

EXCLUSIVE LICENSE AGREEMENT

dated _____, 20__

between

[COMPANY NAME]

and

UNIVERSITY OF KANSAS

***DRAFT
FOR DISCUSSION PURPOSES ONLY***

The submission of this draft for review or its negotiation, or the negotiation of the transaction described herein does not constitute an offer and the execution of this Agreement by [Licensee] does not constitute a binding contract until such time as it has been executed by an authorized officer of the University of Kansas.

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LICENSE AGREEMENT

This license agreement (“Agreement”) is entered into this _____ day of _____, 20__ (Effective Date) by and between the University of Kansas, a public research university having its principal place of business at 1450 Jayhawk Blvd., Lawrence, KS 66045, hereinafter referred to as “KU” or “Licensor,” and [Company Name], having its principal place of business at _____, hereinafter referred to as “Licensee.”

SUMMARY OF TERMS

The terms set forth below shall apply to this Agreement:

- Field of Use:
- Territory:
- Patent royalty rate: 2% of Net Sales
- Success Fee Rate: 0.95%
- Financial Diligence Milestones:
 - Licensee will raise no less than \$_____, in startup funding by [Date]
 - Licensee will raise no less than \$_____, in second round of funding by [Date]
- Non-Financial Commercial Diligence Milestones:
 - Technical Milestone 1:
 - Technical Milestone 2:
 - Technical Milestone 3:
 - Technical Milestone 4:
 - Technical Milestone 5:

WITNESSETH

WHEREAS, certain inventions, generally characterized as [Invention Title] and assigned KU Ref # _____, hereinafter collectively referred to as “the Invention”, have been made in the course of research at the University of Kansas conducted by [Inventors] and are Covered By Patent Rights (as defined below);

WHEREAS, the University of Kansas and the University of Kansas Medical Center (hereinafter collectively referred to as “KU”) and KU Center for Technology Commercialization Inc. , a Kansas non-profit § 501(c)(3) corporation, and an affiliate of KU, having its principal place of business at 2029 Becker Drive, Suite 142, Lawrence, KS 66047 (hereinafter referred to as “KUCTC”) have an agreement wherein KUCTC is the manager of intellectual property owned by KU;

WHEREAS, Licensor desires that the Patent Rights be developed and utilized to the fullest extent so that their benefits can be enjoyed by the general public;

WHEREAS, Licensee wishes to obtain from Licensor a license under the Patent Rights for the commercial development, production, manufacture, use and sale of Licensed Products and/or Licensed Methods, and Licensor is willing to grant such a license upon the terms and conditions hereinafter set forth;

~~[If federal funding used]~~ WHEREAS, the Patent Rights were developed in the course of research sponsored in part by the U.S. Government, and as a consequence are subject to overriding obligations of Licensor to the U.S. Government;]

NOW THEREFORE, for and in consideration of the covenants, conditions and undertakings hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **“Affiliate”** means any company or other business entity that, directly or indirectly, controls, or is controlled by, or is under common control by Licensee. Solely for purposes of this definition, the term “control” means the possession of the power to direct or cause the direction of the management and policies of the entity, whether through ownership of voting securities or by contract. Control will be presumed if an entity owns, either of record or beneficially, at least fifty percent (50%) of the voting stock of the other entity. An entity will be deemed an Affiliate only while such ownership or control relationship continues.
- 1.2 **“...Covered By...”** means a claim or claims within any pending or issued patent included in the Patent Rights claiming all, a portion, or a component, or step of a Licensed Product or Licensed Method.
- 1.3 **“Commercially Diligent Efforts”** means, with respect to a Licensed Product and/or Licensed Method, the diligent exercise, dedication and expenditure of efforts, money, personnel, and resources as reasonably needed to develop, manufacture, market, and sell the Licensed Product and/or Licensed Method. Such efforts shall be documented and must be consistent with those utilized by companies of similar size and type that have successfully developed products and services similar to the Licensed Product and/or Licensed Method. At a minimum, Commercially Diligent Efforts shall be based upon the commercialization plan, attached as Exhibit G and incorporated by reference, submitted to Licensor by Licensee as required under Article 5. In determining Commercially Diligent Efforts with respect to a particular Licensed Product and/or Licensed Method, Licensee may not reduce such efforts due to the competitive, regulatory, or other impact of any other product or method that it owns, licenses, or is developing or commercializing.
- 1.4 **“Effective Date”** means the date identified above.
- 1.5 **“Entity”** means a corporation, an association, a joint venture, a partnership, a trust, a business, an institution, an individual, a government or political subdivision thereof, including an agency, or any other organization that can exercise independent legal standing.
- 1.6 **“Fair Market Value”** means the cash consideration which Licensee or its Sublicensee would realize from an unaffiliated, unrelated buyer in an arm’s length sale of an identical item sold in the same quantity, under the same terms, and at the same time and place.
- 1.7 **“Field of Use”** means _____.
- 1.8 **“Insolvent”** means being unable to meet one’s debt obligations to another Entity as such debt obligations become due and not being able to provide reasonable financial assurances of becoming able to meet such obligations.

- 1.9 “**Licensed Product**” means any product, apparatus, kit or component part thereof, or any other subject matter, the manufacture, design, creation, use, importation, distribution, or sale of which is Covered By any claim or claims included within the Patent Rights.
- 1.10 “**Licensed Method**” means any method, procedure, process or other subject matter, the practice, manufacture, use, or sale of which is Covered By any claim or claims included within the Patent Rights.
- 1.11 “**Net Sales**” means the gross revenue and other consideration paid or given to Licensee or its Affiliates or Sublicensees for Licensed Products and/or Licensed Method which are sold, leased, or otherwise commercialized by or for Licensee or any of its Affiliates or Sublicensees; however, sales or other transfers of Licensed Products and/or practice of Licensed Methods between Licensee and its Affiliates shall be excluded from the computation of Net Sales, and no payments will be payable to Licensor on such sales or transfers except where such Affiliates are end users or consumers; less the following deductions, directly attributable to the sale of such Licensed Product and/or Licensed Method and specifically identified on the invoice, and borne by the seller to the extent they are included in such gross revenue or other consideration:
- a) cash and/or quantity discounts actually granted to purchases of a Licensed Product and/or Licensed Method;
 - b) allowances or credits to third parties for rejections or returns;
 - c) excise taxes, tariffs and duties applicable to sales of Licensed Product in finished package form that the Licensee has to pay on such sales; and,
 - d) outbound transportation charges prepaid or allowed.

A Licensed Product and/or Licensed Method shall be considered sold when it is shipped, delivered, or invoiced, whichever is earlier. No deductions shall be made from Net Sales for commission paid to individuals whether they are with independent sales agencies or are regularly employed by Licensee or its Affiliates or Sublicensees and are on its or their payroll, or for the cost of collections. In the event Licensee transfers a Licensed Product to and/or transfers or performs a Licensed Method for a third party in a bona fide arm’s length transaction, for consideration, in whole or in part, other than cash, then the Net Sales price for such Licensed Product and/or Licensed Method shall be deemed to be the standard invoice price then being invoiced by Licensee in an arm’s length transaction with similar companies and in the absence of such standard invoice price, then the reasonable Fair Market Value of the Licensed Product and/or Licensed Method. Components of Net Sales shall be determined in the ordinary course of business using the accrual method of accounting in accordance with generally accepted accounting practices.

