

EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement (hereinafter called "Agreement"), to be effective as of the _____ day of _____, 2004 (hereinafter called "Effective Date"), is by and between The Board of Trustees of the University of Alabama for and on behalf of the University of Alabama (hereinafter referred to as "UNIVERSITY") and _____, a _____ corporation having a principal place of business at _____ (hereinafter referred to as "COMPANY").

RECITALS

WHEREAS, UNIVERSITY owns certain Patent Rights and Technology Rights related to the Licensed Subject Matter that were developed at the University of Alabama; and

WHEREAS, UNIVERSITY desires to have the Licensed Subject Matter developed and used for the benefit of the public by facilitating the distribution of useful products and the utilization of new processes; and

WHEREAS, COMPANY desires to obtain certain rights in such Licensed Subject Matter on an exclusive basis as herein provided and to commercially develop, manufacture, use, and distribute products and processes based on the Patent Rights and Technology Rights.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto expressly agree as follows:

AGREEMENT

1. DEFINITIONS AS USED HEREIN

1.1 "Affiliate" shall mean COMPANY and any company or other legal entity other than COMPANY in whatever country organized, controlling, controlled by or under common control with COMPANY. The term control means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of COMPANY, whether through the ownership of voting securities by contract or otherwise.

1.2 "Fair Market Value" shall mean the cash consideration that COMPANY or its sublicensees would realize from an unaffiliated, unrelated buyer at an arm's length sale of an identical item sold in the same quantity and at the same time and place of the transaction.

1.3 "Licensed Field" shall mean only those sales, manufactures or sublicensees that are in the field of _____ health, including without limitation, _____.

1.4 "Licensed Product(s)" shall mean any product sold by COMPANY that incorporate, utilize or are made with the use of the Licensed Subject Matter or whose manufacture, use or sale

would constitute an infringement of any claim within the Patent Rights, or any article, composition, apparatus, chemical, substance or any other materials made, used or sold for use with a Licensed Process.

1.5 “Licensed Process(es) shall mean any and all processes or methods that incorporate, utilize or are made with the use of the Licensed Subject Matter or whose use of practice would constitute an infringement of any claim within the Patent Rights.

1.6 “Licensed Subject Matter” shall mean inventions and discoveries covered by Patent Rights and/or Technology Rights within the Licensed Field.

1.7 “Licensed Territory” shall mean world-wide.

1.8 “Net Sales” shall mean the gross amount of monies or cash equivalent or other consideration or any thing of value that is paid to COMPANY or held for the benefit of COMPANY by unrelated third parties or Sublicensees for the Licensed Products or Licensed Process by sale or other mode of transfer, less all trade, quantity and cash discounts actually allowed, shipping costs, sales and use taxes imposed by a government agency, and credits or allowances actually granted on account of rejections and returns.

1.9 “Patent Rights” shall mean the inventions disclosed and claimed in those patents listed on Attachment A, and all continuations, divisions, and reissues thereof, and any corresponding foreign patent applications and any patents, or other equivalent foreign patent rights issuing, granted, or registered thereon.

1.10 “Sale or Sold” shall mean any bona fide transaction for which consideration is received or expected for the sale, use, lease, transfer, or other disposition of a Licensed Product or Licensed Process. A sale shall be deemed to be completed at the time COMPANY or its sublicensees invoices, ships, or receives payment for a Licensed Product or Licensed Process, whichever occurs first.

1.11 “Sublicensee” shall mean any person, company or other legal entity other than COMPANY who has the right, granted by COMPANY, to make, use or sell the Licensed Product or Licensed Process.

1.12 “Sublicensing Revenue” shall mean all (i) cash, (ii) sublicensing fees, (iii) all other payments and the cash equivalent thereof at Fair Market Value, and (iv) royalties that are paid to COMPANY by the Sublicensees of its rights hereunder, excluding funds paid to COMPANY as consideration for the issuance of shares of stock or other participatory in COMPANY and any research and development money paid to COMPANY to conduct research.

