

**University of Wisconsin-Milwaukee Research
Foundation –
COMPANY, LLC.**

***Draft* Patent License Agreement**

Month __, Year

CONFIDENTIAL

To avoid any possible misunderstanding, neither UWMRF nor COMPANY (as defined herein) shall have any obligation or liability of any nature to each other, unless and until the parties execute and deliver a definitive written agreement providing for such obligations or liabilities, and either party shall be free to terminate discussions at any time without obligation or liability to the other. Furthermore, delivery of this draft license agreement is not an offer to sell to any person, or a solicitation to any person to buy, securities of COMPANY.

Further, the terms and conditions of this draft license agreement shall be confidential information and shall not be disclosed to any third party without the consent of the UWMRF, except that the parties hereto may disclose the terms and conditions described in this draft license agreement including its existence to their respective officers, directors, employees, attorneys and other advisers, provided that such persons agree to the confidentiality restrictions contained herein.

PATENT LICENSE AGREEMENT

This Patent License Agreement (the "Agreement") is entered into on this _____ day of Month, 2013 (the "Effective Date") between the University of Wisconsin-Milwaukee Research Foundation, Inc., a non-profit Wisconsin corporation, with its principal place of business at 1440 East North Ave., Milwaukee, WI 53202 ("UWMRF"), and COMPANY, LLC, a company organized under the laws of the state of _____, with a place of business at _____ ("COMPANY"). UWMRF and COMPANY are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, UWMRF owns certain Patent Rights and Technology Rights relating to the Licensed Subject Matter, which were developed at the University of Wisconsin-Milwaukee ("University"), and is interested in licensing same;

WHEREAS, UWMRF represents that it has the right to grant licenses granted in this agreement; and

WHEREAS, UWMRF desires to have the Licensed Subject Matter developed and used and commercialized to the fullest extent possible for the benefit of COMPANY, Inventor, University, UWMRF and the general public; and

WHEREAS, COMPANY desires to obtain a license from UWMRF to practice Licensed Subject Matter upon the terms and conditions herein set forth in this agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. DEFINITIONS

- 1.1. **"Affiliate"** shall mean any business entity more than fifty percent (50%) owned by COMPANY, any business entity which owns more than fifty percent (50%) of COMPANY, or any business entity that is more than fifty percent (50%) owned by a business entity that owns more than fifty percent (50%) of COMPANY.
- 1.2. **"Combination Product"** shall mean a Licensed Product in connection with which (a) COMPANY has physically, chemically, structurally or otherwise combined one or more Components with a Licensed Product, or COMPANY has packaged one or more Components with a Licensed Product for sale as a single package or unit; and (b) the combination of the Licensed Product with the Component is required to achieve the intended use, indication, or effect.
- 1.3. **"Component"** shall mean a product, system or device that is Sold commercially by COMPANY, an Affiliate, or sublicensee of COMPANY, which does not meet the definition of a Licensed Product.

“Commercialization”, with a correlative meaning for **“Commercialize”**, shall mean all activities undertaken before and after obtaining regulatory approval relating specifically to the pre-marketing, launch, promotion, marketing, sale, and distribution of a (pharmaceutical) product, including, without limitation: (a) strategic marketing, sales force detailing, advertising, (medical education and liaison), and market and product support; and (b) (any phase IV clinical trials), and (c) all customer support and product distribution, invoicing and sales activities. **(THE LANGUAGE WILL BE ADJUSTED TO INDUSTRY SPECIFIC ACTIVITIES RELATED TO THE DISTRIBUTION OF THE PRODUCT.)**