If Licensee or any Affiliate or Sublicensee sells, leases or otherwise commercializes any Licensed Product and/or Licensed Method at a reduced fee or price for the purpose of promoting other products, goods or services or for the purpose of facilitating the sale, license or lease of other products, goods or services, then Licensee shall pay to Licensor, and each such Affiliate and Sublicensee shall be obligated to pay to Licensor, a royalty under Article 4 based upon the Fair Market Value of the License Product and/or Licensed Method.

- 1.12 “**Patent Rights**” means and includes all of the following Licensor intellectual property: The United States patents and/or patent applications listed in Exhibit “A”; United States patents issued from the applications listed in Exhibit “A” and from divisionals and continuations (other than continuations-in-part) of these applications and any reissues of such United States patents; claims of continuation-in-part applications and patents directed to subject matter specifically described in the patent(s) and/or patent application(s) listed in Exhibit “A”; claims of all foreign applications and patents which are directed to subject matter specifically described in the United States patents and/or patent applications listed in Exhibit “A”; and term extensions, supplementary protection certificates and other governmental actions which provide exclusive rights to a product beyond the original patent expiration date.

- 1.13 “**Regulatory Exclusivity**” means any exclusive marketing rights or data exclusivity rights conferred by any Regulatory Authority (e.g. FDA etc.) with respect to a product other than Patents, including orphan drug exclusivity, new chemical entity exclusivity, data exclusivity, or pediatric exclusivity.
- 1.14 “**Sublicensee**” means any party other than an Affiliate which enters into an agreement or arrangement with Licensee or receives a license grant from Licensee under the Patent Rights, to manufacture, have manufactured, offer for sale, sell, lease, use, practice, and/or import the Licensed Product or Licensed Method, subject to the then-current applicable article, item, service, technology, and technical data-specific requirements of the U.S. export laws and regulations.
- 1.15 “**Success Fee Rate**” means the rate (0.95%) that will be used to calculate the amount the Licensee shall pay to Licensor upon a Liquidation Event or Initial Public Offering in accordance to Exhibit E
- 1.16 “**Tangible Research Property**” means the materials and other property that Licensor provides to Licensee pursuant to this Agreement, as listed in Exhibit A.
- 1.17 “**Technical Information**” means the information, know-how, data, and methods not available in the public domain, which Licensor provides to Licensee pursuant to this Agreement, as listed in Exhibit A.
- 1.18 “**Territory**” means the countries and other territories set forth under Summary of Terms, but excluding those countries and territories to which export of technology or goods is prohibited by applicable U.S. export control laws and regulations.
- 1.19 “**USD**” or “**\$**” means the lawful currency of the United States of America

ARTICLE 2. LICENSE GRANT

2.1 License Grants and Restrictions

- 2.1.1** Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-transferable (subject to Article 19), royalty-bearing exclusive license to make, have made, use and sell any Licensed Product and to practice any Licensed Method in the Field of Use under Licensor’s Patent Rights throughout the Territory. This grant is subject to the payment by Licensee to Licensor of all consideration required under this Agreement, and subject to any rights of the Government of the United States as set forth in **Section (2.2)**.
- 2.1.2** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-transferable (subject to Article 19), non-exclusive license, in the Field of Use and in the Territory, for the Term (as defined below) of this Agreement, to use the Technical Information and Tangible Research Property solely for the purpose of exploiting the license granted to Licensee in 2.1.1 above.
- 2.1.3** The grant in 2.1.1 & 2.1.2 is further subject to rights retained by Licensor and KU to:
- a. publish the general scientific findings from research conducted in whole or in part at KU related to the Patent Rights;
 - b. manufacture, have manufactured, use, practice, or transfer the Patent Rights for research, teaching, and other educationally-related purposes;

- c. to permit all other non-profit and/or academic research institutions the right to use the Patent Rights, to make, have made, and use any Licensed Product, and to practice any Licensed Method for such organizations' internal non-commercial research purposes;
- d. KU retains the right to use Patent Rights, Technical Information, and Tangible Research Property for research and educational purposes; and
- e. KU retains all ownership rights in the Patent Rights, Technical Information, and Tangible Research Property. Licensee agrees that it will not do any act or thing which would in any way contest KU's ownership in, or otherwise derogate from the ownership by KU, of any rights in the Patent Rights, Tangible Research Property, and/or Technical Information.

2.2 **[If federally funded]** The license granted in Section 2.1 hereof is expressly made subject to a non-exclusive, irrevocable, royalty-free license heretofore granted to the U.S. Government and in the general form as attached hereto as Exhibit "B" and incorporated herein by reference.]

2.3 Affiliates

Licensee may extend the license granted herein to any Affiliate if the Affiliate consents in writing to be bound by this Agreement to the same extent as Licensee; provided, however, that any fee or other consideration paid to Licensee in consideration of such extension will be subject to the provisions of Section 2.4 as if the Affiliate were a Sublicensee. Other agreements or arrangements with Affiliates relating to Patent Rights which result in the sale of Licensed Product(s)/and or Licensed Method(s) will be subject to the royalty payment and other applicable payment provisions of this Agreement

2.4 Sublicensing

Licensor hereby grants to Licensee the right to enter into sublicensing agreements with Sublicensees, provided that Licensee has current exclusive rights thereto in the Territory being sublicensed pursuant to Section 2.1 and subject to the following:

- a. Any sublicense granted by Licensee to a Sublicensee shall incorporate all of the terms and conditions of this Agreement, which shall be binding upon each Sublicensee as if such Sublicensee were a party to this Agreement. Licensee shall collect and guarantee all payments due Licensor from Sublicensee(s). In each such sublicense, the Sublicensee will be prohibited from granting further sublicenses;
- b. If Licensee becomes Insolvent, Licensor's proportionate share of all payments then or thereafter due and owing to Licensee from its Sublicensees for the sublicense of the Patent Rights will, upon written notice from Licensor to any such Sublicensee, become payable directly to Licensor by Sublicensee for the account of Licensee;
- c. Licensee shall within thirty (30) days of: (a) execution, provide Licensor with a copy of each sublicense granted by Licensee hereunder, and any amendments thereto or terminations thereof; and (b) receipt, summarize, and deliver copies of all reports due to Licensee from Sublicensee(s); and
- d. If this Agreement is terminated for any reason, Licensor shall have the sole option to (a) terminate any or all sublicense(s) and all rights granted thereunder, or (b) require Licensee to immediately assign all of its right, title, and interest to all sublicense(s) to Licensor, including the right to receive all income from the sublicense(s). Licensee shall, prior to execution of each sublicense, make the intended Sublicensee(s) aware of this contingency.

