

PATENT LICENSE AGREEMENT
AGT. NO. _____

This Patent License Agreement is between the Licensor and the Licensee identified below.

No binding agreement between the Parties will exist until this Patent License Agreement has been signed by both Parties. Unsigned drafts of this Patent License Agreement shall not be considered offers.

Background

Licensor owns rights to the Licensed Patents. Licensee desires to secure the right and license to use, develop, manufacture, market, and commercialize the Licensed Patents. Licensor has determined that such use, development, and commercialization of the Licensed Patents is in the public’s best interest and is consistent with Licensor’s educational and research missions and goals. Licensor desires to have the Licensed Patents developed and used for the benefit of Licensee, the inventors, Licensor, and the public.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereby agree as follows:

The Terms and Conditions of Patent License attached hereto as Exhibit A are incorporated herein by reference in their entirety (the “Terms and Conditions”). In the event of a conflict between provisions of this Patent License Agreement and the Terms and Conditions, the provisions in this Patent License Agreement shall govern. Capitalized terms used in this Patent License Agreement without definition shall have the meanings given to them in the Terms and Conditions.

The section numbers used in the left hand column in the table below correspond to the section numbers in the Terms and Conditions.

1	Definitions	
	Effective Date	
	Licensor	Texas State University, an agency of the State of Texas, whose address is 601 University Dr, JCK 489, San Marcos, TX 78666
	Licensee	
	Contract Year and Contract Quarters	(Check one box to correspond with Licensee fiscal year and quarters) <input type="checkbox"/> Contract Year is 12-month period ending December 31 and Contract Quarters are 3-month periods ending March 31, June 30, Sept. 30, Dec. 31 OR <input type="checkbox"/> Other: Contract Year is 12-month period ending (specify): [month and day]; Contract Quarters are 3-month periods ending (specify): [month and day, Q1], [month and day, Q2], [month and day, Q3], [month and day, Q4]

	Licensed Territory			
	Licensed Field	<input type="checkbox"/> All fields <input type="checkbox"/> Exclusive OR <input type="checkbox"/> Non-Exclusive OR <input type="checkbox"/> Limited fields Field: [Describe field of use] <input type="checkbox"/> Exclusive OR <input type="checkbox"/> Non-Exclusive Field: [Describe field of use] <input type="checkbox"/> Exclusive OR <input type="checkbox"/> Non-Exclusive Field: [Describe field of use] <input type="checkbox"/> Exclusive OR <input type="checkbox"/> Non-Exclusive If "Limited fields" is checked, Excluded Fields include: Excluded Field: [Describe excluded field of use] Excluded Field: [Describe excluded field of use] Excluded Field: [Describe excluded field of use]		
	Licensed Patent Rights Includes improvements __Yes __No			
	App. No./ Date of Filing	Title	Inventor(s)	Jointly Owned? (Y/N; if Y, with whom?) <input type="checkbox"/> Yes, w/[whom] <input type="checkbox"/> No
				Prosecution Counsel
	USPTO Entity Status	Check one box: <input type="checkbox"/> Small <input type="checkbox"/> Large		
3.1	Patent expenses due upon Effective Date	Amount	based on invoices received as of:	
3.2	Licensee commercialization milestones and fees	Milestone events	Deadline	Milestone Fees
		1. [Milestone]	[Deadline]	\$
		2. [Milestone]	[Deadline]	\$
		3. [Milestone]	[Deadline]	\$
		4. [Milestone]	[Deadline]	\$
3.3	Scheduled license fee payments	\$ due on Effective Date \$ due on \$ due on		
3.4	Royalty rate (applies to Sales by Licensee, Affiliates and Sublicensees)	____% of gross sales payable quarterly as set forth in section 3.4 of this Agreement.		

3.5	Minimum royalty	
3.6	Annual maintenance fee	\$_____ payable commencing on _____. Licensee shall reimburse Licensor all future patent maintenance fees required by the USPTO to keep the patent active.
3.7	Sublicense Fees (applicable to Non-Royalty Sublicensing Consideration)	_____% gross
3.8	License documentation fee (due upon Effective Date)	\$ _____ [waived if Licensee does not request agreement changes that require outside counsel review]
3.9	Assignment fee	\$ _____
6.2	Administrative fee (patent prosecution)	_____% Licensee will pay for all Patent Prosecution fees
18	Contact Information	
	Licensee Contacts	Licensor Contacts
	<p>Contact for Notice: Attn: Fax: [Fax number] Phone: E-mail:</p> <p>Accounting contact: Attn:</p> <p>Patent prosecution contact: Attn:</p>	<p>Contact for Notice: Attn: Dr. Reddy Venumbaka 3055 Hunter Rd. STAR Park, San Marcos, TX 78666 Fax: 512-245-3847 Phone: 512-245-2672 E-mail: reddy@txstate.edu</p> <p>And</p> <p>Attn: Ms. Teresa Carey 3055 Hunter Rd. STAR Park, San Marcos, TX 78666 Fax: 512-245-3847 Phone: 512-245-2314 E-mail: tc18@txstate.edu</p> <p>Payment and reporting contact: Checks payable to "Texas State University" Attn: Dr. Reddy Venumbaka</p> <p>Patent prosecution contact: Attn: Dr. Reddy Venumbaka</p>

20. Special Provision. The parties hereby agree to the following special provisions set forth in this Section 20 with respect to this Patent License Agreement. In the event of a conflict between the terms set forth in this Section 20 and those set forth in the Terms and Conditions attached as Exhibit A, the terms and conditions set forth in this Section 20 shall govern.

21. No Other Promises and Agreements; Representation by Counsel. Licensee expressly

warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to Licensee in executing this Patent License Agreement except those explicitly set forth herein and in the Terms and Conditions, and that Licensee is not relying upon any statement or representation of Licensor or its representatives. Licensee is relying on Licensee's own judgment and has been represented by legal counsel. Said legal counsel has read and explained to Licensee the entire contents of this Patent License Agreement and the Terms and Conditions incorporated by reference herein. Licensee hereby warrants and represents that Licensee understands and agrees to all terms and conditions set forth in this Patent License Agreement and said Terms and Conditions.

22. Deadline for Execution by Licensee. If this Agreement is executed first by the Licensor and is not executed by the Licensee and received by the Licensor at the address and in the manner set forth in Section 18 of the Terms and Conditions within thirty (30) days of the date of signature set forth under the Licensor's signature below, then this Agreement shall be null and void and of no further effect.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Patent License Agreement.

LICENSOR: Texas State University

LICENSEE:

By _____

By _____

Date _____

Date _____

EXHIBIT A TERMS AND CONDITIONS OF PATENT LICENSE

These Terms and Conditions of Patent License (“Terms and Conditions”) govern the license grant when incorporated by reference into a Patent License Agreement executed by the Licensor and Licensee identified therein. All Section references in these Terms and Conditions shall be references to provisions in these Terms and Conditions unless explicitly stated otherwise.

1. Definitions

“**Actively Commercialize**” is defined in Section 2.4 hereof.

“**Affiliate**” means any business entity more than fifty percent (50%) owned by Licensee, any business entity which owns more than fifty percent (50%) of Licensee, or any business entity that is more than fifty percent (50%) owned by a business entity that owns more than fifty percent (50%) of Licensee.

“**Agreement**” means collectively (i) these Terms and Conditions, and (ii) the Patent License Agreement.

“**Confidential Information**” means all information that is of a confidential and proprietary nature to Licensor or Licensee, as further set forth in Section 8 (Confidentiality). Without limiting the foregoing, (i) Confidential Information of both parties includes the Patent License Agreement (but not these Terms and Conditions and not the fact that the parties have entered into the Patent License Agreement), (ii) Confidential Information of Licensee includes the information it discloses under Section 4.2, and (iii) Confidential Information of the Licensor includes all invention disclosures and all patent applications prior to publication.

“**Contract Quarter**” means the three-month periods indicated as the Contract Quarter in Section 1 of the Patent License Agreement, or any stub period thereof at the commencement of the Agreement or the expiration or termination of the Agreement.

“**Contract Year**” means the twelve-month periods indicated as the Contract Year in Section 1 of the Patent License Agreement, or any stub period thereof at the commencement of the Agreement or the expiration or termination of the Agreement.

“**Covered**” means that the product or service infringes, or contributes to or induces the infringement of, a Valid Claim of the Licensed Patent Rights.

“**Effective Date**” means the date indicated as the Effective Date in Section 1 of the Patent License Agreement.

“**Fair Market Value**” means the cash consideration an unaffiliated, unrelated buyer would pay in an arm’s length sale of a substantially identical item sold in the same quantity, under the same terms, and at the same time and place.

“**Government**” means any agency, department or other unit of The United States of America or the State of Texas.

“**Gross Consideration**” means all monies and all other consideration (e.g., stock or “in-kind” property”) received by Licensee, Affiliates or Sublicensees from the Sale of Licensed Products or

Licensed Services. With regard to non-cash consideration, the royalties payable thereon may be paid either “in-kind” or in cash equivalent of the Fair Market Value of the non-cash consideration, at the election of Licensor, provided, however, that (a) if Licensor elects to receive the cash equivalent of non-cash consideration that is expected to be converted to cash in due course, Licensee may delay the royalty payment thereon until the cash conversion occurs, and (b) in order for Licensor to receive securities issued by a third party, Licensor shall be required to agree to the same terms imposed on such securities as are applicable to Licensee’s portion of such securities.