1.13 “Technology Rights” shall mean all technical information, formulations, know-how, processes, procedures, compositions, devices, methods, formulas, materials, tests and confidential information related to the Patent Rights and created by Dr. _____ that were developed as of the Effective Date, that are not described by Patent Rights but that are necessary for practicing the invention covered by the Patent Rights

2. **LIMITED WARRANTY**

2.1 Except for the rights, if any, of the United States Government in accordance with the Bayh-Dole Act of 1980 (35 U.S.C. § 200 et. seq.), UNIVERSITY warrants to COMPANY that it has the lawful right to grant this license.

2.2 This License and the Licensed Subject Matter covered herein are provided to COMPANY by UNIVERSITY without warranty by UNIVERSITY of merchantability, operability, or fitness for a particular use or purpose or any other warranty, express or implied. UNIVERSITY makes no representations or warranty that the Licensed Products or Licensed Processes or the Technology Rights will not infringe any patent or other proprietary right now held or that will be held by others or by the UNIVERSITY.

2.3 COMPANY understands and acknowledges that UNIVERSITY, by this Agreement, makes no representation as to the operability or fitness for any use, safety, efficacy, ability to obtain regulatory control, patentability, and/or breadth of the Licensed Subject Matter. COMPANY, by execution hereof, acknowledges, covenants, and agrees that it has conducted sufficient due diligence with respect to all items and issues pertaining to this Agreement and has adequate knowledge and expertise, or has used knowledgeable and expert consultants, to adequately conduct the due diligence and agrees to accept all risks inherent therein.

2.4 In no event will UNIVERSITY be liable for any incidental, special or consequential damages resulting from the exercise of this License or the use of the Licensed Subject Matter.

2.5 Nothing in this Agreement shall be construed as:

- (a) a warranty or representation by UNIVERSITY as to the validity or scope of any UNIVERSITY patent rights; or
- (b) a warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents of third parties; or
- (c) an obligation to bring or prosecute actions or suits against third parties for patent infringement except as provided in Section 16; or
- (d) conferring by implication, estoppel or otherwise any license or rights under any patents of UNIVERSITY other than UNIVERSITY patent rights as defined herein, regardless of whether such patents are dominant or subordinate to UNIVERSITY patent rights; or
- (e) an obligation to furnish any know-how not provided in UNIVERSITY Patent Rights or Technology Rights.

3. **PATENT PROSECUTION**

3.1 UNIVERSITY shall diligently prosecute and maintain the United States and foreign patents and patent applications comprising UNIVERSITY Patent Rights. Control over the prosecution of any patent application shall remain vested with UNIVERSITY.

3.2 COMPANY shall reimburse UNIVERSITY for all of UNIVERSITY'S out-of-pocket expenses incurred in filing, prosecuting, enforcing, and maintaining and shall pay all patent maintenance fees on all exclusively licensed Patent Rights. This obligation to reimburse the UNIVERSITY shall be postponed until such time as COMPANY has raised one million dollars (\$1,000,000) in funding capital. At such time, COMPANY shall pay all such expenses in full within ninety days. COMPANY shall continue to pay all expenses arising after that date for so long as and in the countries where the license granted hereunder remains exclusive.

3.3 COMPANY' obligation to underwrite and to pay patent costs as specified in Paragraph 3.2 of this Agreement shall continue for as long as this Agreement remains in effect; provided, however, that COMPANY may terminate its obligations with respect to any given patent application or patent upon three (3) months written notice to UNIVERSITY. UNIVERSITY will use its best efforts during the three (3)-month period to minimize any additional patent costs when such a notice is received from COMPANY. UNIVERSITY may continue prosecution and/or maintenance of such application(s) or patent(s) at its sole discretion and expense; provided, however, that COMPANY shall have no further right or license regarding such patent application and the inventions or discoveries disclosed therein.

3.4 UNIVERSITY shall not allow any UNIVERSITY Patent Rights for which COMPANY is licensed, and is underwriting the costs, to lapse or become abandoned without COMPANY' authorization on reasonable notice.

4. **GRANT**

4.1 Subject to the limitations set forth in this Agreement, UNIVERSITY hereby grant to COMPANY and its Affiliates an exclusive, worldwide, royalty-bearing license to make, use and sell the Licensed Product(s) and Licensed Process(es) and to otherwise exploit the Patent Rights and Technology Rights within the Licensed Territory and in the Licensed Field. Unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement, this Agreement shall be in force from the Effective Date and shall remain in effect for the life of the last-to-expire patent in UNIVERSITY Patent Rights; or until the last patent application licensed under this Agreement is abandoned and no patent in UNIVERSITY Patent Rights ever issues; or for twenty (20) years from the Effective Date, whichever occurs last.

