any final deadline. Any advice and suggestions made by Licensee shall not be rejected unreasonably, but final decisions shall be in LSU's discretion.
- 8.3 If patent protection is obtained, Licensee shall cooperate with LSU in enforcing or policing such protection as provided in Article 9 and by taking all reasonably appropriate measures as required and taking other reasonable measures as mutually agreed to by LSU and Licensee.
- 8.4 If, at any time during the term of this Agreement, Licensee wants to cease payment and abandon its license in any or all of the Patent Rights, it shall notify LSU of that decision at least three (3) months prior to any deadline for filing any response or taking any other action necessary to maintain any such Intellectual Property Protection or Patent Rights. Thereafter, LSU shall have the sole and exclusive responsibility for the prosecution of any such Intellectual Property Protection or the maintenance of any such Patent Rights. In such an event, Licensee shall immediately forfeit all of its rights granted under this Agreement, in and to the Patent Rights abandoned in the affected jurisdiction(s), and such abandoned rights shall immediately revert to LSU. No election by Licensee under this Paragraph 8.4 shall relieve Licensee of any obligations that arose prior to the date of Licensee's election not to maintain its license.

9. NOTICE OF INFRINGEMENT AND ENFORCEMENT OF RIGHTS

- 9.1 Each party shall notify the other party of any known or alleged infringement or other unauthorized use of Patent Rights licensed hereunder. If either Licensee or LSU thereafter decides to pursue enforcement of Patent Rights, such party shall notify the other party at least sixty (60) days prior to filing suit.
- 9.2 If Licensee and LSU agree to jointly pursue enforcement of Patent Rights against a third party, then the parties shall share equally all costs, fees, and expenses incurred in connection with such enforcement, provided that, unless LSU otherwise agrees in its sole discretion, LSU will not be obligated to pay for such costs, fees and expenses that exceed the amount of royalties paid to LSU by Licensee hereunder. Any payments or recoveries accruing from such action to enforce Patent Rights shall be paid to Licensee and LSU in proportion to the parties' respective contributions to all costs, fees, and expenses incurred in such action; provided that if any payments or recoveries are attributed to Licensee's lost sales, then a figure equal to the amount of such lost sales shall be included in

Licensee's Net Sales for purposes of calculating royalties otherwise due to LSU under Article 4.

- 9.3 If either party elects not to pursue enforcement of Patent Rights against a third party, then such party shall promptly notify the other party of such decision. The party choosing to pursue enforcement may then proceed with such enforcement action solely at its own expense and any and all payments and recoveries shall be awarded solely and exclusively to that party; provided that if any payments or recoveries are attributed to Licensee's lost sales, then a figure equal to the amount of such lost sales shall be included in Licensee's Net Sales for purposes of calculating royalties otherwise due to LSU under Article 4. However, Licensee shall not enter into any settlement agreement that grants any sublicense under the Patent Rights without the advice and written consent of LSU. However, if required that any such action be prosecuted in the name of the owner of the Patent Rights or that LSU be joined in the action, LSU shall voluntarily appear; provided that Licensee shall hold LSU harmless from, and indemnify LSU against any liability, damage, loss, or expense that LSU suffers or incurs, including attorneys' fees and expenses, in connection with, in consequence of or resulting from such action.
- 9.4 If either party elects to enforce Patent Rights against a third party and the other party elects to not participate in such enforcement action, each party agrees, nevertheless, to reasonably cooperate in the prosecution of such action by making available to the other party non-privileged records, information, evidence and testimony by employees, contractors, advisors and agents relevant to the enforcement of the Patent Rights at the prosecuting party's sole expense.