ARTICLE 3. TERM OF AGREEMENT

This Agreement shall be in full force and effect from the Effective Date until the end of the term of the last-to-expire of Licensor's Patent Rights licensed under this Agreement or Regulatory Exclusivity ("Term"), unless otherwise terminated by operation of law or by acts of the parties pursuant to the terms of this Agreement.

ARTICLE 4. FEES & ROYALTIES

4.1 License Issue Fee:

There is no License Issue Fee.

4.2 License Maintenance Fee:

There is no License Maintenance Fee.

4.3 Running Royalty

As consideration for the license under this Agreement, Licensee shall pay to Licensor an earned royalty of two percent (2.0%) of Net Sales. Earned royalties shall accrue in each country for the duration of Patent Rights or Regulatory Exclusivity in that country.

4.4 Minimum Royalty

There will be no minimum royalties due.

4.5 Sublicense Fees and Royalties

- (a) Licensee shall pay to Licensor thirty five percent (35%) of any lump sum fee that is not an earned royalty, including but not limited to any fixed fee, license fee, milestone payment, unearned portion of any minimum royalty payment, equity, joint marketing fee, intellectual property cross-license, research and development funding in excess of Licensee's cost of performing such research and development, and any other property, consideration, or thing of value given or exchanged for a sublicense regardless of how the Licensee and Sublicensee characterize such payments or consideration (collectively, "Sublicense Income"). Once Licensee has raised over ten million dollars (\$10M) in funding or five years have passed from the Effective Date, whichever occurs first, the sublicensing rate in this Section 4.5(a) shall decrease from thirty five percent (35%) to fifteen percent (15%).
- (b) All such consideration received by Licensee shall be fully auditable by Licensor. Licensee shall not receive from Sublicensee(s) anything of value in lieu of cash payments in consideration for any sublicense under this Agreement without the express prior written permission of Licensor. Any non-cash consideration, including, without limitation, equity in other companies or equity investments in Licensee, received by the Licensee from any Sublicensee(s) will be valued at its Fair Market Value as of the date of receipt by Licensee.
- (c) In addition, Licensee shall pay to Licensor a royalty on Net Sales made under any sublicense which royalty rate shall be fifty percent (50%) of the royalty rate charged by Licensee on Net Sales by such Sublicensee; and in no event shall the royalty rate be less than one percent (1%) of Net Sales by Sublicensee.

4.6 Past and Future Patent Expenses

Licensors will pay past patent expenses incurred by Licensor, before the Effective Date, which are related to filing and prosecuting the patent application included in the Patents Rights in Exhibit A, up to a maximum of twenty thousand dollars (\$20,000). In the event past patent expenses exceed \$20,000, Licensee shall reimburse Licensor the amount in excess of \$20,000. As of the Effective Date, Licensee shall reimburse Licensor for all future patent expenses as set forth in Article 11 hereof.

ARTICLE 5. COMMERCIAL DILIGENCE & MILESTONES

5.1 Commercial Diligence

Upon execution of this Agreement, Licensee shall diligently proceed with Commercially Diligent Efforts to develop, manufacture, practice, sell, and use the Licensed Products and/or Licensed Methods in order to make them readily available to the general public as soon as possible on commercially reasonable terms. Licensee shall continue active, Commercially Diligent Efforts for one or more Licensed Product(s) and/or Licensed Method(s) throughout the term of this Agreement (“Actively Commercializing”). In addition, Licensee shall perform at least the following obligations as part of its due diligence activities hereunder:

[NOTE: The specific Due Diligence milestones in Section 5.1 are representative only; others may be substituted as long as they are objective and related to successful commercialization]

- (a) Licensee commercialization plan detailing each phase of development, the target markets and time frames toward first sale of the Licensed Products and Licensed Methods is attached in Exhibit F. Licensee shall keep Licensor apprised on any changes in the commercialization plan;
- (b) Licensee shall secure its startup round of funding which shall be no less than \$_____, on or before _____;
- (c) Licensee shall secure its second round of funding which shall be no less than \$_____, on or before _____;
- (d) Technical Milestone 1;
- (e) Technical Milestone 2;
- (f) Technical Milestone 3;
- (g) Technical Milestone 4;
- (h) Technical Milestone 5;
- (i) Licensee shall develop a working model on or before _____;
- (j) Licensee shall spend at least _____ dollars (\$_____) on research, development, and commercialization of Licensed Products and/or Licensed Methods during the ____-year period following the Effective Date of this Agreement; and
- (k) Licensee shall have Net Sales by _____.

ARTICLE 6. SUCCESS FEE

- 6.1 In the event that Licensee becomes subject to a Liquidation Event or Initial Public Offering (as defined in Exhibit E), Licensee shall pay Licensor a Success Fee at a Success Fee Rate of 0.95%, which shall be calculated in accordance to Exhibit E.

ARTICLE 7. CONFIDENTIALITY

- 7.1 Licensee and Licensor acknowledge that either party may provide certain information to the other with regard to the Invention that is considered to be confidential. Licensee and Licensor shall take all reasonable precautions to protect such confidential information. Such precautions shall involve at least the same degree of care and precaution that the recipient customarily uses to protect its own confidential information, but in no circumstance less than reasonable care.
- 7.2 Licensee acknowledges that Licensor is subject to the Kansas Open Records Act, K.S.A. 45-215 et seq. Licensor shall keep confidential any information provided to Licensor by Licensee that Licensee considers confidential, to the extent allowable under the Kansas Open Records Act.

ARTICLE 8. QUARTERLY & ANNUAL REPORTS

8.1 Quarterly and Annual Royalty Report

Within thirty (30) days after the calendar year in which Net Sales first occur, and within 30 days after each calendar quarter thereafter, Licensee shall provide Licensor with a written report detailing all sales and uses, if any, made of Licensed Products and/or Licensed Methods during the preceding calendar quarter, and detailing the amount of Net Sales made during such quarter and calculating the royalties due to Licensor pursuant to Article 4 hereof. Each report shall include at least the following:

- a. number or volume of Licensed Products manufactured, leased, and sold by and/or for Licensee, Affiliates and all Sublicensees;
- b. accounting for all Licensed Methods used or sold by and/or for Licensee, Affiliates, and all Sublicensees;
- c. accounting for Net Sales, noting the deductions applicable as provided in Section 1.11;
- d. royalties, earned royalties, royalties due on other payments from Sublicensees, Affiliates, and assignees due under Articles 4 and 19;
- e. total royalties due to Licensor;
- f. names and addresses of all Sublicensees;
- g. the amount spent on product development; and
- h. the number of full-time equivalent employees working on the Licensed Products and/or Licensed Methods.