4.2 The License granted hereunder shall be subject to any overriding obligations to the U.S. government, including, but not limited to, (i) the requirement that Licensed Products produced for sale or use within the United States shall be substantially manufactured in the United States (unless a waiver under 35 USC § 204 or equivalent is granted by the appropriate United States government agency); (ii) the right of the United States government to require UNIVERSITY, or its licensees, including COMPANY, to grant sublicenses to responsible applicants on reasonable terms when necessary to fulfill health or safety needs; and (iii) other

rights acquired by the United States government under the laws and regulations applicable to the grant/contract award under which the inventions were made.

4.3 COMPANY has the right to establish its own brand names and trademarks for the Licensed Product(s) and Licensed Process(es). All costs associated with such activities shall be the responsibility of COMPANY.

4.4 UNIVERSITY expressly reserves the right to use UNIVERSITY Patent Rights, Technology Rights and unpatented technology (i) for research, teaching and other educationally-related purposes, and (ii) in publications relating to the general scientific findings from research related to the Licensed Subject Matter subject to the terms of Section 13, Confidential Information, and (iii) for any other purpose that is not inconsistent with the rights granted to COMPANY hereunder.

5. **SUBLICENSING RIGHTS**

5.1 COMPANY may grant written, royalty-bearing sublicense(s) under the license granted in Paragraph 4.1. The proposed sublicense shall refer to and be generally consistent with this Agreement and shall: (a) incorporate by reference the terms and conditions of this Agreement, (b) be consistent with the terms, conditions, and limitations of this Agreement, (c) prohibit further sublicense of the rights delivered hereunder, (d) name UNIVERSITY as an intended third party beneficiary of the obligations of sublicense without imposition of obligation or liability on the part of UNIVERSITY or its inventors to sublicensee, (e) specifically incorporate paragraphs 15, 17, and 18, (Use of Name, Indemnification, Products Liability) into the body of the sublicense agreement and cause the terms used therein to have the same meaning as in this Agreement.

5.2 COMPANY shall provide UNIVERSITY with a copy of each proposed sublicense agreement, executed by COMPANY and the proposed sublicensee, for review, approval, and signature by UNIVERSITY. To the extent that any terms, conditions, or limitations of any sublicense agreement are inconsistent with this Agreement, those terms, conditions, or limitations are null and void as against the UNIVERSITY, even though UNIVERSITY has approved the sublicense in writing.

5.3 The granting of a sublicense by COMPANY shall not operate to relieve COMPANY from any of its obligations under this Agreement.

5.4 Upon revocation or termination of this Agreement for any reason, at the option of UNIVERSITY, all sublicenses shall be assigned to UNIVERSITY, and shall remain in full force and effect under the terms and conditions thereof with UNIVERSITY, but the duties of UNIVERSITY shall only extend to UNIVERSITY duties under this Agreement.

6. **EQUITY, LICENSE FEE AND ROYALTIES**

6.1 In lieu of a licensing fee for the Licensed Subject Matter, as partial consideration for the rights conveyed to COMPANY by UNIVERSITY under this Agreement, COMPANY will

upon execution of this Agreement issue UNIVERSITY such number of shares of COMPANY common stock as will cause the UNIVERSITY to own twenty-five percent (25%) of the outstanding shares of capital stock of COMPANY on the terms and conditions set forth in the Stock Purchase Agreement between COMPANY and UNIVERSITY, a copy of which is attached hereto as Attachment B.

6.2 In addition, COMPANY hereby grants UNIVERSITY the anti-dilution of UNIVERSITY owned shares guaranteeing shares equal to twenty-five percent (25%) of all shares of COMPANY common stock, until such time as COMPANY has raised one million dollars (\$1,000,000) in funding capital of COMPANY and can document in writing the receipt of such funds to UNIVERSITY.

6.3 In addition, COMPANY shall pay to UNIVERSITY for sale of Licensed Product(s) and/or Licensed Process(es) sold by COMPANY or its Affiliates an earned royalty of seven percent (7%) of the Net Sales of Licensed Product(s) and/or Licensed Process(es).