- 1.4. “Develop” or “Development”** shall mean all activities relating to preparing and conducting (preclinical testing), toxicology testing, (human clinical studies), regulatory affairs for obtaining the regulatory approvals, formulation development, process development for manufacture and associated validation, quality assurance and quality control activities. **(SOME OF THIS LANGUAGE IS SPECIFIC ONLY TO THE PHARMACEUTICAL INDUSTRY. THE LANGUAGE WILL BE ADJUSTED FOR EACH INDUSTRY.)**
- 1.5. “Development Plan”** shall mean a summary of COMPANY’S plans to Develop the Licensed Products that includes, but is not limited to, significant strategies, events, activities, research, collaborations, timelines and Development activities for the Licensed Products conducted hereunder for the primary purpose of ultimately supporting the Sale of Licensed Product.
- 1.6. “Diligent Efforts”** shall mean, with respect to a Party’s obligation under this Agreement to Develop or Commercialize a Product, the level of efforts required to carry out such obligation in a sustained manner consistent with the efforts a similarly situated biopharmaceutical company, in the case of COMPANY or its’ sublicensee, or a university intellectual property management organization in the case of UWMRF, devotes to a product of similar market potential, profit potential or strategic value within its portfolio, based on conditions then prevailing. Without limiting the foregoing, Diligent Efforts requires, with respect to such an obligation, that the Party: (a) within a reasonable time assign responsibility for such obligation to specific employee(s) who are held accountable for progress and monitor such progress on an on-going basis, (b) set and consistently seek to achieve specific, meaningful and measurable objectives for carrying out such obligation, and (c) consistently make and implement decisions and allocate resources designed to advance progress with respect to such objectives.
- 1.7. “Field of Use”** shall mean _____.
- 1.8. “Improvement”** shall mean inventions, or claims to inventions, which constitute advancements, developments, or enhancements to the Licensed Patents, whether or not patentable and whether or not claimed in of any patent application, but which are sufficiently supported by the specification of a patent or patent application within the Licensed Patents to be entitled to the priority date of that patent or patent application.
- 1.9. “Information”** means any data, results, technology, business information, and information of any type whatsoever, in any tangible or intangible form, including, without limitation, know-how, practices, techniques, methods, processes, inventions, developments, specifications, formulations, formulae, materials or compositions of matter of any type or kind (patentable or otherwise), software, algorithms, marketing reports, expertise, technology, test data (including pharmacological, biological, chemical, biochemical, toxicological, preclinical and clinical test data), analytical and quality control data, stability data, other study data and procedures. **(WE ASK THE COMPANY TO DISCLOSE INFORMATION RELATED TO THE LICENSED SUBJECT MATTER WITH THE INVENTORS TO USE FOR RESEARCH AND TRAINING PURPOSES ONLY).**

- 1.10. "Licensed Patents"** shall mean UWMRF's rights in the patents and patent applications listed in Exhibit 1 and patents issuing therefrom, and any divisions, continuations, continuations-in-part and reissues thereof, and any and all foreign patents and patent applications corresponding thereto and any extensions of any of the foregoing. This definition of Licensed Patents excludes any rights in and to New Developments.
- 1.11. "Licensed Product"** shall mean any property, product, method, or service within the Field of Use that, absent the licenses granted under this Agreement, infringes, induces infringement, or contributes to infringement of the Licensed Patent(s).
- 1.12. "Licensed Subject Matter"** shall mean, collectively, Patent Rights, Technology Rights, and Improvements.
- 1.13. "Licensed Territory"** shall mean _____.
- 1.14. "Net Sales"** shall mean the gross revenue received by COMPANY, its Affiliates or their respective sublicensees, as appropriate, for Sales of Licensed Products to Third Parties during a relevant period of time; excluding the following deductions to the extent actually allowed or incurred with respect to such sales (a) sales, use occupation or excise tax directly imposed and with reference to particular sales and other applicable taxes that are not reimbursable, refundable, or creditable to COMPANY, (b) customs, duties or other governmental charges directly imposed and actually paid and with reference to particular sales, (c) prepaid or allowed freight (to the extent itemized and included in the amount billed the Third Party customer), postage, duty or insurance included therein, (d) returns, discounts, rebates, and discounts actually allowed, refunds, credits or repayments due to rejections, defects or returns, and net of amounts previously included in Net Sales that were written-off during such period as non-collectible (each not to exceed the original billing or invoice amount), and (e) normal and customary trade, quantity and cash discounts. No deductions shall be made for commissions paid to individuals whether they are with independent sales agencies or regularly employed by COMPANY and on its payroll, or for cost of collections. If the Licensed Product is commercially used by, Sold or leased to any Person for a consideration other than money, Net Sales shall be the gross selling price of comparable Licensed Products sold in arm's length transactions by COMPANY or, if no sales or leases of comparable Licensed Products have been made, then the fair market value thereof shall apply, except that this latter provision shall apply only to commercial use and shall not apply to Licensed Products transferred, conveyed or otherwise used by third parties for research and/or development performed on behalf of or for COMPANY. For transfers of Licensed Products by COMPANY to Affiliates solely for subsequent Sale by the Affiliates, Net Sales of such Licensed Products shall be determined when such Licensed Product is Sold by such Affiliate. Sales of Licensed Products to Third Party distributors or others that are not COMPANY or its Affiliates shall be determined when such Licensed Product is Sold to such Third Party distributor or other Third Party. Net Sales calculations performed pursuant to this definition shall be in accordance with GAAP.
- 1.15. "New Developments"** means inventions, or claims to inventions, which constitute advancements, developments, or improvements, whether or not patentable and whether or not the subject of any patent application, but if patentable, are not sufficiently supported by the specification of a previously-filed patent or patent application within the Patent Rights to be entitled to the priority date of the previously-filed patent or patent application.