Each report shall be in substantially similar form as Exhibit "C" attached hereto. Each such report shall be signed by an officer of Licensee (or the officer's designee). With each such report submitted, Licensee shall pay to Licensor the royalties and fees due and payable under this Agreement. If no royalties shall be due, Licensee shall so report. Licensee's failure to submit a royalty report in the required form will constitute a breach of this Agreement. Licensee will continue to deliver royalty reports to Licensor after the termination or expiration of this Agreement until such time as all Licensed Product(s) and/or Licensed Method(s) permitted to be sold after termination have been sold or destroyed.

8.2 Progress Report and Commercialization Plan

Commencing on January 1, 20__, and on each January 1 thereafter, Licensee shall submit to Licensor a written report covering Licensee's (and any Sublicensee's) progress in (a) development and testing of all Licensed Products and Licensed Methods; (b) achieving the due diligence milestones specified herein; (c) preparing, filing, and obtaining of any approvals necessary for marketing the Licensed Products and Licensed Methods; and (d) plans for the upcoming year in commercializing the Licensed Product(s) and Licensed Method(s). Each report shall be in substantially similar form and contain at least the information required by Exhibit "D" attached hereto and incorporated herein by this reference.

8.3 On or before the ninetieth (90th) day following the close of Licensee's fiscal year, Licensee shall provide Licensor with Licensee's certified financial statements for the preceding fiscal year including, at a minimum, a balance sheet and income statement.

8.4 In addition to the regular reports required by Section 8.1, 8.2, and 8.3 hereof, Licensee shall provide a written report to Licensor of the date of first occurrence of Net Sales in each country within sixty (60) days of the occurrence thereof.

ARTICLE 9. PAYMENTS, RECORDS and AUDITS

9.1 Payments

Licensee shall pay all royalties accruing to Licensor in U.S. Dollars, without deduction of exchange, collection, wiring fees, bank fees, or any other charges, within thirty (30) days following the calendar quarter in which Net Sales occur. Each payment will reference KUCTC Technology ID # _____. All payments to Licensor will be made in United States Dollars by wire transfer or check payable to the KU Center for Technology Commercialization, Inc., and sent to:

KUMC Research Institute, Inc.
Attn: KUCTC
3901 Rainbow Blvd, Mail Stop 1039
Kansas City, KS, 66160
(913) 588-1261
Tax Identification Number: 26-2838693

ACH or Wire Transfer Information:

Commerce Bank of Kansas City
1000 Walnut P.O. Box 13686
Kansas City, MO 64199-3686
Routing #: 101000019
Account#: 700046965
Account Type: Checking
Swift # CBKC US 44

For converting any Net Sales made in a currency other than United States Dollars, the parties will use the conversion rate published in the *Wall Street Journal*, or other industry standard conversion rate approved in writing by Licensor for the last day of the calendar quarter for which such royalty payment is due or, if the last day is not a business day, the closest preceding business day.

9.2 Late Payments

In the event royalty payments or other fees are not received by Licensor when due hereunder, Licensee shall pay to Licensor interest charges at the rate of twelve percent (12%) per annum on the total royalties or fees due for the reporting period.

9.3 Records

Licensee shall keep, and cause its Sublicensees and Affiliates to keep, complete, true, and accurate records and books containing all particulars that may be necessary for the purpose of showing the amounts payable to Licensor hereunder. Records and books shall be kept at Licensee's principal place of business or the principal place of business of the appropriate division of Licensee to which this Agreement relates.

9.4 Audit

Such books and the supporting data shall be open to inspection by Licensor or its agents, upon reasonable prior notice to Licensee, at all reasonable terms for a term of five (5) years following the end of the calendar year to which they pertain, upon reasonable prior notice to Licensee, for the purpose of verifying Licensee's royalty statement or compliance in other respects with this Agreement. Such access will be available to Licensor upon not less than ten (10) days written notice to Licensee, not more than once each calendar year of the Term, during normal business hours, and once a year for three (3) years after the expiration or termination of this Agreement. Should such inspection lead to the discovery of a greater than five percent (5%) or five thousand US dollars (\$5,000), discrepancy in reporting to Licensor's detriment, Licensee agrees to pay the full cost of such inspection. Whenever Licensee has its books and records audited by an independent certified public accountant, Licensee will, within thirty (30) days of the conclusion of such audit, provide Licensor with a written statement, certified by said auditor, setting forth the calculation of royalties, fees, and other payments due to Licensor over the time period audited as determined from the books and records of Licensee.

ARTICLE 10. PATENT MARKING

Licensee shall permanently and legibly mark all Licensed Products made, used, or sold under the terms of this Agreement, or their containers, in accordance with all applicable patent-marking and notice provisions under Title 35, United States Code.

ARTICLE 11. PATENT PROSECUTION AND MAINTENANCE

11.1 Future Patent Expenses

Licensee will pay, within thirty (30) days of invoice, all future expenses for filing, prosecuting, enforcing, and maintaining the Patent Rights that are licensed to Licensee hereunder, including without limitation, any taxes on such Patent Rights. Licensee will receive such invoices directly from patent counsel; Licensor will receive a copy of such invoice. Licensee shall pay such invoices directly to patent counsel with written confirmation of payment to Licensor.

In the event that Licensee fails to pay any patent expenses required under this Agreement within sixty (60) days of receipt of notification that such expenses are due, Licensee will be required within the following thirty (30) day period to establish with a leading and first class bank, subject to approval by Licensor, an irrevocable and, if so requested by Licensor, confirmed letter of credit (not restricted, unless otherwise jointly agreed upon) in the amount of US\$20,000 in favor of Licensor available immediately to secure the payment of patent expenses due

under this Agreement. Licensor may draw upon such letter of credit upon presentation of the letter notifying Licensee of patent expenses due and payable and a statement from Licensor of Licensee's failure to pay. In the event that Licensee does not establish such letter of credit within such thirty (30) day period, Licensor may unilaterally terminate this Agreement. Should Licensee decline or fail to pay the costs and legal fees for the preparation, prosecution, and maintenance of any patent or patent application under this Agreement, Licensor may at its discretion, either (i) exclude by written notice the patent or patent application from this Agreement, without terminating the Agreement in its entirety and Licensee shall have no further rights thereto, or (ii) Licensor may terminate this Agreement in full pursuant to Section 12.1 hereof. Any exclusion pursuant to this section shall not relieve Licensee of any obligation or liability accrued hereunder prior to such exclusion, or rescind or give rise to any right to rescind any payments made or other consideration given to Licensor hereunder prior to the time such exclusion becomes effective. Such exclusion shall not affect in any manner any obligation due Licensor by Licensee, arising under this Agreement prior to the date of such exclusion.

11.2 Patent Counsel

Licensor will work closely with Licensee to develop a suitable strategy for the prosecution and maintenance of all Patents Rights; provided that Licensor will maintain final authority in all decisions regarding the prosecution and maintenance of the Patent Rights. Licensor will confer with Licensee regarding the choice of patent counsel and will identify to Licensee the patent attorney selected to file and prosecute the Patent Rights. It is intended that Licensee will interact directly with the selected patent counsel in all phases of patent prosecution: preparation, office action responses, filing strategies for continuation or divisional applications, and other related activities. Licensor will request that copies of all documents prepared by the selected patent counsel be provided by patent counsel to Licensee for review and comment prior to filing, to the extent practicable under the circumstances. Licensee will be billed and will pay all documented costs and fees and other charges incident to the preparation, prosecution, and maintenance of the Patent Rights within thirty (30) days of receipt of invoice from the selected patent attorney. All patent applications and patents will be in the name of Licensor, owned by Licensor and included as part of the Patent Rights licensed pursuant to this Agreement.