10. INDEMNITY

- 10.1 Licensee hereby indemnifies and holds harmless LSU and its employees, officers, board members and agents ("Indemnitees") from and against all claims, suits, liabilities, damages, costs, fees (including, without limitation, attorneys' fees), expenses or losses arising out of or resulting from Licensee's or a sublicensee's performance under this Agreement, including, but not limited to, any third-party claims against Indemnitees for declaratory judgment related to the Patent Rights, infringement, or interference; any claims based on negligence, omission, or misconduct of Licensee, any Sublicensee or any employees, contractors, advisors, agents or representatives of Licensee or a sublicensee; and any claims based on death or injury to any person and damage to any property arising from the possession, use or operation of Products produced or Sold by Licensee or its Sublicensees or their customers, in any manner whatsoever.
- 10.2 Licensee shall defend the Indemnitees from any such claim or suit at Licensee's sole cost and expense using counsel reasonably acceptable to the Indemnitees, and shall keep the Indemnitees informed as to the progress of the defense of any such claim or suit. The Indemnitees shall have the right to participate, at their own expense, with respect to any

such claim or suit. The Indemnitees shall reasonably cooperate with the License in such defense at Licensee's cost and expense. Licensee shall have the right to control the defense and disposition; provided however, that, if Licensee assumes control of such defense and Indemnitees reasonably conclude, based on advice from counsel, that Licensee and Indemnitees have conflicting interests with respect to such claim or suit, Licensee shall be responsible for the reasonable fees and expenses of counsel to the Indemnitees solely in connection therewith, except that in no event shall Licensee be responsible for the fees and expenses of more than one such law firm for all Indemnitees. Licensee shall not agree to any settlement of such claim or suit that does not include a complete and unconditional release of the Indemnitees from all liability with respect thereto or that imposes any liability or obligation on the Indemnitees or that narrows the claims in Patent Rights, without the prior written consent of the affected Indemnitees.

11. DISCLAIMER, WARRANTY AND LIMITATION OF LIABILITY

- 11.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LSU LICENSES THE INVENTION AND THE PATENT RIGHTS "AS IS, WITH ALL FAULTS" AND DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE INVENTION AND THE PATENT RIGHTS, INCLUDING CONDITION, VALIDITY, SCOPE, ENFORCEABILITY, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR APPARENT DEFECTS THEREIN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.
- 11.2 LICENSEE AND SUBLICENSEES ASSUME THE ENTIRE RISK AS TO PERFORMANCE OF PRODUCTS. IN NO EVENT SHALL LSU BE LIABLE FOR ANY USE BY LICENSEE OF THE INVENTION, PRODUCTS, OR THE PATENT RIGHTS OR ANY LOSS, CLAIM, DAMAGE OR LIABILITY, OF WHATSOEVER KIND OR NATURE, WHICH MAY ARISE FROM OR IN CONNECTION WITH LICENSEE'S PERFORMANCE UNDER THIS AGREEMENT.
- 11.3 LSU SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, EVEN IF LSU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LSU'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND THE LICENSE GRANTED HEREIN SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY LSU FROM LICENSEE UNDER THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION SHALL APPLY REGARDLESS OF THE LEGAL THEORY ON WHICH THE LIABILITY IS BASED, AND REGARDLESS OF WHETHER LSU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. REPRESENTATIONS

- 12.1 LSU represents to the best of its knowledge that it has the right, power and authority to enter into this Agreement and to grant the licenses as provided in Paragraph 2.1.
- 12.2 Licensee represents to the best of its knowledge that it has the right, power and authority to enter into this Agreement.
- 12.3 Licensee represents and warrants that it currently has insurance that covers all contractually assumed liabilities, including all liabilities assumed under this Agreement.
- 12.4 Licensee represents and warrants that any Products made or Sold pursuant to this Agreement shall comply with all applicable federal and state law regulations, including but not limited to regulations of the FDA, the Environmental Protection Agency, and their state counterparts. Licensee, at Licensee's sole expense, will prepare and deliver all necessary and appropriate documents, and take all necessary and appropriate actions to seek any required FDA or other governmental license or regulatory clearance.
- 12.5 Licensee acknowledges and agrees that the representations made in this Article 12 by LSU may rely, at least in part, on information provided to LSU by one or more employees, agents, founders or representatives of Licensee. Licensee acknowledges and agrees that it is Licensee's sole responsibility to verify the information provided by such employees agents, founder or representatives.