6.4 In addition to the royalty as set forth in paragraph 6.3 COMPANY shall pay to UNIVERSITY fifty percent (50%) of all Sublicensing Revenue received for sublicenses under this Agreement.

6.5 Paragraphs 1.4, 1.5, and 1.6 define UNIVERSITY Licensed Subject Matter, Licensed Products, and Licensed Processes so that royalties shall be payable on products and methods covered by both pending patent applications and issued patents. Earned royalties shall accrue in each country for the duration of UNIVERSITY Patent Rights in that country.

6.6 Royalties accruing to UNIVERSITY shall be paid to UNIVERSITY on a quarterly basis. Each such payment will be for royalties which accrued within the most recently completed calendar quarter and payment shall be made by COMPANY within one (1) month of the end of such calendar quarter.

6.7 All monies due UNIVERSITY shall be payable in United States funds collectible at par in Tuscaloosa, Alabama. When Licensed Product(s) or Licensed Process(es) are sold for monies other than United States dollars, the earned royalties will first be determined in the foreign currency of the country in which such Licensed Product(s) or Licensed Process(es) were sold and then converted into equivalent United States funds. The exchange rate will be that established by the Wall Street Journal on the last day of the reporting period.

6.8 Any tax for the account of UNIVERSITY required to be withheld by COMPANY under the laws of any foreign country shall be promptly paid by COMPANY for and on behalf of UNIVERSITY to the appropriate government authority, and COMPANY shall use its best efforts to furnish UNIVERSITY with proof of payment of such tax. COMPANY shall be responsible for all bank transfer charges.

6.9 If at any time legal restrictions prevent the prompt remittance of part or all royalties by COMPANY with respect to any country where Licensed Product(s) or Licensed Process(es) are sold, COMPANY shall have the right and option to make such payment by depositing the

amount thereof in local currency to UNIVERSITY accounts in a bank or other depository in such country.

7. DUE DILIGENCE

7.1 COMPANY, upon the execution of this Agreement, shall diligently proceed with the development, manufacture and sale of Licensed Product(s) and/or Licensed Process(es) and shall earnestly and with reasonable effort endeavor to market the same within a reasonable period of time after the Effective Date of this Agreement and in quantities sufficient to meet the market demands therefore.

7.2 COMPANY shall endeavor to obtain all necessary government approvals for the manufacture, use and sale of Licensed Product(s) and Licensed Process(es).

7.3 COMPANY shall have the sole discretion for making all decisions as to how to commercialize, market and sell Licensed Product(s).

7.4 As one indicator of due diligence, COMPANY shall, by the fifth anniversary date of the Effective Date, raise an additional five million dollars (\$5,000,000) in equity investment capital or have obtained annualized revenues of at least five hundred thousand dollars (\$500,000). Failure to meet such goals shall not automatically be an item of default under the terms of this Agreement, but shall be considered by UNIVERSITY as part of its review of COMPANY'S due diligence and may serve as a partial basis for the exercise of any of UNIVERSITY'S rights hereunder.

8. PROGRESS AND ROYALTY REPORTS

8.1 Beginning January 1, 2005, and semi-annually thereafter, COMPANY shall submit to UNIVERSITY a progress report covering the progress of the COMPANY'S development, evaluation, testing, and commercialization of each Licensed Product and Licensed Process and the obtaining of the governmental approvals necessary for marketing. COMPANY shall also notify UNIVERSITY in writing within thirty (30) days of the First Commercial Sale of each Licensed Product.

8.2 After the First Commercial Sale of a Licensed Product or Licensed Process anywhere in the world, COMPANY will make quarterly royalty reports to UNIVERSITY within one (1) month from the end of each calendar quarter. Each royalty report will cover COMPANY'S most recently completed calendar quarter and will show (i) the gross sales and Net Sales of Licensed Product(s) and Licensed Process(es) sold by COMPANY, its Affiliates or Sublicensees during the most recently completed calendar quarter; (ii) the number of each type of Licensed Product, Licensed Process and Licensed Service sold; (iii) the royalties in U.S. dollars, payable hereunder with respect to such sales; and (iv) the exchange rate used for any foreign sales.

8.3 If no sales of Licensed Product(s) or Licensed Process(es) have been made during any reporting period, a statement to this effect shall be required.