- 11.3 If Licensor agrees to allow Licensee to select the patent attorney, Licensor must consent, in writing, to such selected patent attorney, or any subsequent or new patent attorney, which consent shall not be unreasonably withheld. The selected patent attorney will agree to keep both Licensee and Licensor, as co-clients, equally informed and involved as to all material information, material communications with governmental patent offices, material issues and decisions, and related matters applicable to prosecuting the patent applications for the Patent Rights and for maintaining the Patent Rights in good standing. Decisions for prosecuting the patent applications will be made so as to obtain as broad of patent protection as is reasonable and practical under the circumstances. Licensee will request that copies of all documents prepared by the patent attorney selected by Licensee be provided to Licensor for review and comment prior to filing to the extent practicable under the circumstances. Licensee will promptly notify Licensor of its plans to file, revise, or drop any patent application or claim which may adversely affect the Patent Rights or the rights or royalties of Licensor in the Licensed Product(s) under this Agreement. Licensee and the selected patent attorney shall not change any inventorship designations and shall not drop or reduce any claim in a pending patent application which may adversely affect the Patent Rights or royalties of Licensor.

ARTICLE 12. TERMINATION BY LICENSOR

- 12.1 If Licensee should: (a) fail to deliver to Licensor any statement or report required hereunder when due; (b) fail to make any payment at the time that the same should be due; (c) violate or fail to perform any covenant, condition, or undertaking of this Agreement to be performed by it hereunder; (d) cease active Commercially Diligent Efforts to commercialize a Licensed Product(s); (e) file a bankruptcy action, or have a bankruptcy action against it, or become Insolvent; or (f) enter into a composition with creditors, or have a receiver appointed for it; then Licensor may give written notice of such default to Licensee. If Licensee should fail to cure such default within thirty (30) days of such notice, the rights, privileges, and license granted hereunder shall automatically terminate.

- 12.2 If Licensee shall cease to carry on its business with respect to the rights granted in this Agreement, this Agreement shall terminate upon thirty (30) days written notice by Licensor.
- 12.3 No termination of this Agreement by Licensor shall relieve Licensee of its obligation to pay any monetary obligation due or owing at the time of such termination and shall not impair any accrued right of Licensor. Licensee shall pay all attorneys' fees and costs incurred by Licensor in enforcing any obligation of Licensee or accrued right of Licensor. Articles 1, 7, 9, 14, 20, 21, 22, 23, 25, 26, and Sections 2.4, 8.1, 12.3, 15.2, 15.3, 17.3, 27.5, and 27.7 hereof shall survive any termination of this Agreement.

ARTICLE 13. TERMINATION BY LICENSEE

- 13.1 Licensee may terminate this Agreement, in whole or as to any specified patent, at any time and from time to time without cause, by giving written notice thereof to Licensor. Such termination shall be effective one hundred twenty (120) days after such notice and all Licensee's rights associated therewith shall cease as of that date.
- 13.2 Any termination pursuant to Section 13.1 hereof shall not relieve Licensee of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind any payments made or other consideration given to Licensor hereunder prior to the time such termination becomes effective. Such termination shall not affect in any manner any rights of Licensor arising under this Agreement prior to the date of such termination.
- 13.3 No termination of this Agreement by Licensor shall relieve Licensee of its obligation to pay any monetary obligation due or owing at the time of such termination and shall not impair any accrued right of Licensor. Licensee shall pay all attorneys' fees and costs incurred by Licensor in enforcing any obligation of Licensee or accrued right of Licensor. Articles 1, 7, 9, 14, 20, 21, 22, 23, 25, 26, and Sections 2.4, 8.1, 13.3, 15.2, 15.3, 17.3, 27.5, and 27.7 hereof shall survive any termination of this Agreement.

ARTICLE 14. DISPOSITION OF LICENSED PRODUCTS ON HAND

Upon expiration or termination of this Agreement by either party, Licensee shall provide Licensor with a written inventory of all Licensed Products in process of manufacture, in use, or in stock. Licensee may dispose of any such Licensed Products within the ninety (90) day period following such expiration or termination, provided, however, that Licensee shall pay royalties and render reports to Licensor thereon in the manner specified herein.

ARTICLE 15. WARRANTY BY LICENSOR

- 15.1 Licensor warrants that it has the lawful right to grant the license set forth in this Agreement.
- 15.2 **EXCEPT AS EXPRESSLY PROVIDED IN SECTION 15.1, THE PARTIES ACKNOWLEDGE AND AGREE LICENSOR, ITS AFFILIATES, AGENTS, EMPLOYEES, AND THE INVENTORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, ON THE VALIDITY OR ENFORCEABILITY OF PATENT RIGHTS. IN NO EVENT SHALL LICENSOR, ITS AFFILIATES, AGENTS, EMPLOYEES, AND THE INVENTORS BE HELD RESPONSIBLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE EXERCISE OF PATENT RIGHTS, EVEN IF LICENSOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

- 15.3 Nothing in this Agreement shall be construed as:
- a. a warranty or representation by Licensor as to the validity, enforceability, or scope of any Patent Rights;
 - b. a warranty or representation by Licensor that the exercise or practice by the Licensee of the license granted herein (including making, using, selling, offering for sale, or importing the Licensed Product or Licensed Method) is or will be free from infringement of intellectual property rights of third parties;
 - c. an obligation by Licensor or KU to bring or prosecute actions or suits against third parties for patent infringement, except as expressly provided in Article 15 hereof;
 - d. an obligation to furnish any know-how not provided in the Patent Rights or Technical Information; and
 - e. conferring by implication, estoppel, or otherwise any license or rights under any patents of Licensor other than Patent Rights.
- 15.4 Licensor's total cumulative liability in connection with this Agreement and the Patent Rights, whether in contract or tort or otherwise, will not exceed the amount of fees paid to Licensor under this Agreement within the twelve months preceding the claim.

ARTICLE 16. INFRINGEMENT

- 16.1 If either party learns of a claim of infringement of any of Licensor's Patent Rights licensed under this Agreement, that party shall give prompt written notice of such claim to the other party. Licensor shall then use reasonable efforts to terminate such infringement. In the event Licensor fails to abate the infringing activity within ninety (90) days after such written notice or to bring legal action against the third party, Licensee may bring suit for patent infringement. No settlement, consent judgment, or other voluntary final disposition of the suit may be entered into without the consent of Licensor, which consent shall not be unreasonably withheld.
- 16.2 Any such legal action shall be at the expense of the party by whom suit is filed, hereinafter referred to as the "Litigating Party." Any damages or costs recovered by the Litigating Party in connection with a legal action filed by it hereunder, and provided that the Litigating Party is reimbursed for its costs and expenses reasonably incurred in the lawsuit, and after any royalties or other payments due to Licensor under Article 4 are paid, shall be equally divided between Licensee and Licensor.
- 16.3 Licensee and Licensor shall cooperate with each other in litigation proceedings instituted hereunder, provided that such cooperation shall be at the expense of the Litigating Party, and such litigation shall be controlled by the Litigating Party.