13. INSURANCE

Licensee shall, no later than first Sale of any Product or first use of any Product in humans, including a clinical trial, whichever occurs earlier, maintain in full force and effect insurance policies for product liability and contractually assumed liabilities in the amount of not less than One Million U.S. Dollars for Other Products and not less than Five Million U.S. Dollars for Clinically-Approved Products. Licensee shall each year provide to LSU evidence of such policies. Such insurance policies shall name LSU as an additional insured. Any Sublicensee or assignee shall maintain insurance policies for product liability and contractually assumed liabilities in an amount not less than required above for Licensee.

14. RELATIONSHIP BETWEEN LSU AND LICENSEE

LSU and Licensee are and shall remain independent contractors, and nothing in this Agreement shall create a partnership or joint venture between LSU and Licensee.

15. CONSULTING

- 15.1 Any use of LSU personnel as consultants shall not interfere with normal LSU activities and shall comply with the laws of the State of Louisiana and the rules, regulations, and policies of LSU, including without limitation Permanent Memorandum 11 and the Louisiana Code of Governmental Ethics. Licensee shall make independent arrangements with LSU to assure such noninterference. Compensation and travel reimbursement are to be paid directly to consultants by Licensee, consistent with all applicable laws, rules, regulations, and policies. The relationship between Licensee and its consultants, including any LSU personnel, shall be outside the scope of this Agreement, except that such consulting agreements shall not under any circumstances grant Licensee rights to any LSU intellectual property, or otherwise cause an LSU employee to violate any employment obligations to LSU.

16. CONFLICT OF INTEREST MANAGEMENT

- 16.1 This Agreement is subject to the provisions of LSU's Permanent Memorandum 67, and the Louisiana Code of Governmental Ethics. Unless LSU provides appropriate formal written approvals, all development, manufacture, and marketing of Products will take place without the use of LSU funds, facilities, other resources of LSU, or funds administered by LSU. Licensee shall cooperate with LSU in developing and implementing appropriate plans for management of potential conflicts of interest and conflicts of LSU employees.

17. MARKING OF PRODUCTS

- 17.1 Licensee shall suitably mark or cause to be marked all containers and packages of any Product Sold pursuant to this Agreement, and shall fix or cause to be fixed on some conspicuous part of every such Product where appropriate, a stamped plate or other method of marking containing the relevant U.S. Patent Number(s).

18. ADVERTISING, PUBLICITY AND PUBLICATIONS

- 18.1 Licensee shall not use the name of LSU or any of its employees, campuses, affiliates or divisions or any derivations thereof in any advertisement, publications, or sales materials without the prior written consent of LSU. No right, title, interest or license to any trademark or service mark of LSU is granted to Licensee.
- 18.2 LSU, the inventor(s), and Licensee shall have the right to publish papers and other scholarly materials pertaining to the Invention in the appropriate literature.

19. TERM AND TERMINATION

- 19.1 This Agreement shall commence on the Effective Date and shall continue until the expiration of the last expiring patent within the Patent Rights (or if no Patent ever issues, until the abandonment of the last pending patent application within the Patent Rights). Notwithstanding the foregoing, the obligations of the parties under Articles 4, 6, 10, 11, 12, 18, 19, 20, 21, 22, 23, 24, 25, and 26 shall survive any termination of this Agreement.
- 19.2 In the event of the breach of a material obligation hereunder by either party, except as provided in Paragraph 19.4, the non-breaching party shall inform the alleged breaching party of said breach in writing. The breaching party shall have thirty (30) days from the date of said notification during which time to cure the breach. In the event the breaching party does not cure the breach within thirty (30) days, the non-breaching party may terminate the Agreement upon written notification to the breaching party.
- 19.3 In the event that Licensee becomes bankrupt or insolvent, or if the business of Licensee is placed in the hands of a receiver, assignee or trustee for the benefit of creditors, whether by the voluntary act of Licensee or otherwise, then (i) Licensee shall immediately notify LSU, (ii) the licenses granted under this Agreement shall automatically become non-exclusive effective immediately upon the giving of such notice, and (iii) LSU shall have the right to terminate this Agreement and the licenses granted hereunder by giving written notice to Licensee. If this Agreement is terminated by LSU, termination shall be effective immediately upon written notice to Licensee.
- 19.4 In the event that Licensee fails to pay LSU any amounts due within sixty (60) days of the due date under Articles 3, 4, 5, or 8 above, LSU shall have the right, in its sole discretion, to terminate this Agreement and the licenses granted hereunder immediately upon giving written notice to Licensee. Any such action shall not release Licensee from any obligations of Licensee to LSU that arose or accrued prior to the date of termination.
- 19.5 In the event that Licensee desires to challenge, directly or indirectly, or cause to be challenged, the validity, enforceability, or scope of any Patent licensed hereunder, Licensee shall provide LSU written notice at least ninety (90) days prior to such challenge, such notice to include a detailed description of the basis of the challenge. Should Licensee fail to provide such notice, or if Licensee pursues the challenge to the Patent sooner than ninety (90) days after the required notice, LSU may immediately terminate this Agreement and the licenses and rights granted hereunder.
- 19.6 In the event this Agreement terminates for any reason, Licensee shall return any confidential or trade secret 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.

