PATENT AND TECHNOLOGY EXCLUSIVE LICENSE AGREEMENT SHORT FORM

STANDARD TERMS AND CONDITIONS

A. DEFINITIONS

1. 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.

2. LICENSED PRODUCTS means any product or service sold by LICENSEE or its AFFILIATES or their sublicensees comprising LICENSED SUBJECT MATTER pursuant to the AGREEMENT.

3. NET SALES means the gross revenues received by LICENSEE or its AFFILIATES or their sublicensees from a SALE less sales discounts actually granted, sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation actually prepaid or allowed, and amounts actually allowed or credited due to returns (not exceeding the original billing or invoice amount), all as recorded by LICENSEE or its AFFILIATES or their sublicensees in their official books and records in accordance with generally accepted accounting practices and consistent with their published financial statements and/or regulatory filings with the United States Securities and Exchange Commission.

4. PATENT RIGHTS means BSU’s rights in the information or discoveries described in invention disclosures, or claimed in any patents and/or patent applications, whether domestic or foreign, as identified in Exhibit I to the AGREEMENT, and all divisionals, continuations, continuations-in-part (to the extent the claims of such continuations-in-part are entitled to claim priority to the aforesaid patents and/or patent applications identified in Exhibit I to the AGREEMENT), reissues, reexaminations or extensions of the patents and/or patent applications identified in Exhibit I to the AGREEMENT, and any letters patent, domestic or foreign that issue thereon.

5. SALE or SOLD means the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or an AFFILIATE.

6. TECHNOLOGY RIGHTS means BSU’s rights in any technical information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings or data created by the inventor(s) at BSU before the EFFECTIVE DATE and listed on Exhibit I to the AGREEMENT, which are not claimed in PATENT RIGHTS but that are necessary for practicing PATENT RIGHTS.

7. AGREEMENT means the PATENT AND TECHNOLOGY LICENSE AGREEMENT SHORT FORM entered into by and between BSU and LICENSEE.

B. LICENSE

1. The rights granted to LICENSEE under this AGREEMENT are subject to WARRANTY limitations as outlined below, the payment by LICENSEE to BSU of all consideration as provided herein, the timely payment of all amounts due under any related sponsored research agreement between BSU and LICENSEE in effect during the AGREEMENT, and is further subject to the following rights retained by BSU to:

   (a) Publish the general scientific findings from research related to LICENSED SUBJECT MATTER, subject to the terms of Section J–Confidential Information and Publication; and

   (b) Use LICENSED SUBJECT MATTER for research, teaching, and other academically-related purposes; and

   (c) Transfer LICENSED SUBJECT MATTER to academic or research institutions for non-commercial research use.

2. LICENSEE may extend the license granted herein to any AFFILIATE provided that the AFFILIATE consents in writing to be bound by the AGREEMENT to the same extent as LICENSEE. LICENSEE agrees to deliver such contract to BSU within thirty (30) calendar days following execution thereof.

3. LICENSEE may grant sublicenses under LICENSED SUBJECT MATTER consistent with the terms of the AGREEMENT provided that LICENSEE is responsible for its sublicensees relevant to the AGREEMENT, and for diligently collecting all amounts due LICENSEE from sublicensees. If a sublicensee pursuant hereto becomes bankrupt, insolvent or is placed in the hands of a receiver or trustee, LICENSEE, to the extent allowed under applicable law and in a timely manner, agrees to use its best reasonable efforts to collect all consideration owed to LICENSEE and to have the sublicense agreement confirmed or rejected by a court of proper jurisdiction.
4. LICENSEE must deliver to BSU a true and correct copy of each sublicense granted by LICENSEE, and any modification or termination thereof, within thirty (30) calendar days after execution, modification, or termination.

5. If the AGREEMENT is terminated, BSU agrees to accept as successors to LICENSEE, existing sublicensees in good standing at the date of termination provided that each such sublicensee consents in writing to be bound by all of the terms and conditions of the AGREEMENT.