“Improvements”. Improvement, as used in this Agreement, means any modification of a device or process described in LICENSED PATENT, provided such modification, if unlicensed, would infringe on one or more claims of the LICENSED PATENTS.

Ownership of improvements: Improvements as defined above shall be owned as follows:

Where Licensor or licensor’s employees are the sole inventors, as defined by US Patent Law, Licensor shall own all right and title to the improvement.

Where Licensee or licensee’s employees are the sole inventors, as defined by US Patent Law, Licensee shall own all right and title to the improvement.

Where both Licensee and licensor are both inventors, the invention improvement shall be jointly owned.

“Indemnified Parties” are defined in Section 13.

“Licensee” means the party identified as the Licensee in Section 1 of the Patent License Agreement.

“Licensed Field” means the Licensed Field identified in Section 1 of the Patent License Agreement, subject to the then-current applicable requirements of the U.S. export laws and regulations. If the Licensed Field is not “All fields,” then the Licensed Field excludes all fields not specifically enumerated in Section 1 of the Patent License Agreement, including, without limitation, the **“Excluded Fields”** identified therein.

“Licensed Patent Rights” (a) the patents and patent applications listed in Section 1 of the Patent License Agreement; and (b) all divisionals, continuations, and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents and/or patent applications, and all reissues, reexaminations, extensions of, and foreign counterparts. From time to time during the term of this Agreement, upon request by either party, Licensee and Licensor shall update the list of all patent applications and patents within the Licensed Patent Rights.

Licensor further agrees to grant to Licensee licenses to any improvements that are first conceived and actually or constructively reduced to practice by licensee, prior to the second anniversary of the effective date of this agreement and, as to which prior to that anniversary, Licensor has the right to grant such licenses. Licensee agrees to pay all related patent and legal costs as specified in Section 3 of this Agreement.

Further, Licensee hereby grants Licensor a non-exclusive, royalty-free license to improvements made by licensee for its noncommercial research and educational purposes.

“Licensed Process” means a method or process whose practice or use is covered by a Valid Claim of the Licensed Patent Rights.

“Licensed Product” means any product or component (i) whose manufacture, use, sale, offer for sale or import is Covered by any Valid Claim of the Licensed Patent Rights, or (ii) which are made using a Licensed Process or Licensed Product.

“Licensed Service” means performance of a service for customers for a fee or other consideration using a Licensed Product, or the practice of a Licensed Process. For clarity, the Licensed Service does not include research for or development of Licensed Products by or on behalf of any of Licensee, its Affiliates, or a Sublicensee.

“Licensed Territory” means the territory so indicated as the Licensed Territory in Section 1 of the Patent License Agreement, subject to the then-current applicable requirements of the U.S. export laws and regulations.

“Licensee Patent Challenge” means any proceeding or action initiated by Licensee (or its Affiliate or Sublicensee) to challenge the validity, enforceability, or scope of one or more of the Licensed Patent Rights, or any such proceeding or action in which Licensee (or its Affiliate or Sublicensee) assists a third party in pursuing.

“Licensor” means the party identified as the Licensor in Section 1 of the Patent License Agreement.

“Milestone Fees” means all fees payable by Licensee pursuant to Section 3.2 of the Patent License Agreement.

“Net Product Sales” means the Gross Consideration from the Sale of Licensed Products less the following items directly attributable to the Sale of such Licensed Products and specifically identified on the invoice, and included in the Gross Consideration, and borne by the Licensee, Affiliates, or Sublicensees as the seller: (a) discounts, refunds, and rebates actually granted; (b) sales, value added, use and other taxes and government charges actually paid, excluding income taxes; (c) import and export duties actually paid; (d) freight, transport, packing and transit insurance charges actually paid or allowed; and (e) other amounts actually paid, allowed or credited due to rejections, returns or the like (not exceeding the original invoiced amount).

Additionally, if Licensee (or its Affiliate or Sublicensee) uses or consumes a Licensed Product or a Licensed Process for its own internal purposes or for rendering a service in a situation which does not involve a Sale, then Net Product Sales shall also include an amount equal to the customary sale price charged to a third party for the same Licensed Product; provided however, the foregoing shall not apply to units of a Licensed Product or Licensed Service which are not Sold and which are used for testing or quality control purposes, or for marketing or demonstration purposes, or for marketing give-away purposes, or for obtaining governmental approval (e.g., FDA clinical trial). Further, if there is no customary sale price for such internally used Licensed Product or Licensed Service, then the Net Product Sales shall be an amount equal to the reasonable fair value of such internally used Licensed Product or Licensed Service, as said value is determined by mutual agreement or by an independent valuation expert.

“Net Service Sales” means the Gross Consideration received from the Sale of Licensed Services less the following items, directly attributable to the Sale of such Licensed Services and specifically identified on the invoice, and included in the Gross Consideration, and borne by the Licensee, Affiliates, or Sublicensees as the seller: (a) discounts, refunds, and rebates actually granted; (b) sales, value added, use and other taxes and government charges actually paid, excluding income taxes; and (c) other amounts actually paid, allowed or credited due to rejections, re-works or the like, but not exceeding the original invoiced amount.

“Non-Royalty Sublicensing Consideration” means the total payments and other consideration received by the Licensee or its Affiliate from a Sublicensee in consideration of the grant of a sublicense under the Licensed Patent Rights (including, without limitation, license fees, fees to maintain license rights, and payments for achieving milestones in the development or commercialization of Licensed Products or Licensed Services), including any securities and other non-cash consideration received from the Sublicensee for the sublicense, but excluding amounts received as running royalties, a profit share, or other revenue sharing based on Net Product Sales or Net Service Sales for which Licensor receives a royalty under Section 3.4. Notwithstanding the foregoing, Non-Royalty Sublicensing Consideration shall not include amounts paid to Licensee or an Affiliate that are bona fide: (i) reimbursement or payment of license fees, milestone fees, and other such amounts which were paid or payable by Licensee or its Affiliate after the date the sublicense is granted; (ii) amounts paid by the Sublicensee for the supply of Licensed Products or Licensed Services, so long as such amounts do not exceed the price customarily charged to an independent third party for comparable Licensed Products or Licensed Services, and if there are no such other third party sales, then not to exceed a profit margin of 20% on Licensed Services and 50% on Licensed Products; (iii) loans, except to the extent that such loans have actually been forgiven; (iv) amounts paid for equity or securities (including conditional equity, such as warrants, convertible debt and the like) not in excess of Fair Market Value, (v) dividends or profit distributions on equity or other property (excluding the Agreement) owned or controlled by Licensee or its Affiliate, (vi) amounts paid for facilities or equipment not in excess of the Fair Market Value; (vii) withholding taxes and other amounts actually withheld from or deducted against the amounts paid to Licensee or its Affiliate; and (viii) amounts paid exclusively for research, development and other work performed by Licensee after the date the sublicense is granted related to Licensed Products or Licensed Services, so long as the payment does not reflect a premium of more than 15% over Licensee’s actual costs to perform said work; provided, however, that the amounts referenced in the foregoing clauses (i) through (viii) may only be deducted from Non-Royalty Sublicensing Consideration if specifically identified in the applicable payment report delivered pursuant to Section 4.2. Non-Royalty Sublicensing Consideration shall not include any payments to the extent that, and for so long as, such payments are refundable within the next one year for reasons other than a default by Licensee or an Affiliate, pursuant to a written instrument, in the sole discretion of the party that paid such amounts to the Licensee, provided that Licensee reports the exclusion of such specific amounts in the payment report delivered pursuant to Section 4.2.

“Patent License Agreement” means the particular Patent License Agreement to which these Terms and Conditions are attached and incorporated into by reference.

“Prosecution Counsel” means the patent attorney and/or patent law firm that is prosecuting the Licensed Patent Rights as of the Effective Date, as identified in Section 1 of the Patent License Agreement, subject to change in accordance with Section 6.2 hereof.

“Quarterly Payment Deadline” means for any particular Contract Quarter, the day that is forty-five days after the last day of such Contract Quarter.

“Sale or Sold” means any bona fide transaction for which consideration is received or expected for the sale, use, lease, transfer, or other disposition of Licensed Products or Licensed Services. A Sale of Licensed Products or Licensed Services will be deemed completed at the time Licensee or its Affiliate or its Sublicensee invoices, ships, or receives payment for such Licensed Products, or invoices performs or receives payment for such Licensed Services, whichever occurs first.

“Sublicense Agreement” means any agreement or arrangement pursuant to which Licensee (or an Affiliate) grants to any third party (including an Affiliate) any rights to use any of the Licensed Patent Rights or any other rights of Licensee under the Agreement.

“Sublicense Fee” means that certain percentage rate, as specified in Section 3.7 of the Patent License Agreement, of Non-Royalty Sublicensing Consideration that Licensor is entitled to receive pursuant to Section 3.7.