8.4 COMPANY shall make a good faith effort to provide UNIVERSITY at least as frequently as they are distributed to the COMPANY Board of Directors copies of all COMPANY Board reports that relate to Licensed Products and all business plans, projections, and financial statements that are distributed to the COMPANY Board of Directors. Not later than one hundred twenty (120) days after the end of each calendar year during the term of this Agreement, but not more than once per calendar year, COMPANY shall deliver to UNIVERSITY a written progress report as to COMPANY'S and any sublicensee's efforts and accomplishments during the preceding year in diligently commercializing the Licensed Subject Matter and commercialization plans of those parties in the ensuing year. Information provided to UNIVERSITY by COMPANY under the terms of this paragraph 8.4 shall be treated as Confidential Information pursuant to section 13 of this Agreement.

9. **BOOKS AND RECORDS**

9.1 COMPANY shall keep and maintain in COMPANY'S place of business complete and accurate books and records (or their electronic equivalents) of accounts pertaining to the sales of the Licensed Product(s) and Licensed Process(es) and the various items required to be shown on royalty statements including sales journals, cash receipts, general ledgers, manufacturing and/or buildup of materials and routing records and inventory records. Such records and books shall be available for inspection, audit and copying by UNIVERSITY's representatives at COMPANY'S principal place of business, during reasonable business hours, and on thirty (30) days prior written notice. COMPANY agrees to permit UNIVERSITY to designate independent certified public accountants to perform an inspection and audit, and that such an audit may occur no more frequently than once every twelve (12) months. COMPANY agrees not to cause or permit any interference with UNIVERSITY's representatives in the performance of their inspection and audit, and COMPANY agrees to cause its accountants and bookkeepers to cooperate fully in the audit.

9.2 The fees and expenses of UNIVERSITY and UA representatives performing an examination shall be borne by UNIVERSITY. However, if an error in royalties of more than Ten percent (10%) of the total royalties due for any year is discovered, then the fees and expenses of these representatives shall be borne by COMPANY. Said fees and expenses, and the deficient royalties with interest on the outstanding amount are due and payable within thirty (30) days of receiving written notice thereof.

10. **TERMINATION BY UNIVERSITY**

10.1 If COMPANY should violate or fail to perform any material term or covenant of this Agreement, then UNIVERSITY may give written notice of such default (Notice of Default) to COMPANY. If COMPANY should fail to repair such default within ninety (90) days of the effective date of such notice, UNIVERSITY shall have the right to terminate this Agreement and the licenses herein by a second written notice (Notice of Termination) to COMPANY. If a Notice of Termination is sent to COMPANY, this Agreement shall automatically terminate as of

the effective date of such notice. Such termination shall not relieve COMPANY of its obligation to pay any royalty or fees owing at the time of such termination. COMPANY shall also assign all Sublicensees granted to UNIVERSITY. These notices shall be subject to Section 19 (Notices).

10.2 If, at any time, COMPANY shall file in any court pursuant to any statute of any individual state or country, a petition in bankruptcy, insolvency or for reorganization or for an agreement among creditors or for the appointment of a receiver or trustee of COMPANY or of its assets, or if COMPANY proposes a written agreement of composition or extension of its debts, or if COMPANY shall be served with an involuntary petition against is filed in any insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof, or if COMPANY shall propose or be a party to any dissolution or liquidation, or if COMPANY shall make an assignment for the benefit of creditors, then, in the event of any of the above, UNIVERSITY shall have the right to terminate this Agreement.

10.3 COMPANY shall have the obligation to notify UNIVERSITY of any potential or planned bankruptcy no less than ninety (90) days before such anticipated or planned action. Said planned bankruptcy actions, or failure to notify UNIVERSITY of said planned actions, shall constitute grounds for UNIVERSITY termination of this Agreement.

11. TERMINATION BY COMPANY

11.1 COMPANY shall have the right at any time to terminate this Agreement in whole or as to any portion of UNIVERSITY Patent Rights by giving notice in writing to UNIVERSITY. Such notice of termination shall be subject to Article 19 (Notices) and termination of this Agreement shall be effective ninety (90) days from the effective date of such notices. If this Agreement is terminated in whole or in part by COMPANY, COMPANY shall assign to UNIVERSITY all sublicenses related to the Licensed Subject Matter that were previously granted by COMPANY.