C. CONSIDERATION, PAYMENTS AND REPORTS

1. In consideration of rights granted by BSU to LICENSEE under the AGREEMENT, LICENSEE agrees to pay BSU the following:

   (a) All out-of-pocket expenses incurred by BSU in filing, prosecuting, enforcing and maintaining PATENT RIGHTS, and all such future expenses incurred by BSU, for so long as, and in such countries as the AGREEMENT remains in effect as set forth in the AGREEMENT. BSU will invoice LICENSEE after the AGREEMENT has been fully executed by all parties for expenses incurred as of that time and on a quarterly basis thereafter. The invoiced amounts will be due and payable by LICENSEE within thirty (30) calendar days of invoice; and

   (b) A nonrefundable license documentation fee in the amount indicated in the AGREEMENT. This fee will not reduce the amount of any other payment provided for in this Section C, and is due and payable within thirty (30) calendar days after the AGREEMENT has been fully executed by all parties and LICENSEE has received an invoice for the amount from BSU; and

   (c) A nonrefundable annual maintenance fee ("Annual Maintenance Fee") in the amount indicated in the AGREEMENT, due and payable (without invoice) within thirty (30) calendar days of each anniversary of the EFFECTIVE DATE until the first SALE. The Annual Maintenance Fee will not reduce the amount of any other payment provided for in this Section C; and

   (d) A running royalty as indicated in the AGREEMENT; and

   (e) After the first SALE, minimum annual royalties ("Minimum Annual Royalties") as indicated in the AGREEMENT, due and payable (without invoice) within thirty (30) calendar days of the first and subsequent anniversaries of the EFFECTIVE DATE which follows the first SALE; provided, however, that in the event that there is less than a twelve (12) month period between the first SALE, and the first anniversary of the EFFECTIVE DATE which follows the first SALE, then LICENSEE shall pay the following: (1) the Annual Maintenance Fee due for that year multiplied by the fraction, A/C, where A is the number of months between the anniversary of the EFFECTIVE DATE preceding the first SALE, and the first SALE, and C is twelve (12); and (2) the Minimum Annual Royalty multiplied by the fraction, B/C, where B is the number of months between the first SALE, and the first anniversary of the EFFECTIVE DATE which follows the first SALE, C is twelve (12), and A + B = twelve (12). Additionally, running royalties accrued under Section C.1(d) and paid to BSU during the one year period preceding an anniversary of the EFFECTIVE DATE shall be credited against the Minimum Annual Royalties due on that anniversary date; and

   (f) The milestone achievement payments as set forth in the AGREEMENT, regardless of whether the milestone is achieved by LICENSEE, by a sublicensee or by an AFFILIATE ("Milestone Payments"). Each of the Milestone Payments shall be made by LICENSEE to BSU (without invoice) within thirty (30) calendar days of achieving the milestone event and shall not reduce the amount of any other payment provided for in this Section C; and

   (g) Fifty percent (50%) of all consideration, other than research and development money and royalties, received by LICENSEE from either (i) any sublicensee pursuant to Sections B.3 and B.4 above, or (ii) any assignee pursuant to Section K below (in consideration for BSU allowing the assignment), including but not limited to, up-front payments, marketing, distribution, franchise, option, license, or documentation fees, bonus and milestone payments and equity securities; and

   (h) In addition to the percentage of assignee consideration set forth in Section C.1(g) above, an Assignment Fee as indicated in the Patent and Technology License Agreement (in further consideration for BSU allowing the assignment), due and payable prior to any assignment pursuant to Section K below.
2. Unless otherwise provided, all such payments are payable within thirty (30) calendar days after March 31, June 30, September 30, and December 31 of each year during the term of the AGREEMENT, at which time LICENSEE will also deliver to BSU a true and accurate report, giving such particulars of the business conducted by LICENSEE, its AFFILIATES and its sublicensees, if any exist, during the preceding three (3) calendar months under the AGREEMENT as necessary for BSU to account for LICENSEE's payments hereunder. This report will include pertinent data, including, but not limited to:

   (a) 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; and
   (b) a list of LICENSED PRODUCTS produced for the three (3) preceding calendar months; and
   (c) the total quantities of LICENSED PRODUCTS produced; and
   (d) the total SALES; and
   (e) the calculation of NET SALES; and
   (f) the royalties so computed and due BSU and/or minimum royalties; and
   (g) all consideration received from each sublicensee or assignee and payments due BSU; and
   (h) all other amounts due BSU herein.