ARTICLE 17. INSURANCE

17.1 Insurance Requirements

Beginning at the time any Licensed Product and/or Licensed Method is being distributed or sold (including for the purpose of obtaining any required regulatory approvals) by Licensee, Affiliate, or a Sublicensee, Licensee will, at its sole cost and expense, procure and maintain commercial general liability insurance issued by an insurance carrier with an A.M. Best rating of "A" or better in amounts not less than \$1,000,000 per incident and \$2,000,000 annual aggregate. Licensee will have Licensor, KUCTC, and their respective officers, employees and agents, named as additional insureds. All rights of subrogation will be waived against Licensor and its insurers. Such

commercial general liability insurance will provide (i) product liability coverage; (ii) broad form contractual liability coverage for Licensee's indemnification under this Agreement; and (iii) coverage for litigation costs. The specified minimum insurance amounts will not constitute a limitation on Licensee's obligation to indemnify Licensor, KU, and their respective officers, employees and agents, under this Agreement.

17.2 Evidence of Insurance and Notice of Changes

Licensee will provide Licensor with written evidence of such insurance upon request by Licensor. Licensee will provide Licensor with written notice of at least thirty (30) days prior to the cancellation, non-renewal, or material change in such insurance.

17.3 Continuing Insurance Obligations

Licensee will maintain such commercial general liability insurance beyond the expiration or termination of this Agreement during (i) the period that any Licensed Product(s) and/or Licensed Service(s) developed pursuant to this Agreement is being commercially distributed or sold by Licensee, any Affiliate, or any Sublicensee or agent of Licensee; and (ii) for five (5) years after such period.

ARTICLE 18. WAIVER

No waiver by either party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

ARTICLE 19. ASSIGNABILITY

This Agreement is not assignable or otherwise transferable by Licensee without the prior written consent of Licensor. Notwithstanding the foregoing, Licensee shall be free to assign this Agreement and its rights and obligations hereunder without Licensor's consent (a) to any Affiliate or (b) in connection with any sale of substantially all of Licensee's assets or business (or that portion of its assets or business related to the subject matter of this Agreement), merger, acquisition, consolidation, reorganization, or other similar transaction, provided that (i) Licensee shall not be released of its obligation existing at the time of such assignment and (ii) the assignee or successor to this Agreement confirms, in writing, that it will be subject to and must comply with all terms, conditions, and obligations of this Agreement. The failure of Licensee to comply with the terms of this paragraph shall be grounds for termination of the Agreement by Licensor under Article 12.

ARTICLE 20. INDEMNIFICATION BY LICENSEE

Licensee shall indemnify, hold harmless, and defend Licensor, Licensor's Affiliates, KUCTC, and their respective officers, employees, inventors, affiliates, and agents, against any and all claims, suits, losses, damages, costs, liabilities, fees, and expenses (including reasonable fees of attorneys) resulting from or arising out of or in connection with: (a) the exercise of any license granted under this Agreement; (b) the breach of this Agreement by Licensee; (c) Licensee's failure to comply with any applicable laws, rules, or regulations, or (d) any act, error, or omission of Licensee, its officers, agents, employees, Affiliates, or Sublicensees, except where such claims, suits, losses, damages, costs, fees, or expenses result solely from the gross negligence, fraud, or intentional misconduct of the Licensor, its affiliates, officers, employees, or agents. Licensee shall give Licensor prompt and timely written notice of any claim or suit instituted of which Licensee has knowledge that in any way, directly or indirectly, affects or might affect Licensor, and Licensor shall have the right at its own expense to participate in the defense of the same.

ARTICLE 21. NOTICES

Any payment, notice, or other communication required or permitted to be given to either party hereto shall be in writing and shall be deemed to have been properly given and effective: (a) on the date of delivery if delivered in person during recipient’s normal business hours; or (b) on the date of attempted delivery if delivered by courier, express mail service, or first-class mail, registered or certified. Such notice shall be sent or delivered to the respective addresses given below, or to such other address as either party shall designate by written notice given to the other party as follows:

In the case of Licensee:

[COMPANY NAME]

In the case of Licensor:

KU Center for Technology Commercialization, Inc.
Attn: Director, KUCTC
2029 Becker Drive, #142
Lawrence, Kansas 66047

ARTICLE 22. REGULATORY COMPLIANCE

- 22.1 When required by local/national law, Licensee shall register this Agreement, pay all costs and legal fees connected therewith, and otherwise ensure that the local/national laws affecting this Agreement are fully satisfied.
- 22.2 Licensee shall comply with all applicable U.S. laws dealing with the export and/or management of technology or information. Licensee understands that the Arms Export Control Act (AECA), including its implementing International Traffic In Arms Regulations (ITAR), and the Export Administration Act (EAA), including its Export Administration Regulations (EAR), are some (but not all) of the laws and regulations that comprise the U.S. export laws and regulations. Licensee further understands that the U.S. export laws and regulations include (but are not limited to): (1) ITAR and EAR product/service/data-specific requirements; (2) ITAR and EAR ultimate destination-specific requirements; (3) ITAR and EAR end user-specific requirements; (4) ITAR and EAR end use-specific requirements; (5) Foreign Corrupt Practices Act; and (6) anti-boycott laws and regulations. Licensee will comply with all then-current applicable export laws and regulations of the U.S. Government (and other applicable U.S. laws and regulations) pertaining to the Licensed Product(s) and/or Licensed Method(s) (including any associated products, items, articles, computer software, media, services, technical data, and other information). Licensee certifies that it will not, directly or indirectly, export (including any deemed export), nor re-export (including any deemed re-export) the Licensed Product(s) and/or Licensed Method(s) (including any associated products, items, articles, computer software, media, services, technical data, and other information) in violation of U.S. export laws and regulations or other applicable U.S. laws and regulations. Licensee will include an appropriate provision in its agreements with its authorized Sublicensees to assure that these parties comply with all then-current applicable U.S. export laws and regulations and other applicable U.S. laws and regulations.
- 22.3 ~~If federally funded~~-Licensee agrees that products used or sold in the United States embodying Licensed Products or produced through use of the Licensed Method shall be manufactured substantially in the United States, unless a written waiver is obtained in advance from the sponsoring federal agency.]

ARTICLE 23. GOVERNING LAW

This Agreement shall be interpreted and construed in accordance with the laws of the State of Kansas, without application of any principles of choice of laws.