“Sublicensee” means any party (including an Affiliate) to whom an express sublicense has been granted under the Licensed Patent Rights to Sell Licensed Products or Licensed Services to third parties. For clarity, a third party wholesaler or distributor who has no significant responsibility for marketing and promotion of the Licensed Product or Licensed Services within its distribution territory or field, and who does not pay any consideration to Licensee or an Affiliate for such wholesale or distributor rights, shall not be deemed a sublicensee. Additionally, for clarity, a physician, hospital or other healthcare provider who (i) has not been granted an express license to Sell a Licensed Product or Licensed Service, and (ii) purchases a Licensed Product from Licensee, its Affiliate or a Sublicensee for providing healthcare services to the patients of such physician, hospital or other healthcare provider, shall not be deemed a Sublicensee (i.e., even if such physician, hospital or healthcare provider is deemed to receive an implied sublicense to practice a Licensed Process by reason of its purchase of the Licensed Product). This definition does not limit Licensee’s rights to grant or authorize sublicenses under this Agreement.

“Sublicensee Breach” is defined in Section 2.3 (Sublicensing).

“Term of Agreement” will commence on the Effective Date and continue until the date of expiration or termination of the last to expire or terminate of the Licensed Patent Rights. A Licensed Patent shall be considered terminated if Licensor finally terminates or abandons prosecution of the patent application with respect thereto without any claims being issued.

“Valid Claim” means a claim of (i) an issued and unexpired patent included within the Licensed Patent Rights unless the claim has been held unenforceable or invalid by the final, un-reversed, and un-appealable decision of a court or other government body of competent jurisdiction, has been abandoned or disclaimed, or has otherwise been admitted or determined to be invalid, un-patentable or unenforceable, whether through reissue, reexamination, disclaimer or otherwise, or (ii) a pending patent application within the Licensed Patent Rights, but only to the extent the claim continues to be prosecuted in good faith.

“USPTO Entity Status” has the meaning set forth in Section 6.6.

2. License Grant: Commercialization

2.1 Grant

- (a) Licensor hereby grants to Licensee a royalty-bearing license under Licensed Patent Rights to manufacture, have manufactured, use, offer for sale, sell, lease, and/or import Licensed Products in the Licensed Field in the Licensed Territory and to perform Licensed Services in the Licensed Field in the Licensed Territory. This license grant is exclusive only to the extent indicated in Section 1 of the Patent License Agreement. Otherwise, the license grant is non-exclusive.
- (b) This grant is subject to (i) the payment by Licensee to Licensor of all consideration required under the Agreement, (ii) any rights of the Government of the United States as set forth in

Section 11.2 (Government Rights), and (iii) rights retained by Licensor to the following uses without any royalty obligation for such uses:

- (1) The right to publish the scientific findings from research related to the Licensed Patent Rights; and
- (2) The right to manufacture, have manufactured, and use the Licensed Patent Rights for Licensor's teaching, research, patient care, education, and other educationally-related purposes; and
- (3) The right to grant rights in the Licensed Patent Rights to other academic institutions or non-profit research institutions for the purposes identified in clauses (1) and (2) above; and
- (4) All other rights arising out of, in connection with, or under the Licensed Patent Rights not expressly granted to Licensee under the Agreement.

2.2 Affiliates

Licensee may extend the license granted herein to any Affiliate, subject to compliance with Section 2.3 (except that the requirement that the license grant hereunder be exclusive in order to grant sublicense rights is not applicable to the extension of rights to Affiliates), in which case the Affiliate will be treated as a Sublicensee for all provisions hereof. Accordingly, any fee or other consideration paid to Licensee in consideration of such extension will be subject to the provisions of Section 3.7 (Sublicensee Fees).

2.3 Sublicensing

If the license grant under Section 2.1 is exclusive, Licensee has the right to grant Sublicense Agreements under the Licensed Patent Rights consistent with the terms of the Agreement, subject to the following:

- (a) Each Sublicensee, including an Affiliate extended rights hereunder pursuant to Section 2.2, must agree in writing to be bound, for the benefit of Licensor, by the terms and conditions of the following Sections of these Terms and Conditions: 2.1(b), 2.3, 2.4, 3.4 (to the extent applicable to the Sublicensee or sub-sublicensee), 4, 5, 6, 7.5, 8, 9, 10, 12, 13, 14, 16, 17, and 18 (for notice to Licensor). To the extent that Licensee permits a Sublicensee to grant further sub-tier sub-sublicense agreements, then each such sub-sublicensee shall be considered a "Sublicensee" under the Agreement and must also agree in writing to be bound, for the benefit of Licensor, by the above-referenced Sections.
- (b) Each such Sublicense Agreement shall indicate that Licensor is a third party beneficiary of the terms and conditions required by Section 2.3(a), and is entitled to enforce the same. Survival or not of Sublicensee rights in the event of termination of the Agreement shall be governed by Section 7.5(b) below.
- (c) Licensee shall (and to the extent a Sublicensee is authorized by Licensor to grant further sublicenses, such Sublicensee shall) deliver to Licensor a true, complete, and correct copy of each Sublicense Agreement granted by Licensee, and any modification or termination thereof, within thirty (30) days following the applicable execution, modification, or termination of such Sublicense Agreement, including an English translation if the Sublicense Agreement is not written in English. All such copies shall be considered Confidential Information of Licensee under the Agreement. Licensor's receipt of such Sublicense

Agreement will not constitute a waiver of any of Licensor's rights or Licensee's obligations under the Agreement.

- (d) Notwithstanding any such Sublicense Agreement, Licensee will remain primarily liable to Licensor for all of the Licensee's duties and obligations contained in the Agreement, and any act or omission of a Sublicensee that would be a breach of the Agreement if performed by Licensee will be deemed to be a breach by Licensee of the Agreement unless Licensee complies with the remaining provisions of this paragraph. Each Sublicense Agreement will contain a right of termination by Licensee in the event that the Sublicensee breaches the payment obligations affecting Licensor or any other terms and conditions of the Sublicense Agreement that would constitute a breach of the terms and conditions of the Agreement if such acts were performed by Licensee (a "Sublicensee Breach"). In the event of a Sublicensee Breach, and if after a reasonable opportunity to cure as provided in any such Sublicense Agreement (not to exceed 30 days for a payment breach and 90 days for a non-payment breach), such Sublicensee fails to cure such Sublicensee Breach, then the Licensee will terminate the Sublicense Agreement within 30 days thereafter unless Licensor agrees in writing that such Sublicense Agreement need not be terminated.

2.4 Diligent Commercialization

Licensee (by itself and/or through its Affiliates and Sublicensees) will use diligent and commercially reasonable efforts to Actively Commercialize Licensed Products and Licensed Services in the Licensed Field in the Licensed Territory. Without limiting the foregoing, Licensee will use diligent and commercially reasonable efforts to perform and complete (i) the milestone events specified in Section 3.2 of the Patent License Agreement by the deadlines indicated therein and (ii) the annual report submitted pursuant to Section 4.2 (Annual Written Report). "**Actively Commercialize**" means having a commercially effective, reasonably funded (as compared to other similarly situated companies), ongoing and active research, development, manufacturing, marketing and/or sales program directed toward obtaining regulatory approval, production and/or Sales of Licensed Products or Licensed Services in a Licensed Field in a Licensed Territory. The failure of Licensee to meet the milestone events set forth in Section 3.2 of the Patent License Agreement by the deadlines indicated therein shall be considered a material breach of the Agreement, unless Licensee has given written notice of such failure to Licensor in the quarterly payment and milestone report for the Contract Quarter in which the scheduled deadline date falls and Licensee has fully cured such failure within ninety (90) days after the scheduled deadline date.

3. **Compensation**

In consideration of rights granted by Licensor to Licensee under the Agreement, Licensee will pay Licensor the following fees and royalties. Each payment will reference the agreement number set forth in the Patent License Agreement (if any), will be made payable to the payee indicated in Section 18 of the Patent License Agreement and will be sent to Licensor's payment and accounting contact in Section 18 of the Patent License Agreement.

3.1 Patent Expenses Due Upon Issuance of Patent

Licensee will reimburse Licensor for the past patent expenses set forth in Section 3.1 of the Patent License Agreement within fifteen (15) days after the Issuance of patent or patents. The amount set forth in Section 3.1 of the Patent License Agreement is the amount currently estimated to be owed for past patent expenses based on invoices received by the Licensor through the date indicated in Section 3.1 of the Patent License Agreement, but shall not limit Licensee's obligations to pay all past and future patent expenses pursuant to Section 6 (Patent Expenses and Prosecution).

3.2 Milestones

Licensee will pay Milestone Fees in accordance with the schedule set forth in Section 3.2 of the Patent License Agreement. The Milestone Fees shall be due and payable on the Quarterly Payment Deadline for the Contract Quarter in which the particular milestone event was satisfied.

3.3 Scheduled License Fees

Licensee will pay non-refundable license fees in the amounts set forth in Sections 3.3 of the Patent License Agreement in accordance with the schedule set forth therein.

3.4 Royalty

Licensee will pay a royalty at the rate set forth in Section 3.4 of the Patent License Agreement of Net Product Sales and Net Service Sales for Licensed Products and Licensed Services Sold by Licensee and its Affiliates and Sublicensees in each Contract Quarter, payable on or before the Quarterly Payment Deadline for such Contract Quarter, subject to the following:.