Simultaneously with the delivery of each such report, LICENSEE agrees to pay BSU the amount due, if any, for the period of such report. These reports are required even if no payments are due.

3. During the term of the AGREEMENT and for one (1) year thereafter, LICENSEE agrees to keep complete and accurate records of its, its AFFILIATES' and its sublicensees' SALES and NET SALES in sufficient detail to enable the royalties and other payments due hereunder to be determined. LICENSEE agrees to permit BSU or its representatives, at BSU's expense, to periodically examine LICENSEE's books, ledgers, and records during regular business hours for the purpose of and to the extent necessary to verify any report required under the AGREEMENT. If any amounts due BSU are determined to have been underpaid in an amount equal to or greater than five percent (5%) of the total amount due during the period so examined, then LICENSEE will pay the cost of the examination plus accrued interest at the highest allowable rate.

4. Within thirty (30) calendar days following each anniversary of the EFFECTIVE DATE, LICENSEE will deliver to BSU a written progress report as to LICENSEE's (and any sublicensee's) efforts and accomplishments during the preceding year in diligently commercializing LICENSED SUBJECT MATTER in the LICENSED TERRITORY and LICENSEE's (and sublicensees') commercialization plans for the upcoming year.

5. In the event that the AGREEMENT is terminated pursuant to Sections L.2 or L.3 prior to its expiration date, or in the event LICENSEE shall terminate the AGREEMENT prior to its expiration date for any reason other than a material breach of the AGREEMENT by BSU, LICENSEE shall pay BSU a Termination Fee in the amount set forth in the AGREEMENT.

6. All amounts payable hereunder by LICENSEE will be paid in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks are to be made payable to Boise State University, and sent by United States mail to Boise State University Office of Technology Transfer, 1910 University Drive, Boise, Idaho 83725, and the accompanying correspondence must include title and EFFECTIVE DATE of AGREEMENT and type of payment (e.g., license documentation fee, milestone payment, royalty [including applicable patent/application identified by patent number or application serial number], or maintenance fee, etc.).

7. No payments due or royalty rates owed under the AGREEMENT will be reduced as the result of co-ownership of LICENSED SUBJECT MATTER by BSU and another party, including, but not limited to, LICENSEE.

D. SPONSORED RESEARCH

If LICENSEE desires to sponsor research for or related to the LICENSED SUBJECT MATTER, and particularly where LICENSEE receives payments for sponsored research pursuant to a sublicense under the AGREEMENT, LICENSEE (a) will notify BSU in writing of all opportunities to conduct this sponsored research, (b) will solicit research proposals from BSU for this purpose, and (c) will give good faith consideration to funding the proposals at BSU.
E. PATENTS AND INVENTIONS

1. If after consultation with LICENSEE both parties agree that a new patent application should be filed for LICENSED SUBJECT MATTER, BSU will prepare and file appropriate patent applications, and LICENSEE will pay the cost of searching, preparing, filing, prosecuting and maintaining same. If LICENSEE notifies BSU that it does not intend to pay the cost of filing, prosecuting or maintaining a patent application or patent, or if LICENSEE fails to promptly confirm its intent to pay the cost of filing, prosecuting or maintaining a patent application or patent upon inquiry from BSU, or if LICENSEE is in arrears on any expense payments due under Section C.1(a), then BSU may elect to file, not file, continue prosecution or maintenance, or abandon such patent application or patent at its own expense without further notice to LICENSEE. In the event BSU files or continues prosecution or maintenance of such patent application or patent at BSU’s expense, then LICENSEE’s rights to such invention under the AGREEMENT shall terminate in their entirety. BSU will provide LICENSEE with a copy of any applications for which LICENSEE has paid the cost of filing, as well as copies of any documents received or filed during prosecution thereof. The parties agree that they share a common legal interest to get valid enforceable patents and that LICENSEE will keep all privileged information received pursuant to this Section confidential.