ARTICLE 24. RELATIONSHIP OF PARTIES

In assuming and performing the respective obligations under this Agreement, Licensee and Licensor are each acting as independent parties and neither shall be considered or represent itself as a joint venture, partner, agent, or employee of the other.

ARTICLE 25. USE OF NAMES

25.1 By Licensee

Licensee shall not, without prior written consent of the Licensor, use the name or any trademark or trade name owned by Licensor, KU, or by an affiliate of KU, in any publication, publicity, advertising, or otherwise, except that Licensee may identify KUCTC as licensor of the Patent Rights and Licensed Products.

25.2 By Licensor

Licensor may use Licensee's name in connection with Licensor's publicity related to Licensor's intellectual property and commercialization achievements.

ARTICLE 26. DISPUTE RESOLUTION

Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with the Agreement, including but not limited to any dispute relating to patent validity or infringement, which the parties shall be unable to resolve within sixty (60) days, shall be mediated in good faith. The party raising such dispute shall promptly advise the other party in writing of such dispute. By no later than five (5) business days after the recipient has received such written notice of a dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such representative. By no later than ten (10) days after the date of such written notice of a dispute, the party against whom the dispute shall be raised shall select a mediator in the Kansas City area and such representatives shall schedule a date with such mediator for a hearing. The parties shall enter into good faith mediation and shall share the costs equally. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, then any and all claims, disputes, or controversies arising under, out of, or in connection with this Agreement, including any dispute relating to patent validity or infringement, shall be resolved through arbitration if the parties mutually consent, or through any judicial proceeding either in the courts of the State of Kansas or in the United States District Court for the District of Kansas, to whose jurisdiction for such purposes Licensee and Licensor each hereby irrevocably consents and submits. All costs and expenses, including reasonable attorneys' fees, of the prevailing party in connection with resolution of a dispute by arbitration or litigation of such controversy or claim shall be borne by the other party.

ARTICLE 27. GENERAL PROVISIONS

- 27.1 The headings of the sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
- 27.2 This Agreement shall not be binding upon the parties until it has been signed below by or on behalf of each party.
- 27.3 No amendment or modification of this Agreement shall be valid or binding upon the parties unless made in writing and signed by both parties hereto.
- 27.4 This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter thereof.
- 27.5 The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.
- 27.6 This Agreement may be executed in any number of counterparts (electronic transmission of PDF documents included), each constituting an original, but all such counterparts together constituting one and the same instrument. Any party may also execute this Agreement using electronic signatures, and each party agrees that any electronic signature will have the same legal significance as handwritten signatures. Each individual executing this Agreement on behalf of a legal Entity does hereby represent and warrant to each other person so signing that he or she has been duly authorized to execute this Agreement on behalf of such Entity.
- 27.7 In the event of any litigation, arbitration, judicial reference, or other legal proceeding involving the parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or seeking a declaration of the rights of either party under this Agreement, the prevailing party shall be entitled to recover from the other such attorneys' fees and costs as may be reasonably incurred, including the costs of reasonable investigation, preparation, and professional or expert consultation incurred by reason of such litigation, arbitration, judicial reference, or other legal proceeding.
- 27.8 Except as required by law, neither party may disclose the financial terms of this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 27.9 Licensee acknowledges that Licensor is a 501c(3) corporation; Licensee will exercise necessary precautions to ensure that Licensor's 501c(3) status is not jeopardized by Licensee's activity under this Agreement by refraining from engaging in prohibited activity, including, but not limited to, making political contributions or engaging in substantial lobbying of legislators for or on behalf of Licensor.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement by their respective officers hereunto duly authorized, on the day and year hereinafter written.

“Licensee”

“Licensor”

[COMPANY NAME] _____

THE UNIVERSITY OF KANSAS _____

By _____
(Signature)

By _____
(Signature)

Name _____

Name Simon J. Atkinson, PhD

Title _____

Title Vice Chancellor for Research

Date _____

Date _____

EXHIBIT "A"

PATENT RIGHTS

KU Ref No.	Matter	Application No. Date of Filing	Title	Inventor(s)

TANGIBLE RESEARCH PROPERTY

TECHNICAL INFORMATION

EXHIBIT "B"

LICENSE TO THE UNITED STATES GOVERNMENT

This instrument confers to the United States Government, as represented by the _____, a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced on its behalf throughout the world the following subject invention. This license will extend to all divisions or continuations of the patent application and all patents or reissues, which may be granted thereon:

Invention Title:

Inventor(s):

Patent Application Serial No.:

Filing Date:

Country, if other than United States:

This subject invention was conceived and/or first actually reduced to practice in performance of a government-funded project, Grant No.: _____

Principal rights to this subject invention have been left with the University of Kansas, subject to the provisions of 37 CFR 401 and 45 CFR 8.

Signed: _____

Date: _____

Name: Simon J. Atkinson, PhD

Title: Vice Chancellor for Research

EXHIBIT "C"

20__ ROYALTY REPORT

LICENSEE: _____ KUCTC Technology ID # _____

Period Covered: From _____ Through: _____

Prepared By: _____ Date: _____

Approved By: _____ Date: _____

If Licensee has several licensed products, please prepare separate reports for each. Then, compile all licensed products into a summary report.

Country and Patent	Product or Tradename	Quantity Sold	Unit Price	Gross Sales	* Less Allowances	Net Sales	Royalty Rate	Period Royalty Amount	
								This Year	Last Year
USA				\$	\$	\$		\$	\$
#									
Canada									
#									
Europe:									
#									
#									
#									
#									
#									
Japan									
#									
Other:									
#									
#									
Sublicense #1 (name)									
#									
Sublicense #2 (name)									
#									
TOTAL:				\$	\$	\$		\$	\$

Total Royalty Due: \$ _____

The following royalty forecast is non-binding and for internal planning only:

Royalty Forecast Under This Agreement: Qtr 1: _____ Qtr 2: _____ Qtr 3: _____ Qtr 4: _____

* On a separate page, please indicate the reasons for adjustments, if significant. Please refer to the following examples as applicable: (1) cash, trade or quantity discounts actually allowed; (2) sales, use, tariff, customs duties or other excise taxes directly imposed upon particular sales; (3) outbound transportation charges--prepaid or allowed, and (4) allowances or credits to third parties for rejections or returns.

EXHIBIT “D”

COMMERCIALIZATION REPORT

[Company Name]

[Tech Title and KUCTC Tech ID#] (if several, use oldest)

For period beginning _____ and ending _____ (“Period”)

Date: _____

Contact Person: _____ Phone: _____ Email: _____

1. Commercialization Efforts

Attach all requested documentation and attach additional pages as necessary. For all requirements include efforts of all Sublicensees. If not applicable, please so indicate by N/A.