19.7 In the event this Agreement terminates due to a breach or failure to pay by Licensee, then Licensee shall provide LSU with all unpatented data and know-how developed by Licensee in the course of Licensee's efforts to develop Products, including a copy of any regulatory data or information filed with any U.S. or foreign government agency with respect to Products. LSU shall have the right to use such data and know-how for any purpose whatsoever, including the right to transfer to future licensees.

20. NOTICES

20.1 All notices required or permitted under this Agreement shall be in writing and shall be delivered personally, by courier, by facsimile transmission (receipt confirmed or sent by certified registered mail to Licensee or LSU at the addresses set forth below:

LSU:

Attn.

LICENSEE:

Attn:

All such notices shall be deemed delivered five days after their transmission; or, if earlier, upon their receipt.

21. WAIVER

21.1 Waiver by either party of any term or provision of this Agreement shall not constitute a continuing waiver thereof nor of any further or additional rights such party may hold under this Agreement.

22. SEVERABILITY

22.1 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

23. GOVERNING LAW AND VENUE

23.1 This Agreement shall be construed in accordance with the substantive laws of the State of Louisiana (without giving effect to any provisions thereof concerning choice of law) and of the United States. 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.

24. ENTIRE AGREEMENT

24.1 This Agreement is the complete and exclusive statement between the parties relating to the subject matter hereof, and supersedes all prior understandings, communications, or representations, either oral or written, between the parties. This Agreement may not be modified or altered except by a written instrument duly executed by Licensee and LSU.

25. CUMULATIVE RIGHTS

25.1 Unless expressly stated to the contrary elsewhere in this Agreement, all rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative and not restrictive of those given by law or in equity.

26. HEADINGS

26.1 Article headings have been inserted herein for convenience of reference only and shall in no way modify or restrict any of the terms or provisions of this Agreement.

27. ASSIGNMENT

27.1 This Agreement and the license granted hereunder are personal to Licensee and may not be assigned or otherwise transferred to any other party; provided, however, that this Agreement may be assigned upon the sale of substantially all of the business or assets of Licensee related to the Products and the Invention.

28. SUCCESSORS AND ASSIGNS

28.1 This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but nothing contained herein shall be

deemed to permit assignment by either party except as otherwise permitted in this Agreement.

29. FORCE MAJEURE

29.1 Neither party shall be held in breach of this Agreement because of acts or omissions caused by any act of God or other cause beyond the reasonable control of the parties, including, but not limited to, fire, floods, hurricanes, labor disputes, or other unforeseen circumstances.

30. COUNTERPARTS

30.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

IN WITNESS WHEREOF, the parties have set their hands and seals and duly executed this Agreement effective as of the date first above written.

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

LICENSEE

By: _____

By: _____

Typed Name: _____

Typed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**APPENDIX A
MILESTONES**

1. Licensee shall have a corporate management team in place by _____ (date).
2. Licensee shall have financing in the amount of _____ by _____ (date).
3. Licensee Product Development Milestones (generally based on construction and testing of prototype and/or stages of regulatory approval)
 - (i) (subject/date)
 - (ii) (subject/date)
 - (iii)
 - (iv)
4. Licensee shall commence commercial Sales of Products by _____ (date).
5. Licensee shall meet the following Sales Milestones:
 - (i) (amount/date)
 - (ii) (amount/date)
 - (iii)
 - (iv)