- (a) Royalties are due only on Sales of Licensed Products Covered by a Valid Claim in the country for which such Licensed Product is developed, manufactured, or Sold.
- (b) Royalties are due only on Sales of Licensed Services when the Licensed Service is performed in a country where the Licensed Service is Covered by a Valid Claim, or when the Licensed Service is performed using a Licensed Product which was developed, manufactured, or used in a country where there was a Valid Claim Covering the Licensed Product at the time of such development, manufacture, or use.
- (c) No more than one royalty shall be paid to Licensor hereunder in respect of the Sale of any one unit of Licensed Product or Licensed Service, whether or not more than one patent or claim within the Licensed Patent Rights is applicable to the Licensed Product or Licensed Service, or the development, manufacture, or performance thereof.
- (d) No royalty shall be payable under this Section 3.4 with respect to (i) Sales to an Affiliate or Sublicensee of a particular unit of Licensed Product that is used by such Affiliate or Sublicensee to perform a Licensed Service if a royalty is payable on the Sale of the Licensed Service in accordance with the terms of the Agreement, (ii) the Sale of Licensed Products between or among Licensee, its Affiliates, and Sublicensees for re-sale purposes, provided that royalties shall be due with respect to the subsequent Sale of such units of Licensed Products to non-Affiliate, or non-Sublicensee third parties, or (iii) any fees or other payments paid between or among Licensee and Affiliates or Sublicensees that constitute Non-Royalty Sublicensing Consideration which is subject to Section 3.7.

3.5 Minimum Royalty

In the event that the running royalties and Sublicense Fees paid to Licensor does not reach the minimum amounts set out in Section 3.5 of the Patent License Agreement for the periods indicated therein, Licensee will additionally pay a minimum royalty deficit sum (the difference between said minimum amount and the amount of cumulative royalties and Sublicense Fees actually paid) on or before the Quarterly Payment Deadline for the last Contract Quarter in such period.

3.6 Annual Maintenance Fees

Licensee will pay a non-refundable annual maintenance fee in the amount set forth in Section 3.6 of the Patent License Agreement, due and payable on the first Quarterly Deadline Date for the first Contract Quarter in each Contract Year, beginning with the Contract Year indicated in Section 3.6 of the Patent License Agreement.

3.7 Sublicense Fees

Licensee will pay Sublicense Fees equal to the percent of Non-Royalty Sublicensing Consideration indicated in Section 3.7 of the Patent License Agreement. Sublicense Fee payments will be made on or before the Quarterly Payment Deadline for the Contract Quarter in which the Non-Royalty Sublicensing Consideration was received by Licensee or an Affiliate. If Licensee receives any non-cash consideration as part of the Non-Royalty Sublicensing Consideration (including equity in Sublicensee or other entities), the Sublicense Fees payable thereon may be paid either “in-kind” or in cash equivalent for the Fair Market Value of the non-cash consideration, at the election of Licensor, provided, however, that (a) if Licensor elects to receive the cash equivalent of non-cash consideration that is expected to be converted to cash in due course, Licensee may delay the payment thereon until the cash conversion occurs, and (b) in order for Licensor to receive securities issued by a third party, Licensor shall be required to agree to the same terms imposed on such securities as are applicable to Licensee’s portion of such securities.

3.8 License Documentation Fee

Licensee will pay a non-refundable license documentation fee in the amount set forth in Section 3.8 of the Patent License Agreement, due and payable within 15 (fifteen) days after the Effective Date.

3.9 Assignment Fee

Licensee will pay an assignment fee in the amount set forth in Section 3.9 of the Patent License Agreement in connection with any assignment of the Agreement pursuant to Section 15.1.

4. Reports and Plans

The reports called for under Section 4 will be sent to the “payment and reporting contact” of Licensor set forth in Section 18 of the Patent License Agreement.

4.1 Quarterly Payment and Milestone Reports

Except in the case of payments under Sections 3.1, 3.8 and 3.9, all payments are due by the Quarterly Payment Deadline for the respective Contract Quarter during the term of the Agreement, at which time Licensee will also deliver to Licensor a true and accurate report, certified by the chief financial officer or similar officer of Licensee, giving such particulars of the business conducted by Licensee, its Affiliates and its Sublicensees, if any exist, during the preceding Contract Quarter under the Agreement as necessary for Licensor to account for Licensee’s payments hereunder. This report will include the information called for in Exhibit A-1 to the extent applicable. Simultaneously with the delivery of each such report, Licensee agrees to pay Licensor the amount due, if any, for the period of such report. These reports are required even if no payments are due.

Notwithstanding the foregoing, if Licensee does not receive payment and a report from a Sublicensee sufficient to enable Licensee to meet its obligations under the foregoing, at least ten (10) business days in advance of the date on which payment and the report is due to Licensor in accordance with the foregoing, then Licensee shall still submit the report as scheduled with whatever information is available, together with a description of the Sublicensee’s delay failure. This report will affirmatively state whether or not each particular form of license consideration (e.g., Milestone Fees, running royalties, minimum royalties, scheduled license fees, annual maintenance fees, Sublicense Fees, or assignment fee) was earned in such period and, if so, the method of calculation. This report will be prepared and delivered in a form as is reasonably appropriate and acceptable to Licensor, which shall include the information described in Exhibit A-2 to the extent relevant, plus other information reasonably requested by Licensor from time to time. Licensee will continue to deliver quarterly reports to Licensor after the termination or expiration of the Agreement until such time as all Licensed Products permitted to be Sold after termination have been Sold or destroyed.

4.2 Annual Written Report

Within forty-five (45) days following the end of each Contract Year, whether or not there have been Sales of Licensed Products or Licensed Services, Licensee will deliver to Licensor a true and accurate written progress report, certified by the chief operating officer or similar officer of Licensee, that summarizes (i) Licensee's efforts and accomplishments during the preceding Contract Year in developing and/or commercializing Licensed Products and Licensed Services, and (ii) Licensee's development and commercialization plans with respect to Licensed Products and Licensed Services for the upcoming Contract Year. Within that same timeframe, Licensee will obtain and provide to Licensor a like report from any Affiliate or Sublicensee. The annual report will be prepared and delivered in a form as is reasonably appropriate and acceptable to Licensor, which will include the information described in Exhibit A-2 to the extent relevant, plus other information reasonably requested by Licensor from time to time. If the Effective Date is within the last three months of the Contract Year, then the annual report will not be required at the end of that Contract Year, but the report for the following Contract Year shall cover activities for the stub period of that first Contract Year.

4.3 Economic Development Overview

Within forty-five (45) days after the end of each Contract Year, Licensee will delivery to Licensor a true and accurate written economic development overview which reports the following matters for Licensee:

- (a) Number and geographic location of new full-time equivalent employee jobs created during the past Contract Year by Licensee; total number and geographic location of full-time equivalent employees of Licensee at the end of such Contract Year; and expected growth in number of employees;
- (b) Dollar amount of new equity and debt financing received by Licensee during the past Contract Year;
- (c) Revenues earned by Licensee during the past Contract Year;
- (d) Location and square footage of facilities; and
- (e) Such other Licensee information reasonably requested by Licensor related to reporting of the results of Licensor's licensing activity.

Said economic development overview shall be treated as Licensee's Confidential Information; excepting however, Licensor is entitled to combine such information with similar information from other Licensor licensees and publicly report such combined aggregate information, without identifying Licensee's separate specific applicable numbers.

If and when Licensee has more than 200 full-time employees, then no further economic development overviews will be required from Licensee.

5. Payment, Records, and Audits

5.1 Payments

All dollar amounts referred to in the Agreement are expressed in United States dollars without deductions for taxes, assessments, fees, or charges of any kind. Each payment will reference the agreement number, if any, set forth at the beginning of the Patent License Agreement. All payments to Licensor will be made in United States dollars by check payable to the payee identified in Section

18 of the Patent License Agreement and sent to the “payment and reporting” contact in Section 18 of the Patent License Agreement.

5.2 Sales Outside the U.S.

All amounts set forth in the Agreement are in U.S. Dollars. If any currency conversion shall be required in connection with the calculation of payments hereunder, such conversion shall be made using the rate used by Licensee for its financial reporting purposes in accordance with Generally Accepted Accounting Principles or, in the absence of such rate, using the average of the buying and selling exchange rate for conversion between the foreign currency and U.S. Dollars, for current transactions as reported in *The Wall Street Journal* on the last business days of the Contract Quarter to which such payment pertains. If the transfer of or the conversion into the United States dollar equivalents of any such remittance in any such instance is not lawful or possible, the payment of such part of the royalties as is necessary will be made by the deposit thereof, in the currency of the country where the Sale was made on which the royalty was based to the credit and account of Licensor or its nominee in any commercial bank or trust company of Licensor’s choice located in that country, and prompt written notice of which will be given by Licensee to Licensor.

5.3 Late Payments

Amounts that are not paid when due will accrue a late charge from the due date until paid, at a rate equal to one percent (1.0%) per month (or the maximum allowed by law, if less).

5.4 Records

For a period of seven (7) years after the Contract Quarter to which the records pertain, Licensee agrees that it and its Affiliates and Sublicensees will each keep complete and accurate records of their Sales, Net Product Sales, Net Service Sales, Milestone Fees, and Non-Royalty Sublicensing Consideration with respect to which payments are due under Section 3 in sufficient detail to enable such payments to be determined and audited.