2. For any foreign country or jurisdiction for which BSU does not have a registered or certified Intellectual Property right in the LICENSED SUBJECT MATTER, LICENSEE may designate, in written notice to BSU, such foreign countries in which it desires to obtain protection of an Intellectual Property right in LICENSED SUBJECT MATTER. BSU shall, by written notice delivered within 45 days of BSU’s receipt of the LICENSEE’s notice, either object to such prosecution of a foreign Intellectual Property right or designate LICENSEE as BSU’s agent to seek the foreign Intellectual Property right with BSU as the record owner. Should BSU in its sole discretion so designate LICENSEE as its agent to seek foreign Intellectual Property rights, LICENSEE shall have the cooperation of BSU in the prosecution, filing and maintenance of any such foreign Intellectual Property rights, but LICENSEE shall be directly responsible for all costs associated therewith and LICENSEE shall not abandon any application for protection of such foreign Intellectual Property rights without sixty days prior written notice to BSU.

F. INFRINGEMENT BY THIRD PARTIES

1. LICENSEE, at its expense, must enforce any patent exclusively licensed hereunder against infringement by third parties in the LICENSED FIELD and is entitled to retain recovery from such enforcement. After reimbursement of LICENSEE’s reasonable legal costs and expenses related to such recovery, LICENSEE agrees to pay BSU either: (a) the royalty detailed in Section C.1(d) for any monetary recovery that is for lost profits due to the infringement and Fifty percent (50%) of related punitive damages; or (b) an amount of the reasonable royalties awarded in any monetary recovery equal to the full royalty detailed in Section C.1(d) in which the award is for reasonable royalties and Fifty percent (50%) of related punitive damages. LICENSEE must notify BSU in writing of any potential infringement in the LICENSED FIELD within thirty (30) calendar days of knowledge thereof. If LICENSEE does not file suit against a substantial infringer in the LICENSED FIELD within six (6) months of knowledge thereof, then BSU may, at its sole discretion, enforce any patent licensed hereunder on behalf of itself and LICENSEE, with BSU retaining all recoveries from such enforcement, and/or reduce the license granted hereunder to non-exclusive.

2. In any suit or dispute involving an infringer, the parties agree to cooperate fully with each other. At the request and expense of the party bringing suit, 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.

G. PATENT MARKING

LICENSEE agrees that all packaging containing individual LICENSED PRODUCT(S), documentation therefor, and, when possible, actual LICENSED PRODUCT(S) sold by LICENSEE, AFFILIATES, and/or sublicensees of LICENSEE will be permanently and legibly marked with the number of any applicable patent(s) licensed hereunder in accordance with each country’s patent laws, including Title 35, United States Code, to the extent such marking is necessary or required to fully preserve PATENT RIGHTS in each such country.
H. INDEMNIFICATION AND INSURANCE

1. LICENSEE agrees to hold harmless and indemnify BSU, its Trustees, officers, employees, students and agents from and against any claims, demands, or causes of action whatsoever, costs of suit and reasonable attorney’s fees, including without limitation, those costs arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the exercise or practice of the rights granted hereunder by LICENSEE, its officers, its AFFILIATES or their officers, employees, agents or representatives. LICENSEE shall have control of the defense and settlement of any claim that is subject to this Section H.1, however, neither LICENSEE nor any attorney engaged by LICENSEE shall defend the claim in the name of BSU, the State of Idaho or any agency of the State of Idaho, nor purport to act as legal representative of BSU, the State of Idaho or any agency of the State of Idaho without first receiving from BSU and other State of Idaho officials as needed, in a form and manner determined by BSU and the State of Idaho, express written authority to act as legal counsel for BSU or the State of Idaho, nor shall LICENSEE settle any claim on behalf of BSU or the State of Idaho without the approval of BSU and other State of Idaho officials as needed. BSU and/or the State of Idaho may, at its election, assume its own defense and settlement in the event that BSU and/or the State of Idaho determines that LICENSEE if prohibited from defending BSU and/or the State of Idaho, or that LICENSEE is not adequately defending BSU’s and/or the State of Idaho’s interests, or that an important governmental principle is at issue and BSU and/or the State of Idaho desires to assume its own defense.

2. In no event shall BSU 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 BSU knows or should know of the possibility of such damages.