11.2 Any termination pursuant to paragraph 11.1 shall not relieve COMPANY of any obligation or liability accrued hereunder prior to such termination or rescind anything done by COMPANY or any payments made to UNIVERSITY hereunder prior to the time of such termination becomes effective, and such termination shall not affect in any manner any rights of either party arising under this Agreement prior to such termination. Upon termination, both parties shall cease any further use of confidential information disclosed to the other party. Furthermore, upon termination of this Agreement, all rights in and to the Licensed Subject Matter shall revert immediately to UNIVERSITY at no cost to UNIVERSITY.

12. DISPOSITION OF LICENSED PRODUCTS ON HAND UPON TERMINATION

12.1 Upon termination of this Agreement, COMPANY shall have the privilege of disposing of all previously made or partially made Licensed Products, but not more, within a period of nine (9) months; provided, however, that the sale of such Licensed Product(s) shall be subject to the terms of this Agreement including, but not limited to, the payment of royalties at the rate and at the time provided herein and the rendering of reports thereon.

13. CONFIDENTIALITY

13.1 Except for technical data, information, knowledge, compositions or chemical material that is derived by COMPANY from Licensed Subject Matter of UNIVERSITY, UNIVERSITY shall be under no obligation to maintain Licensed Subject Matter in confidence. As for technical data, information, knowledge, compositions or chemical material derived by COMPANY from the Licensed Subject Matter of UNIVERSITY, UNIVERSITY agrees to use its best efforts to keep such technical data, information, knowledge, compositions or chemical material in confidence. UNIVERSITY's obligation of confidentiality shall be in force for a period of five (5) years from the date of disclosure of such technical data, information, knowledge, compositions or chemical material.

13.2 The foregoing obligations of confidentiality shall be governed by the following. The free dissemination of information is an essential and long-standing policy of UNIVERSITY. However, UNIVERSITY recognizes that it may properly hold in confidence data supplied by a third party that UNIVERSITY and such third party consider essential for the conduct of a research program. Accordingly, UNIVERSITY's acceptance and use of any COMPANY Proprietary Information to be used by UNIVERSITY shall be subject to the following:

- (a) UNIVERSITY may refuse to accept any COMPANY Proprietary Information.
- (b) In furtherance of the grants and payments under this Agreement, UNIVERSITY agree to the best of its ability to require UNIVERSITY personnel not to disclose to any Third Party, or to publish any know-how except in accordance with the publication and presentation provisions set forth herein; and not to use any confidential information without the express prior written approval of COMPANY except in accordance with rights reserved for UNIVERSITY.
- (c) The obligation of the parties under this paragraph shall not apply to any Information provided by a disclosing party which:
 - (i) is or generally becomes available to the public other than by failure of a receiving party to fulfill its obligations hereunder;
 - (ii) was known previously to a receiving party prior to disclosure by the disclosing party to fulfill its obligations hereunder;
 - (iii) is subsequently disclosed to a receiving party on a non-confidential basis by a Third Party not subject to a direct or indirect obligation of confidentiality to the disclosing party with respect to such Information; or
 - (iv) is independently discovered or developed by one or more persons of a receiving party who did not have access to such information.

13.3 It is understood and agreed that nothing in this Agreement shall prevent either party from disclosing any part of COMPANY' proprietary information, or know-how:

- (a) to the United States or any foreign government or to any agency or representative thereof, which is required by law or regulation or to obtain patent information or to satisfy any governmental regulation relating to the use of know-how; or
- (b) to any person, government, governmental agency or representative to the extent such a disclosure is reasonably necessary or desirable in the interest of promoting health or safety; or
- (c) to third parties with whom COMPANY wishes to discuss possible business arrangements concerning the Licensed Subject Matter provided such third parties are bound by a confidentiality agreement limiting the disclosure and use to the term and for the purposes of discussions concerning such business arrangement.

14. **PATENT MARKING**

14.1 COMPANY agrees to mark all Licensed Products made, used or sold under the terms of this Agreement, or their container, in accordance with the applicable patent marking laws.