5.5 Auditing

Licensee agrees that it and its Affiliates and Sublicensees will permit Licensor or its representatives, at Licensor’s expense, to periodically examine such books, ledgers, and records during regular business hours of the party being audited, at such party’s place of business, on at least thirty (30) days advance notice during the seven (7) year period referenced in Section 5.4, to the extent necessary to verify any payment or report required under the Agreement or the activities of Licensee, its Affiliates and Sublicensees. For each Sublicensee, Licensee shall obtain such audit rights for Licensor. No more than one audit of each of Licensee, its Affiliates, and Sublicensees shall be conducted under this Section 5.5 in any calendar year, it being understood that one audit may necessitate multiple visits to Licensee’s place of business to conduct a given review, and that such multiple visits may take place during the same calendar year. If any amounts due Licensor have been underpaid in an amount equal to or greater than five percent (5%) of the total amount due for the records so examined, then Licensee will pay the cost of any such audit, plus accrued interest due in accordance with Section 5.3. All information examined pursuant to this Section 5.5 shall be deemed to be the confidential information of the party being audited, without the requirement that it be marked or designated as such, and Licensor and its representatives shall be required to enter into a reasonable confidentiality agreement with the party being audited prior to the audit. Further, whenever Licensee and/or its Affiliates and Sublicensees has its books and records audited by an independent certified public accountant, Licensee and/or its Affiliates and Sublicensees will, within thirty (30) days of the conclusion of such audit, provide Licensor with a written statement of said auditor, setting forth the calculation of amounts due to Licensor over the time period audited, as determined from the books and records of the Licensee, Affiliate or Sublicensee; but said auditor does not need to give any audit opinion with said statement.

5.6 No Reductions for Co-Ownership

No payments due under the Agreement will be reduced as the result of co-ownership of Licensed Patent Rights by Licensor and another party, including, but not limited to, Licensee.

6. Patent Expenses and Prosecution

6.1 Patent Expenses

Licensee will pay all future expenses for filing, prosecuting, and maintaining the Licensed Patent Rights that are licensed to Licensee. Patent costs and expenses to be paid by Licensee shall include, but not be limited to, all costs related to United States and foreign filings (pursuant to Section 6.3), including patent filing, translation, search, prosecution and maintenance costs and fees. Licensee will be billed all such costs and fees and other charges incident to the preparation, prosecution, and maintenance of the Licensed Patent Rights; and Licensee shall pay such expenses within thirty (30) days after receipt of invoice from patent counsel. At the election of Licensor, Licensee will either pay Prosecution Counsel directly for patent expenses or will reimburse Licensor for patent expenses. If Licensor offers Licensee the ability to pay Prosecution Counsel directly but Licensee chooses to reimburse the Licensor instead, then Licensee shall also pay Licensor an additional administrative charge in the amount set forth in Section 6.1 of the Patent License Agreement. Any delinquent payment of patent expenses (whether owed directly to Prosecution Counsel or to Licensor) or administrative fees will invoke a late charge as specified in Section 5.3 and will be considered a default of the Agreement.

6.2 Direction of Prosecution

Licensor will work closely with Licensee to develop a suitable strategy for the prosecution and maintenance of all Licensed Patent Rights. Prosecution Counsel as of the Effective Date is identified in Section 1 of the Patent License Agreement. It is intended that Licensee will interact directly with the selected Prosecution Counsel in all phases of patent prosecution, such as 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 Prosecution Counsel be provided to Licensee for review and comment prior to filing, to the extent practicable under the circumstances. At its discretion, Licensor may allow Licensee to instruct Prosecution Counsel directly, provided, that (a) Licensor will maintain final authority in all decisions regarding the prosecution and maintenance of the Licensed Patent Rights, (b) Licensor may revoke this authorization to instruct Prosecution Counsel directly at any time, and (c) the Prosecution Counsel remains counsel to the Licensor, with appropriate contracts, engagement letters and/or conflict waivers in effect, as necessary. If Licensee wishes to instruct Prosecution Counsel directly or to request a change in Prosecution Counsel, Licensee may do so prior to or simultaneously with its execution of the Patent License Agreement by following the Licensor's procedures for such. Licensor reserves in its discretion the ability to change Prosecution Counsel and to approve or disapprove any requested changes by Licensee.

6.3 Ownership

All patent applications and patents will be in the name of Licensor (and any co-owner identified in Section 1 of the Patent License Agreement) and owned by Licensor (and such co-owner, if any).

6.4 Foreign Filings

In addition to the United States, the Licensed Patent Rights shall, subject to applicable bar dates, be pursued in such foreign countries as Licensee may designate in writing to Licensor in sufficient time to reasonably enable the preparation of such additional filings, and in those foreign countries in which Licensor has filed applications prior to the Effective Date.

6.5 Withdrawal From Paying Patent Costs

If Licensee wishes to cease paying for any particular patent cost (e.g., costs for a particular Licensed Patent or for prosecution in a particular country), Licensee must give Licensor at least ninety (90) days prior written notice; and Licensee will continue to be obligated to pay for the patent costs which reasonably accrue during said notice period. If Licensee ceases or fails to pay the required patent costs for any particular patent matter, then said patent matter shall no longer be included in the Licensed Patent Rights covered by the Agreement.

6.6 USPTO Size Status

Licensee represents that the USPTO entity status size of Licensee in accordance with the regulations of the United States Patent and Trademark Office ("USPTO Entity Status") is as set forth in Section 1 of the Patent License Agreement.

6.7 Patent Extension.

As part of the parties' activities under Section 6.2, they may decide to seek extensions of the Licensed Patent Rights when available under applicable laws and regulations that allow for such extensions, including without limitation extensions provided under U.S. law at 35 U.S.C. §§154(b), 155A, and 156. If Licensor is reasonably entitled to an extension of an issued patent within the Licensed Patent Rights for a Licensed Product or Licensed Service in accordance with applicable law, but Licensee does not wish to have the Licensor seek an extension for that particular patent because Licensee desires to seek an extension for a different patent, then Licensee shall nonetheless make payments to Licensor under the Agreement in the same manner as if Licensor had obtained the extension for the Licensed Patent Right selected by Licensor. Notwithstanding the foregoing, in the event there is more than one licensee under the particular Licensed Patent Right in a given country and it is not possible to obtain an extension of such Licensed Patent Rights for all such licensees (including Licensee), then Licensor shall have the right to control in its sole discretion the seeking of any such extension.

6.8 Licensee Patent Challenge

In the event of a Licensee Patent Challenge, Licensee will be obligated to reimburse Licensor for all of its attorneys' fees and other costs incurred in connection with responding to the Licensee Patent Challenge.

7. Term and Termination

7.1 Termination at End of Term

Unless sooner terminated as provided herein, the Agreement will terminate at the end of the Term of Agreement as defined in Section 1 (Definitions).

7.2 Termination by Licensee

Licensee, at its option, may terminate the Agreement at any time by doing all of the following:

- (a) by ceasing to make, have made, use, sell and import any Licensed Products and ceasing to perform Licensed Services; and
- (b) by giving one hundred eighty (180) days prior written notice to Licensor of such cessation and of Licensee's intent to terminate. Licensee agrees that Licensor may immediately begin negotiations with other potential licensees upon receipt of such notice to Licensor and that all other obligations of Licensee under the Agreement will continue until the effective date of termination; and

- (c) by tendering payment of all accrued royalties and other payments due to Licensor as of the date of the notice of termination.

In addition, Licensee, at its option, may terminate the Agreement upon written notice to Licensor if Licensor breaches the Agreement and does not cure such breach within ninety (90) days after the delivery of written notice from Licensee.

7.3 Termination by Licensor

Licensor, at its option, may immediately terminate the Agreement, or any part of Licensed Patent Rights, or any part of Licensed Field, or any part of Licensed Territory, or the exclusive nature of the license grant, upon delivery of written notice to Licensee of Licensor's decision to terminate, if any of the following occur:

- (a) Licensee has not had a Sale of Licensed Products or Licensed Services by the date set forth in Section 3.2 of the Patent License Agreement; or
- (b) Licensee becomes in arrears in any payments due under the Agreement, and Licensee fails to make the required payment within thirty (30) days after written notice of the failure is given to Licensee; or
- (c) Licensee is in breach of any non-payment provision of the Agreement, and does not cure such breach within ninety (90) days after delivery of written notice from Licensor; or
- (d) In any one twelve (12) month period, if Licensor delivers notice to Licensee of three (3) or more actual breaches of the Agreement, even in the event that Licensee cures such breaches in the allowed period, Licensor may immediately terminate the Agreement upon delivery of notice of termination to Licensee; or
- (e) The event of a Licensee Patent Challenge by Licensee or its Affiliate or Sublicensee.

7.4 Other Conditions of Termination

The Agreement will terminate earlier:

- (a) Immediately without the necessity of any action being taken by Licensor or Licensee, if Licensee becomes bankrupt or insolvent, or Licensee's Board of Directors elects to liquidate its assets or dissolve its business, or Licensee ceases its business operations, or Licensee makes an assignment for the benefit of creditors or if the business or assets of Licensee are otherwise placed in the hands of a receiver, assignee or trustee, whether by voluntary act of Licensee or otherwise; or
- (b) at any time by mutual written agreement between Licensee and Licensor.