3. Beginning at the time when any LICENSED SUBJECT MATTER is being distributed or sold (including for the purpose of obtaining regulatory approvals) by LICENSEE, an AFFILIATE, or by a sublicensee, LICENSEE shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than $1,000,000 per incident and $1,000,000 annual aggregate, and LICENSEE shall use reasonable efforts to have BSU, its Trustees, officers, employees, students and agents named as additional insureds. Such commercial general liability insurance shall provide: (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 obligations under the AGREEMENT.

4. LICENSEE shall provide BSU with written evidence of such insurance within thirty (30) calendar days of its procurement. Additionally, LICENSEE shall provide BSU with written notice of at least fifteen (15) calendar days prior to the cancellation, non-renewal or material change in such insurance.

5. LICENSEE shall maintain such commercial general liability insurance beyond the expiration or termination of the AGREEMENT during: (i) the period that any LICENSED SUBJECT MATTER developed pursuant to the AGREEMENT is being commercially distributed or sold by LICENSEE, an AFFILIATE or by a sublicensee or agent of LICENSEE; and (ii) the five (5) year period immediately after such period.

I. USE OF BSU’S NAME AND TRADEMARKS

LICENSEE will not use the name of (or the name of any employee of) BSU, or any trade name, trademark, logo, or other designation of BSU in any advertising, promotional or sales literature, on its Web site, or for the purpose of raising capital without the advance express written consent of BSU secured through:

Boise State University
Office of Trademark Licensing and Enforcement
1910 University Drive
Boise, Idaho 83725
ATTENTION: Rachael Bickerton
Email: licensing@boisestate.edu
Notwithstanding the above, LICENSEE may use the name of (or the name of an employee of) BSU in routine business correspondence, or as needed in appropriate regulatory submissions without express written consent and LICENSEE is encouraged to acknowledge that the LICENSED SUBJECT MATTER was developed by researchers at BSU.

J. CONFIDENTIAL INFORMATION AND PUBLICATION

1. BSU and LICENSEE each agree that all information contained in documents marked "confidential" and forwarded to one by the other (i) are to be received in strict confidence, (ii) are to be used only for the purposes of the AGREEMENT, and (iii) will not be disclosed by the recipient party (except as required by law or court order), its agents or employees without the prior written consent of the disclosing party, except 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; or
   (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it; 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; or
   (f) is required by law or regulation to be disclosed.

2. Each party’s obligation of confidence hereunder will be fulfilled by using at least the same degree of care with the disclosing party's confidential information as it uses to protect its own confidential information, but always at least a reasonable degree of care. This obligation will exist while the AGREEMENT is in force and for a period of three (3) years thereafter.

3. BSU reserves the right to publish the general scientific findings from research related to LICENSED SUBJECT MATTER, with due regard to the protection of LICENSEE’s confidential information.

4. LICENSEE acknowledges and agrees that BSU’s obligations under this Section J may be limited by and subject to the Idaho Public Records Law.

K. ASSIGNMENT

Except in connection with the sale of all of LICENSEE’s assets to a third party, the AGREEMENT may not be assigned by LICENSEE without the prior written consent of BSU, which will not be unreasonably withheld. For any assignment to be effective, (a) the LICENSEE must timely pay BSU the Assignment Fee specified in the AGREEMENT; and (b) the assignee must assume in writing (a copy of which writing will be provided to BSU) 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 the assignee were the original party (i.e., the LICENSEE) to the AGREEMENT.

L. TERM AND TERMINATION

1. Subject to Sections L.3 and L.4 below, the term of the AGREEMENT is from the EFFECTIVE DATE to the full end of the term or terms for which PATENT RIGHTS have not expired, or if only TECHNOLOGY RIGHTS are licensed and no PATENT RIGHTS are applicable, for a term of fifteen (15) years.

2. Any time after three (3) years from the EFFECTIVE DATE, BSU has the right to terminate this license in any national political jurisdiction within the LICENSED TERRITORY if LICENSEE, within ninety (90) calendar days after receiving written notice from BSU of the intended termination, fails to provide written evidence satisfactory to BSU that LICENSEE or its sublicensee(s) has commercialized or is actively and effectively attempting to commercialize a licensed invention in such jurisdiction(s). The following definitions apply to Section L.2: (a) "commercialized" means having SALES in such jurisdiction; and (b) "actively and effectively attempting to commercialize" means having an effective, ongoing and active research, development, manufacturing, marketing or sales program as appropriate, directed toward obtaining regulatory approval, and/or production and/or SALES in
any jurisdiction, and has provided plans acceptable to BSU, in its sole discretion, to commercialize licensed inventions in the jurisdiction(s) that BSU intends to terminate.