COMMERCIALIZATION REPORT							
					Net Sales Forecast		
Country	Licensee’s Licensed Product and Tradename	Sublicensee’s Licensed Product and Tradename	Royalty Rate	Current Period Net Sales	Year 1 after current Period	Year 2 after current Period	Year 3 after current Period
<i>eg: US</i>	<i>Product A</i>	<i>N/A</i>	<i>2%</i>	<i>\$800.000</i>	<i>1.2M</i>	<i>1.8M</i>	<i>2M</i>

- Estimated number of jobs created as a result of this Licensed Product/Licensed Method:

___ Yes ___ No In the designated reporting period, did your company or any Sublicensee of the above-referenced technology have 500 or more employees? (This information is required to determine and report large or small entity status in the United States.)

2. Product Development

Attach all requested documentation and attach additional pages as necessary. For all requirements include efforts of all Sublicensees. If not applicable, please so indicate by N/A.

- A. Provide the commercial name of any FDA-approved products, incorporating, using or that are Licensed Products/Licensed Methods that have first reached the market during the designated reporting Period. (This information is necessary for federal funding reporting requirements)

Pharmaceutical

Licensed Product (Name):		Estimated Date of First Sale:		
FDA approval stage	Contact Person	Estimated Start Time	Estimated End Time	Estimated Budget
Preclinical				
NDA				
Phase I				
Phase II				
Phase III				
Animal Studies				
Mfg./Production Facility				

Medical Devices (PMA or 510(k))

Licensed Product (Name):		Estimated Date of First Sale:		
Class Type:				
Completion Type:				
FDA Approval Stage	Estimated Start Time	Estimated End Time	Estimated Budget	
PMA				
501(k)				
IDE				
HDE				
Preclinical				
Phase I				
Phase II				
Phase III				
Mfg./Production Facility				

Software

Licensed Product (Name):		Estimated Date of First Sale:		
	Contact Person	Estimated Start Time	Estimated End Time	Estimated Budget
Alpha Version				
Beta Version				
Commercial Version				

3. Intellectual Property

Please provide type of intellectual property protection covering or related to the identified licensed product.

Licensed Product (Name):				
Country	Patent No./Patent Appl. No /Copyright Registration No. or Related IP	Owner (Licensor/Licensee/Third Party)	Inventor Name(s)/ Author(s)	Title(s)

4. Marketing Activities

A. Provide an update covering Licensee’s projected marketing, manufacturing and operations

Licensed Product	Competitor’s name	Competing technology	Licensed Product Available/ Development Stage	Marketing Budget	Current Marketing Partner	Potential Marketing Partner
<i>eg: Product A</i>	<i>Company B</i>			<i>\$500,000</i>	<i>Company C</i>	<i>Company C</i>

5. Additional efforts including, but not limited to, Due Diligence or Milestones specific to licensee’s Agreement.

EXHIBIT “E”**Success Fee****Definitions**

1. “Aggregate Consideration” means the amount equal to: (a) in the case of an Asset Sale, the sum of all cash and the fair market value of all securities or other property transferred to Licensee at the time of the transaction, less all current and long-term liabilities (but not contingent liabilities) of Licensee that are not discharged or assumed by the buyer (or its affiliates) in connection with the Asset Sale, and all cash and the fair market value of all securities and other property for Trailing Consideration payable to Licensee, when and if actually paid; or (b) in the case of a Merger or Stock Sale, the sum of (i) all cash and the fair market value of all securities and other property transferred to the stockholders of the Licensee (and any option holders or warrant holders) in return for their stock (or options or warrants) in the Licensee at the time of the transaction, and (ii) all cash and the fair market value of all securities and other property transferred to the stockholders of the Licensee (and any option holders or warrant holders) for Trailing Consideration payable to the holders of Licensee’s securities, when and if actually paid.
2. “Initial Public Offering” means the effectiveness of a registration statement for the first sale of Licensee’s common stock in a public offering registered under the Securities Act of 1933, as amended.
3. “Liquidation Event” means (a) a merger, share exchange or other reorganization (“Merger”), (b) the sale by one or more stockholders of a majority of the voting power of the Licensee (“Stock Sale”) or (c) a sale of all or substantially all of the assets of the Licensee (or that portion of its assets related to the subject matter of this Agreement) (“Asset Sale”) in which for (a), (b), and (c) above, the stockholders of the Licensee prior to such transaction do not own a majority of the voting power of the acquiring, surviving or successor entity, as the case may be. Notwithstanding the foregoing, a Liquidation Event shall not include a bona fide financing transaction in which voting control of the Licensee transfers to one or more persons or entities who acquire shares of Licensee capital stock from Licensee in exchange for either an investment in Licensee or the cancellation of indebtedness owed by Licensee, or a combination thereof.
4. “Pre-Money Valuation” means the amount equal to the product of (a) the price per share of common stock sold in the Initial Public Offering and (b) the total number of outstanding shares of common stock of Licensee immediately prior to the closing of the Initial Public Offering, determined on a fully diluted, as converted into common stock basis, giving effect to any stock split, stock dividend, stock combination, recapitalization or similar action impacting Licensee’s capitalization that occurs, or is deemed to occur, upon consummation of the Initial Public Offering.
5. “Trailing Consideration” means any payments due for any deferred or contingent consideration payable to Licensee or its security holders including, without limitation, any post-closing milestone payment, escrow or holdback of consideration

Success Fee Calculation

6. Licensee shall pay Licensor an amount equal to the Success Fee Rate, as listed in the Summary of Terms, applied to the (a) Aggregate Consideration (and Trailing Consideration, if any) for a Liquidation Event or (b) Pre-Money Valuation for an Initial Public Offering (the “Success Fee”). The Success Fee shall be paid after only the first to occur of either a Liquidation Event or Initial Public Offering. The Success Fee, when and if payable, shall be paid upon closing of the event; except for Trailing Consideration which shall be payable within thirty (30) days after the actual receipt of such Trailing Consideration by Licensee or its security holders.
7. For a Liquidation Event, the Success Fee shall be payable in the form of the proceeds payable to either Licensee or its security holders, whether in cash, securities or other property, and in the same proportion such form of consideration is payable to the Licensee or its security holders. Notwithstanding the foregoing, in the event the form of consideration includes securities for which there is not an active public market, in lieu of paying that portion of the fee with such securities, Licensee will make a cash payment to Licensor equal to the fair market value of such securities. The valuation of such securities shall be determined in accordance with paragraph 9 below.

8. For an Initial Public Offering, the Success Fee shall be payable in the form of cash.

9. The valuation of any securities or other property shall be determined by reference to the operative transaction agreement for a respective Merger, Stock Sale or Asset Sale, provided that, if no such valuation is readily determinable from such operative transaction agreement, then for securities for which there is an active public market: (a) if traded on a securities exchange or market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the 30-day period ending three days prior to the closing of such transaction; or (b) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing of such transaction. For securities for which there is no active public market, the value shall be the fair market value thereof as either (i) determined in good faith by the board of directors of Licensee, which must be approved by Licensor, such approval not to be unreasonably withheld; or (ii) determined by a third party appraiser appointed and paid for by Licensee.

EXHIBIT "F"
COMMERCIALIZATION PLAN