- 1.16. "Patent Rights" means UWMRF's rights in any subject matter claimed in any U.S. or foreign patent applications or patents that claim priority to any of the Licensed Patents. This definition of Patent Rights excludes any rights in and to New Developments.
- 1.17. "Person" shall mean an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a government agency.
- 1.18. "Sale, Sell or Sold" means the transfer or disposition of a Licensed Product for value to a party other than COMPANY.
- 1.19. "Technology Rights" means UWMRF's rights in technical information and information of any type whatsoever, in any tangible or intangible form, including, without limitation, results, technology, business information, know-how, trade secrets, practices, inventions, developments, specifications, formulations, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, data (including test data, analytical and quality control data, stability data, and other study data), materials or compositions of any type (patentable or otherwise), algorithms, marketing reports, and expertise created by Inventor's Name ("Inventor") at the University before the Effective Date relating to Title of Invention which are not part of the Patent Rights but which are necessary for the manufacture, use, or sale of Licensed Products. **(FOR CLARITY, THE KEY OF THIS DEFINITION IS THAT IT REFERS TO INFORMATION CREATED BEFORE THE EFFECTIVE DATE OF THE AGREEMENT. THESE RIGHTS MAY BE REMOVED FOR A LICENSE THAT ONLY INCLUDES THE PATENT RIGHTS).**
- 1.20. "Third Party" shall mean any entity other than UWMRF or COMPANY or an Affiliate of any such entity.

2. LICENSE

- 2.1. Exclusive License. UWMRF hereby grants to COMPANY a royalty-bearing, sole and exclusive license under the Licensed Patents to make, have made, practice, have practiced, Sell, have Sold, use, have used, offer, have offered, import, have imported, market, have marketed and otherwise Commercialize or have commercialized the Licensed Products within the Field of Use and throughout the Licensed Territory. This grant is subject to the payment by COMPANY to UWMRF of all consideration as provided herein, and is further subject to rights retained by UWMRF as provided in this Agreement.
- 2.2. Non-Exclusive License. UWMRF hereby grants to COMPANY a royalty-bearing, non-exclusive license under the Technology Rights to make, have made, practice, have practiced, Sell, have Sold, use, have used, offer, have offered, import, have imported, market, have marketed and otherwise Commercialize or have commercialized the Licensed Products within the Field of Use and throughout the Licensed Territory. This grant is subject to the payment by COMPANY to UWMRF of all consideration as provided herein, and is further subject to rights retained by UWMRF as provided in this Agreement. **(THIS LICENSE MAY BE REMOVED IF ONLY PATENT RIGHTS ARE DESIRED).**
- 2.3. Non-Exclusive Rights. UWMRF expressly reserves for UWMRF, University and University of Wisconsin System a non-exclusive, royalty-free, perpetual, irrevocable, worldwide right, including the right to

grant in its sole discretion similar rights to other academic or non-profit research institutions that employ Inventor, to use the Licensed Subject Matter for any non-commercial purpose, including research, education and other educationally-related purposes. UWMRF expressly reserves the right to grant to any academic or non-profit research institution, in the sole discretion of UWMRF and at the request of Inventor, a non-exclusive right to use the Licensed Subject Matter for any non-commercial purpose, including research, education and other educationally-related objectives solely for the purpose of facilitating scientific and academic collaboration between Inventor and sublicensee collaborator. UWMRF shall promptly notify COMPANY in the event any portion of the Licensed Subject Matter is sublicensed pursuant to this Article 2.3. **(THESE RIGHTS ENSURE THAT THE INVENTORS CAN CONTINUE TO CONDUCT RESEARCH ON THE LICENCED INVENTION FOR NON-COMMERCIAL PURPOSES EVEN IF THEY MOVE TO A NEW UNIVERSITY).**