3. Subject to any rights herein which survive termination, the AGREEMENT will earlier terminate in its entirety:
   (a) automatically, if LICENSEE becomes bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of LICENSEE or otherwise; or
   (b) upon thirty (30) calendar days written notice from BSU, if LICENSEE breaches or defaults on the payment or report obligations of Section C, or use of name obligations of Section I, unless, before the end of the such thirty (30)-calendar day notice period, LICENSEE has cured the default or breach to BSU’s satisfaction, and so notifies BSU, stating the manner of the cure; or
   (c) upon ninety (90) calendar days written notice from BSU if LICENSEE breaches or defaults on any other obligation under the AGREEMENT, unless, before the end of the such ninety (90) calendar-day notice period, LICENSEE has cured the default or breach to BSU’s satisfaction and so notifies BSU, stating the manner of the cure; or
   (d) at any time by mutual written agreement between LICENSEE and BSU upon one hundred eighty (180) calendar days written notice to all parties and subject to any terms herein which survive termination; or
   (e) if Section L.2 or N.8 is invoked; or
   (f) if LICENSEE has defaulted or been late on its payment obligations pursuant to the terms of the AGREEMENT on any two (2) occasions in a twelve (12) month period.

4. Upon termination of the AGREEMENT:
   (a) nothing herein will be construed to release either party of any obligation maturing prior to the effective date of the termination; and
   (b) LICENSEE covenants and agrees to be bound by the provisions of Section H (Indemnification and Insurance), I (Use of BSU’s Name) and J (Confidential Information and Publication) of the AGREEMENT; and
   (c) LICENSEE may, for a period of one year after the effective date of the termination, sell all LICENSED PRODUCTS and parts therefor that it has on hand at the date of termination, if LICENSEE pays the earned royalty thereon and any other amounts due pursuant to Section C of the AGREEMENT; and
   (d) Subject to Section L.4(c), LICENSEE agrees to cease and desist any use and all SALE of the LICENSED SUBJECT MATTER and LICENSED PRODUCTS upon termination of the AGREEMENT; and
   (e) LICENSEE grants to BSU a nonexclusive royalty bearing license with the right to sublicense others with respect to improvements made by LICENSEE (including improvements licensed by LICENSEE from third parties) in the LICENSED SUBJECT MATTER. LICENSEE and BSU agree to negotiate in good faith the royalty rate for the nonexclusive license. BSU’s right to sublicense others hereunder is solely for the purpose of permitting others to develop and commercialize the entire technology package.

M. WARRANTY: SUPERIOR-RIGHTS

1. Except for the rights, if any, of the Government of the United States of America as set forth below, BSU represents and warrants its belief that (a) it is the owner of the entire right, title, and interest in and to LICENSED SUBJECT MATTER, (b) it has the sole right to grant licenses thereunder, and (c) it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

2. LICENSEE understands that the LICENSED SUBJECT MATTER may have been developed under a funding agreement with the Government of the United States of America ("Government") and, if so, that the Government may have certain rights relative thereto. The AGREEMENT is explicitly made subject to the Government’s rights under any such agreement and any applicable law or regulation. To the extent that there is a conflict between any such agreement, applicable law or regulation and the AGREEMENT, the terms of such Government agreement, applicable law or regulation shall prevail. LICENSEE agrees that 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 the GOVERNMENT. LICENSEE will promptly advise BSU if such a written waiver is requested and/or obtained.

3. LICENSEE understands and agrees that BSU, by the AGREEMENT, makes no representation 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 the LICENSED SUBJECT MATTER. BSU, by the AGREEMENT, also makes no representation as to whether any patent covered by PATENT RIGHTS is valid or as to whether there are any patents now held, or which will be held, by others or by BSU in the LICENSED FIELD, nor does BSU make any representation that the inventions contained in PATENT RIGHTS do not infringe any other patents now held or that will be held by others or by BSU.