7.5 Survival

If the Agreement is terminated for any reason:

- (a) except in the case of termination under Section 7.1 (Termination at End of Term), Licensee will immediately cease use of the Licensed Patent Rights and performance of Licensed Services; provided however, after the effective date of termination, Licensee may sell all Licensed Products and parts thereof that it has on hand at the effective date of termination; provided, however, that Licensee's royalty obligations will continue until all Licensed Products have been sold; and

- (b) All rights and licenses of Sublicensees under the Agreement existing at the time of termination shall terminate unless Licensor enters into a written agreement to continue such rights and licenses; and
- (c) Each party will comply with the provisions of Section 8.4 (Copies); and
- (d) nothing in the Agreement will be construed to release either party from any obligation that matured prior to the effective date of termination; and
- (e) The provisions of Sections 6.6 (Licensee Patent Challenge), 8 (Confidentiality), 9 (Infringement and Litigation), 11 (Representations and Disclaimers), 12 (Limit of Liability), 13 (Indemnification), 14 (Insurance), 17 (Use of Name), 18 (Notices), and 19 (General Provisions) will survive any termination or expiration of the Agreement. In addition, the provisions of Sections 3 (Compensation), 4.1 (Quarterly Payment and Milestone Reports), 5 (Payment, Records and Audits), and 6.1 (Patent Expenses) shall survive with respect to all activities and payment obligations accruing prior to the termination or expiration of the Agreement.

8. Confidentiality

8.1 Protection and Marking

Licensor and Licensee each agree that all Confidential Information disclosed in tangible form, and marked “confidential” and forwarded to one by the other, or if disclosed orally, is designated as confidential at the time of disclosure: (i) is to be held in strict confidence by the receiving party, (ii) is to be used by and under authority of the receiving party only as authorized in the Agreement, and (iii) shall not be disclosed by the receiving party, its agents or employees without the prior written consent of the disclosing party or as authorized in the Agreement. Licensee has the right to use and disclose Confidential Information of Licensor reasonably in connection with the exercise of its rights under the Agreement, including without limitation disclosing to Affiliates, Sublicensees, potential investors, acquirers, and others on a need to know basis, if such Confidential Information is provided under conditions which reasonably protect the confidentiality thereof.

8.2 Confidentiality of Terms of Agreement

Each party agrees not to disclose to any third party the terms of the Agreement without the prior written consent of the other party hereto, except each party may disclose the terms of the Agreement: (a) to advisors, actual or potential acquirers or investors, and others on a need to know basis, in each case, under appropriate confidentiality obligations substantially similar to those of this Section 8; and (b) to the extent necessary to comply with applicable laws and court orders (including, without limitation, The Texas Public Information Act, as may be amended from time to time, other open records laws, decisions and rulings, and securities laws, regulations and guidances), in accordance with Section 8.3 hereof.

8.3 Disclosure Required by Court Order or Law

If the receiving party is required to disclose Confidential Information of another party hereto, or any terms of the Agreement, pursuant to the order or requirement of a court, administrative agency, or other governmental body or applicable law, the receiving party may disclose such Confidential Information or terms to the extent required, provided that the receiving party shall use reasonable efforts to provide the disclosing party with reasonable advance notice thereof to enable the disclosing party to seek a protective order and otherwise seek to prevent such disclosure. Each party’s obligation of confidence hereunder includes, without limitation, using at least the same degree of care with the disclosing party’s Confidential Information as it uses to protect the receiving party’s own Confidential Information, but always at least a reasonable degree of care.

8.4 Copies

Each party agrees not to copy or record any of the Confidential Information of the other party, except as reasonably necessary to exercise the rights granted under the Agreement or perform obligations under the Agreement. Within thirty (30) days after the termination of the Agreement, each party will deliver to the other party all copies or records of Confidential Information of the other party in its possession or control, or will certify in writing to the other party that such Confidential Information has been destroyed.

8.5 Continuing Obligations

Subject to the exceptions listed below, the parties' confidentiality obligations under the Agreement will survive termination of the Agreement and will continue for a period of five (5) years.

8.6 Exclusions

Information shall not be considered Confidential Information of a disclosing party under the Agreement to the extent that the recipient party can establish by competent written proof that such information:

- (a) was in the public domain at the time of disclosure; or
- (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns in breach of the Agreement; or
- (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it not under an obligation of confidentiality; or
- (d) was already known by the recipient party at the time of disclosure; or
- (e) was independently developed by the recipient party without use of the disclosing party's Confidential Information.

8.7 Copyright Notice

The placement of a copyright notice on any Confidential Information will not be construed to mean that such information has been published and will not release the other party from its obligation of confidentiality hereunder.

9. Infringement and Litigation

9.1 Notification

Licensor and Licensee shall each notify the other in writing reasonably promptly if either becomes aware of any potential infringement of Licensed Patent Rights.

9.2 Licensee Prosecution Rights

Licensee and its designees have the right, but not the obligation, to enforce, at their expense, all Licensed Patent Rights which are exclusively licensed hereunder against, and to otherwise take actions to terminate, infringement of such Licensed Patent Rights in the Licensed Field in the Licensed Territory, subject to the following: To the extent authorized by the Texas Constitution and the laws of the State of Texas, and subject to the statutory duties of the Texas Attorney General, Licensee, its Affiliates and/or designees shall each have control of suits that they bring pursuant to this Section 9.2. Any recoveries for damages for patent infringement (including any trebling of damages) shall be used first to reimburse the actual and reasonable out-of-pocket costs and

expenses incurred in good faith and actually paid by Licensee or Licensor, in connection with such enforcement, including amounts paid to reimburse Licensor for assistance. Any remaining recoveries shall be governed by the provisions of Section 3.7 as if the remaining recoveries were Non-Royalty Sublicensing Consideration received from Sublicensees; and Licensor's portion thereof shall be delivered to Licensor within ten (10) days following receipt by Licensee.

9.3 Licensor's Prosecution Rights

With respect to any infringement, if Licensee and its designees do not file suit within six (6) months after a written request by Licensor to initiate an infringement action with respect to such infringement, then Licensor shall have the right, at its sole discretion, to bring suit to enforce any Licensed Patent Right licensed hereunder against the infringing activities, with Licensor retaining all recoveries from such enforcement, and Licensor being entitled to reduce the license granted hereunder to non-exclusive if Licensor decides to grant non-exclusive license rights to the infringer.

9.4 Cooperation between Licensor and Licensee

To the extent authorized by the Texas Constitution and the laws of the State of Texas, and subject to the statutory duties of the Texas Attorney General, the parties agree to keep the other reasonably informed regarding any suit brought in accordance with this Section 9, and to cooperate fully with each other, including without limitation, by joining enforcement actions in name as a party plaintiff or taking other actions where necessary for the standing or other requirements to file or maintain the action, subject to (a) in the case of Licensor, approval by Licensor's General Counsel, and (b) reimbursement by the party bringing the suit (the "Initiating Party") for any actual and reasonable out-of-pocket expenses and/or liabilities that such other party reasonably incurs, including attorney fees, in order to provide assistance or cooperation requested by the Initiating Party in connection with an action in accordance with this Section 9. Reimbursements under this Section 9.4 shall be paid within thirty (30) days after receipt of an invoice specifying the expenses and/or liabilities. At the request and expense of the Initiating Party, the other party will permit access during regular business hours, to all relevant personnel, records, papers, information, samples, specimens, and the like in its possession, provided that the parties will cooperate reasonably in an effort to avoid undesired waivers of privilege. In all cases, the party hereto that did not initiate the suit shall have the right to participate in any action brought by another party hereto with counsel of its own choosing, at its own expense.

10. Export Compliance

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): (i) ITAR and EAR product/service/data-specific requirements; (ii) ITAR and EAR ultimate destination-specific requirements; (iii) ITAR and EAR end user-specific requirements; (iv) ITAR and EAR end user-specific requirements; (v) Foreign Corrupt Practices Act; and (vi) 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 Products and Licensed Services (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 Products and Licensed Services (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.

11. Representations and Disclaimers

11.1 Licensor Representation

- (a) Except for the rights, if any, of the Government as set forth below, Licensor represents and warrants to Licensee that to its knowledge (i) Licensor is the owner of the entire right, title, and interest in and to Licensed Patent Rights (except as specified in Section 1 of the Patent License Agreement for joint owners), (ii) Licensor has the sole right to grant licenses hereunder, and (iii) Licensor has not knowingly granted and will not knowingly grant licenses or other rights under the Licensed Patent Rights that are in conflict with the terms and conditions in the Agreement. To Licensor's knowledge, the Licensed Patent Rights as defined in Section 1 of the Patent License Agreement name all of the inventors of the inventions claimed therein. Notwithstanding the foregoing, however, Licensor shall not be responsible or liable to Licensee in the event a third party who is not a named inventor as of the Effective Date subsequently claims to be an inventor of any invention within Licensed Patent Rights.
- (b) If Section 1 of the Patent License Agreement identifies that the Licensed Patent Rights are jointly owned, then Licensor represents that it has authority from the co-owner identified therein to grant the rights specified in the Agreement on behalf of both Licensor and said co-owner.
- (c) EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, LICENSOR MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED.