- 2.4. Non-Exclusive Research License. COMPANY hereby grants to UWMRF a nonexclusive, royalty free, irrevocable, paid-up license, with the right to grant a sublicense to University and any non-profit institutions that employs, on a full-time basis, any inventor of the Licensed Patents, to practice and use Information and Improvements disclosed by COMPANY related to the Licensed Subject Matter for non-commercial research, training and education purposes. **(WE ASK THE COMPANY TO DISCLOSE INFORMATION RELATED TO THE LICENCED SUBJECT MATTER WITH THE INVENTORS TO USE FOR RESEARCH AND TRAINING PURPOSES ONLY).**
- 2.5. Affiliates. COMPANY may extend the license granted herein to any Affiliate if the Affiliate consents to be bound by this Agreement to the same extent as COMPANY. To the extent any Affiliate operates under this license, COMPANY shall be responsible to UWMRF for all payments, reporting, and other obligations and liabilities of such Affiliate as if COMPANY were in the Affiliate's place.
- 2.6. Grant of Sublicenses. COMPANY may grant sublicenses consistent with this Agreement if COMPANY is responsible for the operations of its sublicensees relevant to this Agreement as if the operations were carried out by COMPANY. COMPANY must deliver to UWMRF a true and correct copy of each sublicense granted by COMPANY, and any modification or termination thereof, within thirty (30) days after execution, modification, or termination. When this Agreement is terminated, all existing sublicenses granted by COMPANY must be assigned to UWMRF.

3. PAYMENTS AND REPORTS

- 3.1. Initial License Fee. COMPANY shall pay to UWMRF an initial license fee of _____ thousand dollars (\$_____) within ninety (90) days after execution of this Agreement; provided however that if COMPANY meets all obligations under Sections 2A(i) and 2A(ii) of the Standard Equity Agreement of even date herewith and entered into by UWMRF and COMPANY, then UWMRF shall waive the initial license fee described in this Section 3.1.
- 3.2. Past Patent Costs. COMPANY shall pay to UWMRF an amount equal to the patent filing and prosecution costs incurred by UWMRF prior to the Effective Date and directly related to the Licensed Patents. COMPANY shall pay such amount within thirty (30) days of (1) receipt of invoice detailing such costs. The Parties have stipulated that the amount of patent filing and prosecution costs incurred by UWMRF prior to the Effective Date is XXXXXXXX for the Licensed Patents listed in Exhibit 1.
- 3.3. Payments. In consideration of rights granted by UWMRF to COMPANY under this Agreement, COMPANY will pay UWMRF the following: **(NOT ALL OF THESE TYPES OF PAYMENTS ARE**

NECESSARILY USED. THESE TYPES OF PAYMENTS SHOW THE RANGE OF WHAT WE CAN USE TO DETERMINE FAIR TERMS FOR THE AGREEMENT).

- a. Initial License Fee. _____ Dollars (\$XXX,XXX), due and payable within thirty (30) business days after execution of this agreement;
- b. Annual license maintenance fee. _____ Dollars (\$XX,XXX), is due and payable on each anniversary of the Effective Date beginning on the second anniversary until first Sales occur;
- c. **Clinical milestone payments, in the amounts as follows, based on achievement of clinical based events, as follows: (THIS SECTION IN BLUE ONLY APPLIES FOR MEDICAL/PHARMACEUTICAL TYPE TECHNOLOGIES THAT NEED FDA, EPA, OR OTHER TYPES OF APPROVALS).**

i. A payment of _____ Dollars (\$XX,XXX) upon approval of Investigational New Drug application (as defined in the U.S. Federal Food, Drug and Cosmetic Act and applicable regulations promulgated thereunder by the FDA), or equivalent application, with the FDA or equivalent regulatory authority

ii. A payment of _____ Dollars (\$XX,XXX) upon successful completion of a Phase II Clinical Trial (a "Phase II Clinical Trial" means a small scale clinical trial of a pharmaceutical product on patients, including possibly pharmacokinetic studies, the principal purposes of which are to make a preliminary determination that such product is safe for its intended use and to obtain sufficient information about such product's efficacy to permit the design of further clinical trials). For purposes of this section, "completion" means locking of the database for analysis of the clinical study.

iii. A payment of _____ Dollars (\$XXX,XXX) upon successful completion a Phase III Clinical Trial (a "Phase III Clinical Trial" means one or more clinical trials on sufficient numbers of patients, which trial(s) are designed to (a) establish that a drug is safe and efficacious for its intended use; (b) define warnings, precautions and adverse reactions that are associated with the drug in the dosage range to be prescribed; and (c) support Regulatory Approval of such drug). For purposes of this section, "completion" means locking of the database for analysis of the clinical study.