4. LICENSEE, by execution of the AGREEMENT, acknowledges, covenants and agrees that LICENSEE has not been induced in any way by BSU or employees thereof to enter into the AGREEMENT, and further warrants and represents that (a) LICENSEE is entering into the AGREEMENT voluntarily; (b) LICENSEE has conducted sufficient due diligence with respect to all items and issues pertaining to the AGREEMENT; and (c) LICENSEE has adequate knowledge and expertise, or has used knowledgeable and expert consultants, to adequately conduct such due diligence, and agrees to accept all risks inherent herein.

N. GENERAL

1. No agreements altering or supplementing the terms of the AGREEMENT will be made except by a written document signed by both parties.

2. Any notice required by the AGREEMENT must be given by prepaid, first class, certified mail, return receipt requested, and addressed in the case of BSU to both:
   Boise State University
   Office of Technology Transfer
   1910 University Drive
   Boise, Idaho 83725-1135
   ATTENTION: Katy Ritter

   And

   Boise State University
   Office of the General Counsel
   1910 University Drive
   Boise, Idaho 83725
   ATTENTION: Suzy Harbison

   or in the case of LICENSEE to:
   ____________________________
   ____________________________
   ____________________________
   ____________________________
   ATTENTION: ______________________

   or other addresses as may be given from time to time under the terms of this notice provision.

3. LICENSEE must comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to the AGREEMENT. LICENSEE acknowledges that the LICENSED SUBJECT MATTER is subject to U. S. export control jurisdiction. LICENSEE agrees to comply with all applicable international and national laws that apply to the LICENSED SUBJECT MATTER, including U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions applied by the United States.

4. The AGREEMENT will be construed and enforced in accordance with the laws of the United States of America and of the State of Idaho, without regard to its conflict of law provisions. The Idaho State Courts of Ada County, Idaho (or, if there is exclusive federal jurisdiction, the United States District Court for the District of Idaho)
shall have exclusive jurisdiction and venue over any dispute arising out of the AGREEMENT, and LICENSEE consents to the jurisdiction and venue of such courts and hereby explicitly waives the rights to any other venue to which it might be entitled by cause of action, domicile or otherwise.

5. Failure of BSU to enforce a right under the AGREEMENT will not act as a waiver of right or the ability to later assert that right relative to the particular situation involved.

6. Headings included herein are for convenience only and will not be used to construe the AGREEMENT.

7. If any part of the AGREEMENT is for any reason found to be unenforceable, all other parts nevertheless will remain enforceable.

8. In the event that LICENSEE brings an action before any court, agency or tribunal seeking to invalidate or otherwise challenge the enforceability of or BSU’s ownership of any patent included in the PATENT RIGHTS, then BSU may immediately terminate the AGREEMENT upon written notice to LICENSEE. Any dispute regarding the validity, enforceability or ownership of any patent included in the PATENT RIGHTS shall be litigated in the courts located in Boise, Idaho, and LICENSEE agrees not to challenge personal jurisdiction in that forum. To the extent that LICENSEE unsuccessfully challenges the validity or enforceability of any patent included in the PATENT RIGHTS, LICENSEE agrees to reimburse BSU for all costs and fees (including attorney’s fees) paid by BSU in defending against such challenge. LICENSEE understands and agrees that, in the event LICENSEE successfully challenges the validity or enforceability of any patent included in the PATENT RIGHTS, all payments or other consideration made or otherwise provided by LICENSEE to BSU prior to a final, non-appealable adjudication of invalidity and/or unenforceability shall be non-refundable. The obligations of this Section shall survive the expiration or termination of the AGREEMENT.

9. Nothing in the AGREEMENT shall be deemed to be a waiver by BSU or the State of Idaho of any form of privilege, defense or immunity afforded it under the laws of the State of Idaho, including without limitation the Idaho Tort Claims Act. Further, nothing in the AGREEMENT shall be deemed as a waiver by BSU or the State of Idaho of any form of privilege, defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States of America or otherwise, from any claim or from the jurisdiction of any court.