11.2 Government Rights

Licensee understands that Licensed Patent Rights may have been developed under a funding agreement with Government and, if so, that Government may have certain rights relative thereto. The Agreement is explicitly made subject to the Government's rights under any such agreement and under any applicable United States federal law or regulation. To the extent that there is a conflict between any such agreement, such applicable United States federal law or regulation and the Agreement, the terms of such Government agreement, and applicable federal law or regulation, shall prevail. Licensee agrees that, to the extent required by such applicable United States federal laws and regulations, Licensed Products used or Sold in the United States will be manufactured substantially in the United States, unless a written waiver is obtained in advance from Government. Upon request, Licensor shall use good faith efforts to identify to Licensee in writing each patent and patent application within Licensed Patent Rights that discloses and/or claims an invention made with Government funding and/or that is subject to 35 USC Sec. 202, et seq., or other restrictions as a result of the use of Government funding or resources.

11.3 Licensor Disclaimers

Licensee understands and agrees that Licensor, by the Agreement, makes no representation as to the Licensed Products or Licensed Services, or as to the operability or fitness for any use, safety, efficacy, approvability by regulatory authorities, time and cost of development, patentability, and/or breadth of Licensed Patent Rights. Licensor makes no representation as to whether any patent within Licensed Patent Rights is valid, or as to whether there are any patents now held, or which will be held, by others or by Licensor that might be required for use of Licensed Patent Rights in Licensed Field. Nothing in the Agreement will be construed as conferring by implication, estoppel or otherwise any license or rights to any patents or technology of Licensor other than the Licensed Patent Rights, whether such patents are dominant or subordinate to the Licensed Patent Rights. Licensor has no obligation to furnish to Licensee any know-how, technology or

technological information, unless Licensor specifically identifies such materials and expressly commits to provide them in the Patent License Agreement.

11.4 Licensee Representations

By execution of the Agreement, Licensee represents, acknowledges, covenants and agrees (i) that Licensee has not been induced in any way by Licensor or its employees to enter into the Agreement, and (ii) that Licensee has conducted sufficient due diligence with respect to all items and issues pertaining to this Section 11 (Representations and Disclaimers) and all other matters pertaining to the Agreement; and (iii) that Licensee has adequate knowledge and expertise, or has utilized knowledgeable and expert consultants, to adequately conduct the due diligence, and (iv) that Licensee accepts all risks inherent herein. Licensee represents that it is a duly organized, validly existing entity of the form indicated in Section 1 of the Patent License Agreement, and in good standing under the laws of its state of organization as indicated in Section 1 of the Patent License Agreement, and has all necessary corporate or other appropriate power and authority to execute, deliver and perform its obligations hereunder.

12. Limit of Liability

IN NO EVENT SHALL LICENSOR OR ITS INVENTORS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUE) ARISING OUT OF, OR IN CONNECTION WITH, THE AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER ANY SUCH PARTY KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES.

OTHER THAN FOR CLAIMS AGAINST LICENSEE FOR INDEMNIFICATION (SECTION 13) OR FOR MISUSE OR MISAPPROPRIATION OR INFRINGEMENT OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, LICENSEE WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR EXPECTED SAVINGS OR OTHER ECONOMIC LOSSES, OR FOR INJURY TO PERSONS OR PROPERTY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER LICENSEE KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

13. Indemnification

13.1 Indemnification Obligation

Subject to Section 13.2, Licensee agrees to hold harmless, defend and indemnify Licensor, its Regents, officers, employees, students and agents ("Indemnified Parties") from and against any liabilities, damages, penalties, fines, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and other expenses of litigation) (collectively "Liabilities") to the extent resulting from claims or demands brought by third parties against an Indemnified Party, on account of any injury or death of persons, damage to property, or any other damage or loss to the extent due to the exercise or practice by or under authority of Licensee, its Affiliates or their Sublicensees of the rights granted hereunder.

13.2 Conditions of Indemnification

Licensee shall have no responsibility or obligation under Section 13.1 for any Liabilities to the extent due to the gross negligence or willful misconduct by Licensor. Obligations to indemnify, and hold harmless under Section 13.1 shall not apply unless the Indemnified Parties: (a) promptly notify Licensee of the claim or demand following their receipt of written notice of such claim or demand; (b) to the extent authorized by the Texas Constitution and the laws of the State of Texas,

and subject to the statutory duties of the Texas Attorney General, give Licensee control of the defense and settlement of the claim and demand; and (c) provide the assistance, at Licensee's expense, reasonably necessary in the defense and settlement.

14. Insurance

14.1 Insurance Requirements

Prior to any Licensed Product being used or Sold (including for the purpose of obtaining regulatory approvals), and prior to any Licensed Service being performed by Licensee, an Affiliate, or by a Sublicensee, Licensee shall, at its sole cost and expense, procure and maintain commercial general liability insurance in reasonable and appropriate amounts for the Licensed Product being used or Sold or the Licensed Service being performed, and Licensee shall have Licensor, its Regents, officers, employees, students and agents named as additional insureds. Such commercial general liability insurance shall provide, without limitation: (i) product liability coverage; (ii) broad form contractual liability coverage for Licensee's indemnification under the Agreement; and (iii) coverage for litigation costs. The minimum amounts of insurance coverage required herein shall not be construed to create a limit of Licensee's liability with respect to its indemnification under the Agreement.

14.2 Evidence of Insurance and Notice of Changes

Licensee shall provide Licensor with written evidence of such insurance at least fifteen (15) calendar days prior to Licensed Product being used or Sold (including for the purpose of obtaining regulatory approvals) or Licensed Service being performed. Additionally, Licensee shall provide Licensor with written notice of at least sixty (60) calendar days prior to Licensee cancelling, not renewing, or materially changing such insurance.

14.3 Continuing Insurance Obligations

Licensee shall maintain such commercial general liability insurance beyond the expiration or termination of the Agreement during: (a) the period that any Licensed Product or Licensed Service is being commercially used or Sold or performed; and (b) the five (5) year period immediately after such period.

15. Assignment

15.1 By Licensee

The Agreement may not be assigned by Licensee without the prior written consent of Licensor, which consent will not be unreasonably withheld. A merger or other transaction in which the equity holders of Licensee prior to such event hold less than a majority of the equity of the surviving or acquiring entity shall be considered an assignment of the Agreement. For any permitted assignment to be effective, (a) the Licensee must pay Licensor the assignment fee pursuant to Section 3.9, and (b) the assignee must assume in writing (a copy of which shall be promptly provided to Licensor) all of Licensee's interests, rights, duties and obligations under the Agreement and agree to comply with all terms and conditions of the Agreement as if assignee were an original party to the Agreement. Notwithstanding anything contained herein, Licensee remains jointly and severally responsible and liable with the assignee for performance of the Agreement after any such assignment.

15.2 By Licensor

The Agreement may be assigned by Licensor without the consent from Licensee, so long as such assignment does not impair or diminish the rights of Licensee under the Agreement. Without limiting the generality of the foregoing, Licensor may assign or pledge to a third party the Licensor's right to receive future cash license fees, royalties, Sublicense Fees, and Milestone Fees

payable by Licensee, together with associated audit and information rights. In the event of any such assignment, Licensor will be entitled to disclose to the assignee all relevant information concerning the Agreement and Licensee and its Affiliates and Sublicensees, subject to a confidentiality agreement which is comparable to Section 8 of these Terms and Conditions.

16. Governmental Markings

16.1 Patent Marking

Licensee agrees that, to the extent reasonably feasible and consistent with practices that are common in the particular industry, all packaging containing individual Licensed Products, documentation therefor, and actual Licensed Products sold by Licensee, Affiliates, and/or Sublicensees will be legibly marked with the number of any applicable patent(s) licensed hereunder as part of the Licensed Patent Rights in accordance with each country's patent marking laws, including Title 35, United States Code.

16.2 Governmental Approvals and Marketing of Licensed Products

Licensee will be responsible for obtaining all necessary governmental approvals for the development, production, distribution, sale, and use of any Licensed Product or performance of any Licensed Service, at Licensee's expense, including, without limitation, any safety studies. Licensee will have sole responsibility for any warning labels, packaging and instructions as to the use and the quality control for any Licensed Product or Licensed Service.

16.3 Foreign Registration

Licensee agrees to register the Agreement with any foreign governmental agency that requires such registration; and Licensee will pay all costs and legal fees in connection with such registration. Licensee will assure that all foreign laws affecting the Agreement or the sale of Licensed Products and Licensed Services are fully satisfied.

17. Use of Name

17.1 By Licensee

Licensee may use the name of Licensor only in connection with factually based materials related to disclosing the existence of the Agreement for the Licensed Products and Licensed Services; provided, however, that Licensee may not use the name of Licensor in connection with any name, brand or trademark related to Licensed Products and Licensed Services. For example, Licensee may include a statement in promotional materials that refers to the fact that a Licensed Product or Licensed Service is based on technology developed at Licensor and licensed to Licensee; but Licensee may not include Licensor's name with a product or service name.

17.2 By Licensor

Licensor may use Licensee's name, logo, and general information only in connection with factually based Licensor publicity such as website, press releases, and other general marketing and public relations purposes.

18. Notices

Any notice or other communication of the parties required or permitted to be given or made under the Agreement will be in writing and will be deemed effective when sent in a manner that provides confirmation or acknowledgement of delivery and received at the address set forth below (or as changed by written notice pursuant to this Section 18). Notices required under the Agreement may not be delivered via E-mail.