COMPANY shall pay to UWMRF the above amounts within thirty (30) days of the first occurrence of the above listed clinical based events. Each clinical milestone payment made to UWMRF hereto shall be payable only once per Licensed Product, regardless of the number of times achieved. Each such payment is non-refundable and non-creditable against any other payments due hereunder. For clarity, if any such clinical milestone event that would trigger a milestone payment is not conducted or "skipped", either as by design of the clinical trial or as allowed by the FDA or a comparable foreign regulatory authority, then the payment above shall be due upon the initiation of the next advanced clinical trial/study or regulatory event.

- d. Commercial Milestone Payment. A commercial milestone payment of _____ Dollars (\$XXX,XXX), due and payable within six (6) months of the first Sale of a Licensed Product anywhere in the Licensed Territory.
- e. Running Royalty Rate. A ___ percent (x%) running royalty on Net Sales of Licensed Products Sold by COMPANY or its Affiliate.
- f. Combination Products Royalty Rate. A ___percent (x%) running royalty on Net Sales of Combination Products Sold by COMPANY or its Affiliate. For the purpose of calculating royalties on Net Sales of Combination Products hereunder, Net Sales of a Combination Product shall be determined on a country by country basis by multiplying the actual Net Sales of the Combination Product by the fraction $A/(A+B)$, where A is the average sale price of a Licensed Product in a given country when sold without Components in finished form and B is the average sale price of the other Components sold separately in finished form in that given country. In the event that such average sale price cannot be determined for either the Licensed Product or other Components in the Combination Product, Net Sales for purposes of determining royalty payments hereunder shall be calculated by multiplying the Net Sales of the Combination Product by the fraction $C/(C+D)$, where C is Company's, or its Affiliates', cost of goods of the Licensed Product and D is Company's, or its Affiliates', cost of goods of the other Components, in each case determined in accordance with GAAP.
- g. Minimum Annual Royalties. A minimum annual royalty shall apply following the first Sale of a Licensed Product anywhere in the Licensed Territory.

Year 1 =
Year 2-3 =
Year 3-4 =
Year 5+ =

The minimum annual royalty for each calendar year shall be due and payable in advance on or before January 1 of such year and will be credited as advance payment of royalties to accrue during the calendar year following payment. The minimum annual royalty payments will not be refunded in whole or in part.

3.4. Future Patent Costs. COMPANY shall pay all patent application filing and prosecution costs while securing and maintaining patent protection directly related to the Licensed Patents as per Article 5.6.

3.5. Sublicensing Costs. In consideration of rights granted by UWMRF to COMPANY under this Agreement, COMPANY further agrees to pay UWMRF the following after the execution of a sublicense hereunder:

- a. Within thirty (30) days after the execution of the sublicense agreement, a sublicense fee of fifty percent (50%) of any up-front cash payment made to COMPANY by sublicensee in consideration for the sublicense agreement, excluding funds paid to COMPANY for future research and development purposes ("Research Funds"). Specifically excluded from this exception are Research Funds intended to reimburse COMPANY for research and development expenses incurred by COMPANY prior to executing any sublicense agreement.

- b. Within thirty (30) days after the execution of the sublicense agreement a sublicense fee constituting a cash payment equal to of fifty percent (50%) of any non-cash upfront consideration received by COMPANY from the sublicensee in the case such non-cash consideration is immediately available and saleable. In such case that non-cash consideration is not immediately available and saleable then COMPANY shall offer to assign and/or transfer to UWMRF an amount of non-cash consideration equal to fifty percent (50%) of the non-cash consideration received by COMPANY from a sublicensee. For the purpose of this paragraph such non-cash consideration shall mean equity in other companies or equity investments in COMPANY that can reasonably be converted to cash either immediately or in the future. In the case of equity that is immediately available and saleable, the value of an equity investment will be calculated as the average market value of the class of stock involved for five (5) consecutive days preceding the sale or transfer of such equity investment. In cases where the sublicense agreement calls for payment to COMPANY of a premium over the market value, UWMRF will also share fifty percent (50%) of the premium paid to COMPANY.