15. **USE OF NAMES AND TRADEMARKS**

15.1 Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of UNIVERSITY (including contraction, abbreviation or simulation of any of the foregoing) without prior written approval. Unless required by law, the use of the name, The University of Alabama, is expressly prohibited without prior written approval.

16. **PATENT INFRINGEMENT**

16.1 With respect to any Patent Rights exclusively licensed to COMPANY pursuant to this Agreement, COMPANY shall have the right to prosecute in its own name and at its own expense any infringement of such patent, so long as such license is exclusive at the time of the commencement of said action. UNIVERSITY agrees to notify COMPANY promptly of each infringement of such patents in which UNIVERSITY is or becomes aware. COMPANY agrees to notify UNIVERSITY promptly of each infringement of the licensed patent(s) of which COMPANY becomes aware.

16.2 Recoveries or reimbursements from such action shall first be applied to reimburse COMPANY for reasonable litigation costs. Any remaining recoveries or reimbursements shall be shared equally by COMPANY and UNIVERSITY.

16.3 In the event that COMPANY elects not to exercise its right to prosecute any infringement of any patent incorporating Licensed Subject Matter, pursuant to the above paragraphs, UNIVERSITY may do so at its own expense, controlling such action and retaining all recoveries therefrom. COMPANY shall cooperate fully with UNIVERSITY in connection with any such action.

16.4 If a party receives notice of any suit or claim alleging that the conduct of the activities within this Agreement infringes the proprietary rights of a third party, then the aforementioned clauses shall also be applied in that circumstance.

17. **INDEMNIFICATION**

17.1 COMPANY, its Affiliates, and sublicensees agree and shall agree to indemnify, hold harmless and defend UNIVERSITY, its trustees, former trustees, officers, employees, students, and agents, from and against any judgments, liability, claims, suits, losses, damages, costs, fees, and expenses resulting from or arising out of or as a consequence of the practice of the Licensed Subject Matter by any of the foregoing entities. The obligation of COMPANY to defend and indemnify as set out in this paragraph shall survive the termination of this Agreement, shall continue even after the assignment of rights to an Affiliate or sublicensee, and shall not be limited by any other limitation of liability elsewhere in this Agreement.

17.2 UNIVERSITY shall promptly notify COMPANY in writing of any claim or suit brought against UNIVERSITY in respect of which UNIVERSITY intends to invoke the provisions of this Section 17. COMPANY will keep UNIVERSITY informed on a current basis of its defense of any claims pursuant to this Section 17.

18. **PRODUCT LIABILITY**

18.3 COMPANY, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain liability insurance in each country in which COMPANY, an Affiliate, or sublicensee shall sell Licensed Product(s) or Licensed Process(es) as follows:

- (a) Each Occurrence - \$5,000,000
- (b) Products/Completed Operations Aggregate - \$5,000,000
- (c) Personal and Advertising Injury - \$5,000,000
- (d) General Aggregate (commercial form only) - \$5,000,000

It should be expressly understood, however, that the coverages and limits referred to above shall not in any way limit the liability of COMPANY. COMPANY shall furnish UNIVERSITY with certificates of insurance evidencing compliance with all requirements. If such insurance is underwritten on a "claims made" basis, COMPANY agrees that any change in the underwriters during the term of this Agreement will require the purchase of "prior acts" coverage to ensure that coverage will be continuous throughout the term of this Agreement. COMPANY shall not be required to insure its activities relative to the products liability risk until commencing use of Licensed Product(s) or Licensed Process(es). Such insurance shall:

- (a) Provide for thirty (30) days advance written notice to UNIVERSITY of any modification
- (b) Indicate that UNIVERSITY has been endorsed as an Insured under the coverages referred to under the above.

- (c) Include a provision that the coverages will be primary and will not participate with nor will be excess over any valid and collective insurance or program of self-insurance carried or maintained by UNIVERSITY.

19. **NOTICES**

19.1 Any notice or payment required to be given to either party shall be deemed to have been properly given and to be effective (i) on the date of delivery if delivered in person, or (ii) five (5) days after mailing if mailed by first-class certified mail, postage paid, to the respective address given below, or to such other address as it shall designate by written notice given to the other party.

In the case of COMPANY: _____, Inc.