Notices shall be provided to each party as specified in the "Contact for Notice" address set forth in Section 18 of the Patent License Agreement. Section 18 of the Patent License Agreement also indicates each party's contact for amounts payable under the Agreement and each party's contact for prosecution activities (Contact for Patent Prosecution Matters). Each party shall update the other party in writing with any changes in such contact information.

19. General Provisions

19.1 Binding Effect

The Agreement is binding upon and inures to the benefit of the parties hereto, their respective executors, administrators, heirs, permitted assigns, and permitted successors in interest.

19.2 Construction of Agreement

Headings are included for convenience only and will not be used to construe the Agreement. The parties acknowledge and agree that both parties substantially participated in negotiating the provisions of the Agreement; therefore, both parties agree that any ambiguity in the Agreement shall not be construed more favorably toward one party than the other party, regardless of which party primarily drafted the Agreement.

19.3 Counterparts and Signatures

The Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A party may evidence its execution and delivery of the Agreement by a telecopier facsimile transmission to the other party of a signed copy of the Agreement.

19.4 Enforcement

In the event either party commences any proceeding against the other party with respect to the Agreement, the prevailing party (as determined by the authority before whom such proceeding is commenced) will be entitled to recover reasonable attorneys' fees and costs as may be incurred in connection therewith, in addition to any other relief as may be granted.

19.5 Compliance with Laws

Licensee will comply with all applicable federal, state and local laws and regulations, including, without limitation, all export laws and regulations.

19.6 E-mails

The parties acknowledge that they may correspond or convey documentation via Internet e-mail, but that no modification of the Agreement will be made via e-mail communications.

19.7 Governing Law

The Agreement will be construed and enforced in accordance with laws of the United States of America and the State of Texas, without regard to choice of law and conflicts of law principles.

19.8 Modification

Any modification of the Agreement will be effective only if it is in writing and signed by duly authorized representatives of both parties.

19.9 Severability

If any provision hereof is held to be invalid, illegal or unenforceable in any jurisdiction, the parties hereto shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the parties, and all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intentions of

the parties hereto as nearly as may be possible. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such other provisions in any other jurisdiction, so long as the essential essence of the Agreement remains enforceable.

19.10 Survival

The survival provisions of the Agreement are set forth in Section 7.5 (Survival).

19.11 Third Party Beneficiaries

Nothing in the Agreement, express or implied, is intended to confer any benefits, rights or remedies on any entity, other than the parties and their permitted successors and assigns. However, if there is a joint owner of any Licensed Patent Rights identified in Section 1 of the Patent License Agreement, then Licensee hereby agrees that the following provisions of these Terms and Conditions extend to the benefit of the co-owner identified therein as if such co-owner was identified in each reference to the Licensor: the retained rights under clause (b) of Section 2.1; Section 11.3 (disclaimers); Section 12 (limitation of liability); Section 13 (indemnification); Section 14.1 (insurance for Indemnities); Section 17 (use of name); and Section 19.13 (sovereign immunity, if applicable).

19.12 Waiver

Neither party will be deemed to have waived any of its rights under the Agreement unless the waiver is in writing and signed by such party.

19.13 Sovereign Immunity

Nothing in the Agreement shall be deemed or treated as any waiver of Licensor's sovereign immunity.

19.14 Entire Agreement

The Agreement constitutes the entire Agreement between the parties regarding the subject matter hereof, and supersedes all prior written or verbal agreements, representations and understandings relative to such matters.

19.15 Claims Against Licensor for Breach of Agreement

Licensee acknowledges that any claim for breach of the Agreement asserted by Licensee against Licensor shall be subject to Chapter 2260 of the Texas Government Code and that the process provided therein shall be Licensee's sole and exclusive process for seeking a remedy for any and all alleged breaches of the Agreement by Licensor or the State of Texas.

END OF EXHIBIT A. EXHIBITS A-1 AND A-2 FOLLOW.

EXHIBIT A-1
FORM FOR QUARTERLY PAYMENT AND MILESTONE REPORT

Pursuant to Section 4.1 (Quarterly Payment and Milestone Report) of the Terms and Conditions, Licensee must deliver to Licensor a true and accurate written report, certified by a Officer of Licensee, giving the particulars of the business conducted by Licensee, Affiliates, and Sublicensees, for each Contract Quarter, pertinent to calculating the payments which Licensee is to pay pursuant to the Agreement and to reporting on satisfaction of the milestones. Licensee should provide as much information as is reasonably necessary to calculate all of the amounts payable under the Agreement.

1. Each Payment Report shall include specific details concerning the following:
 - (a) The name of the Licensee and the agreement number set forth at the beginning of the Patent License Agreement, if any, and the Contract Quarter covered by the report.
 - (b) The name of any Affiliates and Sublicensees whose activities are also covered by the report.
 - (c) Identification of each Licensed Product and Licensed Service for which any royalty payments have become payable, or an affirmative statement that no royalty payments have become payable.
 - (d) The Payment Report shall be segregated on a product-by-product basis, and a country-by-country basis, listing the Net Product Sales for each License Product for each country and the Net Service Sales and the nature such services for each country. The report shall also itemize the permitted deductions from the gross consideration used to arrive at the resulting Net Product Sales and Net Service Sales, on a product-by-product and country-by-country basis.
 - (e) The applicable royalty rate.
 - (f) A listing of each milestone event set forth in the Patent License Agreement and an affirmative statement whether or not each such milestone event was met in that reporting period. For any milestones met, the resulting Milestone Fee payable.
 - (g) Listing of any Non-Royalty Sublicensing Consideration received by Licensee during the reporting period, and the resulting Sublicense Fee payable, or an affirmative statement that no Non-Royalty Sublicensing Consideration was received.
 - (h) If any of the Net Product Sales, Net Services Sales or Non-Royalty Sublicensing Consideration was made in currencies other than United States of America dollars, the report shall describe the currency exchange calculations.
 - (i) The accounting methodologies used to account for and calculate the items included in the report and any differences in such accounting methodologies used by Licensee since the previous report
2. For any particular calendar quarter, if the activities of Licensee and its Affiliates and Sublicensees did not generate any payments due under the Agreement, Licensee shall nevertheless submit a Payment Report so stating.
3. If the nature and/or volume of activities warrant additional or different types of information and details in order to keep Licensor well informed as to the relevant factual information applicable to determining payments earned under the Agreement, Licensor may request that Licensee provide such additional details and information; and Licensee will do so if reasonably feasible.
4. If the recordkeeping system of Licensor necessitates that Payment and Milestone Reports be in a particular format, or in a particular electronic form, Licensee shall use diligent and commercially reasonable efforts to furnish the Payment and Milestone Reports in such format or form as is reasonably requested by Licensor

END OF EXHIBIT A-1.

EXHIBIT A-2 FORM FOR ANNUAL WRITTEN REPORT

The general purposes of the annual written report is to keep Licensor well informed (i) as to the progress of Licensee (and its Affiliates and Sublicensees) to develop and commercialize Licensed Products and Licensed Services under the Agreement, and (ii) as to the plans for the next year for Licensee (and its Affiliates and Sublicensees) to develop and commercialize Licensed Products and Licensed Services under the Agreement. Licensee shall provide as much information as is reasonably necessary to clearly demonstrate that Licensee (and/or its Affiliates and Sublicensees) is using diligent and commercially reasonable efforts to Actively Commercialize the Licensed Patent Rights in the Licensed Fields in the Licensed Territory.

The report shall contain the following information to the extent relevant:

1. The name of the Licensee, the agreement number of the Patent License Agreement, the names of any Affiliates and Sublicensees, and the Licensed Products and Licensed Services being developed and/or commercialized.
2. The particular Licensed Patent Rights which are being utilized for developing and/or commercializing particular Licensed Products or Licensed Services.
3. The progress toward completing, the completion of, and the plans for completing, the applicable milestone events specified in the Agreement.
4. The research and development activities performed during the past year, and the plans for research and development activities for the next year, relative to developing and commercializing Licensed Products and Licensed Services.
5. The activities, status and plans for obtaining any necessary governmental approvals for Licensed Products (e.g., FDA regulatory requirements) or Licensed Services.
6. The manufacturing and production facilities, and activities relevant to producing the Licensed Products.
7. The product sales activities for the past year (to the extent not reported in the Payment Reports) and the next year.
8. The working capital and financing requirements applicable to the past year and the next year, in order to Actively Commercialize the Licensed Products and Licensed Services.
9. Any material intellectual property needs, acquisitions, and/or problems relevant to Actively Commercializing the Licensed Products and Licensed Services.
10. Any other material achievements, plans, problems, and expectations relevant to Actively Commercializing the Licensed Products and Licensed Services over the past year and the next year.
11. Once Licensed Products are ready for commercial sales, a detailed sales and marketing plan for the next year, itemized on a product-by-product and country-by-country basis.
12. The Licensee's efforts, progress and plans relative to seeking and obtaining Sublicensees to participate in Licensee's efforts to Actively Commercialize the Licensed Products and Licensed Services.
13. Such additional information as may be reasonably requested by Licensor to enable Licensor to be kept well informed as to the progress and plans for Licensee to Actively Commercialize the Licensed Products and Licensed Services.

If Licensor has a reasonable need to have information for the Report/Plan submitted in a particular format, or in a particular electronic form, then upon such request by Licensor, Licensee shall use diligent and commercially reasonable efforts to comply with such requests.

END OF EXHIBIT A-2.