Attn: _____

In the case of UNIVERSITY: The University of Alabama
Room 153, Rose Administration Building
Tuscaloosa, AL 35487
Attention: Associate Vice President for Research

20. **ASSIGNABILITY**

20.1 This Agreement is binding upon and shall inure to the benefit of UNIVERSITY, its successors and assigns, but shall be personal to COMPANY and assignable by COMPANY only with the written consent of UNIVERSITY, which consent shall not be unreasonably withheld.

21. **LATE PAYMENTS**

21.1 In the event royalty payments or fees are not received by UNIVERSITY when due, COMPANY shall pay to UNIVERSITY interest charges at a rate per annum of ten percent (10%) simple interest calculated from the date payment was due until actually received by UNIVERSITY.

22. **WAIVER**

22.1 It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

23. **GOVERNING LAWS**

23.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of Alabama, but the scope and validity of any patent or patent application shall be governed by the applicable laws of the country of such patent or patent application.

24. **FOREIGN GOVERNMENT APPROVAL OR REGISTRATION**

24.1 If this Agreement or any associated transaction is required by the law of any nation to be either approved or registered with any governmental agency, COMPANY shall assume all legal obligations to do so.

25. **EXPORT CONTROL LAWS**

25.1 COMPANY shall observe all applicable United States and foreign laws with respect to the transfer of Licensed Product(s), Licensed Process(es), and related technical data, to foreign countries, including, without limitation, the International Trade in Arms Regulations (ITAR) and the Export Administration Regulations.

26. **FORCE MAJEURE**

26.1 The parties to this Agreement shall be excused from any performance required hereunder if such performance is rendered impossible or unfeasible due to any catastrophic or other major event beyond their reasonable control including, without limitation, war, riot, and insurrection; laws, proclamations, edicts, ordinances or regulations; strikes, lockouts or other serious labor disputes; and floods, fires, explosions or other natural disasters. When such event have abated, the parties respective obligations hereunder shall resume.

27. **DISPUTE RESOLUTION**

27.1 The Parties shall attempt to settle any controversy between them amicably. To this end, a senior executive from each Party shall consult and negotiate to reach a solution. The Parties agree that the period of amicable resolution shall toll any otherwise applicable statute of limitations. However, nothing in this clause shall preclude any Party from commencing mediation if said negotiations do not result in a signed written settlement agreement within thirty (30) days after written notice that these amicable resolution negotiations have commenced.

27.2 If a controversy arises out of or relates to this agreement, or the breach thereof, and if the controversy cannot be settled through amicable resolution, the Parties agree to try in good faith to settle the controversy by mediation. The Party seeking mediation shall propose five mediators, each of whom shall be a lawyer licensed to practice by the state of Alabama, having practiced actively in the field of commercial law for at least fifteen (15) years, to the other Party who shall select the mediator from the list. The Parties shall split the cost of the mediator equally.

28. **MISCELLANEOUS**

28.1 The headings of the several sections of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

28.2 This Agreement will not be binding upon the parties until it has been signed below on behalf of each party, in which event, it shall be effective as of the date recited on page one.

28.3 No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed on behalf of each party.

28.4 This Agreement embodies the entire understanding of the parties and shall supersede all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof.

28.5 All representations, warranties, covenants, and agreements made herein and which by their express terms or by implication are to be performed after the execution and/or termination of this Agreement, or are prospective in nature, shall survive such execution or termination, as the case may be.

28.6 If any provision(s) contained in this Agreement are or become invalid, are ruled illegal by any court of competent jurisdiction or are deemed unenforceable under then current applicable law from time to time in effect during the term hereof, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby provided that a party's rights under this Agreement are not materially affected. It is further the intention of the parties that in lieu of each such provision which is invalid, illegal, or unenforceable, there be substituted or added as part of this Agreement a provision which shall be as similar as possible in economic and business objectives as intended by the parties to such invalid, illegal or unenforceable provision, but shall be valid, legal and enforceable.

IN WITNESS WHEREOF, UNIVERSITY and COMPANY have executed this Agreement, in duplicate originals, by their respective officer duly authorized, on the day and year hereinafter written.

_____, INC.

By: _____

Title: Chairman and Chief Executive Officer

Date: _____

THE UNIVERSITY OF ALABAMA

By: _____
Dr. Marianne R. Woods

Title: Associate Vice President for Research

Date: _____