- c. A royalty based on all revenue, other than revenue described in the previous two paragraphs, received by COMPANY from a sublicensee under the sublicense agreement. For clarity, this royalty rate is the percentage taken from that received by COMPANY from the sublicensee for the Licensed Patents. Such royalty rate shall be fixed as follows at such date COMPANY executes a sublicense agreement:
 - i. A running royalty rate of fifty percent (50%) until COMPANY invests at least _____ dollars (\$X,000,000) in the research and Development of the Licensed Subject Matter, jointly owned New Developments, or Improvements;
 - ii. A running royalty rate of thirty five percent (35%) if a sublicense agreement is executed after COMPANY has invested between ____ million dollars (\$X,000,000) and ____ million dollars (\$X,000,000) in the research and Development of the Licensed Subject Matter, jointly owned New Developments, or Improvements;
 - iii. A running royalty rate of twenty five percent (25%) thereafter.

3.6. Equity Agreement. In consideration of rights granted by UWMRF to COMPANY under this Agreement and pursuant to a separate Equity Agreement, COMPANY shall convey to UWMRF a total combined equity interest in COMPANY corresponding to ____ percent (___%) of COMPANY's outstanding equity units pursuant to the terms and conditions of such Equity Agreement. The Equity Agreement shall provide, among other things, that UWMRF's percentage interest in COMPANY shall not be diluted prior to such time as COMPANY has raised ____ million dollars (\$X,000,000) in equity financing. Thereafter, UWMRF's equity interest shall be subject to proportional dilution. **(EQUITY IS USED FOR LICENSES WITH START UP COMPANIES IN EXCHANGE FOR OTHER TYPES OF UP FRONT CASH FEES. WE ASK FOR ANTI-DILUTION UP THROUGH A CERTAIN AMOUNT OF FUNDING OR FINANCING, INCLUDING GRANTS, OR FOR A CERTAIN NUMBER OF YEARS POST EXECUTION DATE).**

3.7. Royalty Payments. Payments of royalties shall be made quarterly within sixty (60) days of the end of the calendar quarter (or COMPANY fiscal quarter to the extent COMPANY adopts a financial year

not based on the calendar year). Royalties shall be reported using the template provided in Exhibit 4.

3.8. Legal Actions. At any time should COMPANY bring a legal action in any forum seeking to invalidate any claim of any Licensed Patent, COMPANY and its sublicense(s) shall continue to pay royalties with respect to that patent as if such contest were not underway until the patent is adjudicated invalid or unenforceable by a court of last resort.

3.9. Payments and Taxes. Payments due under this Agreement shall be made in United States Dollars. For converting payments on Net Sales made in a currency other than United States Dollars, there shall be used the exchange rate for U.S. Dollars as related to such other currency as published in the Wall Street Journal for the last day of the quarter for which such payment is due, or if the last day is not a business day, the closest preceding business day. All payments pursuant to this Agreement may be paid with deduction for withholding for or on account of any taxes (other than taxes imposed on or measured by net income) or similar governmental charge imposed on such payments by a jurisdiction other than the United States ("Withholding Taxes"). At UWMRF's request, COMPANY shall provide UWMRF a certificate evidencing payment of any Withholding Taxes hereunder and shall reasonably assist UWMRF to obtain the benefit of any applicable tax treaty

3.10. Right to Audit. During the term of this Agreement and for a period of three (3) years thereafter, COMPANY shall keep and maintain, and require its Affiliates and assignees to keep and maintain, proper and complete records and books of account to document sales of Licensed Products by COMPANY and any Affiliates and assignees. Such records shall be maintained for a minimum of three (3) years. At UWMRF's request and expense, COMPANY shall permit UWMRF or its representatives, to examine, not more than once in any calendar year for any current or preceding calendar year and upon 30 days prior written notice, such books and records of COMPANY and its Affiliates and assignees for the sole purpose of determining the correctness of all calculations of sales, royalties, and other consideration and payments reported by COMPANY pursuant to this Article 3. COMPANY shall pay to UWMRF underpaid amounts, if any, within thirty (30) days of the determination, and UWMRF shall pay to COMPANY overpaid amounts, if any, within thirty (30) days of the determination; provided, however, that if the Party responsible for such payment objects within thirty (30) days of receiving notification of an underpayment, the matter shall be submitted to a mutually agreed upon independent public accounting firm, whose determination shall be binding upon the parties. In addition, if the amounts due UWMRF are determined to have been underpaid by an amount equal to or greater than ten percent (10%) of the total amount due for the calendar year so examined, then COMPANY shall pay the underpaid amount plus the cost of the examination. Late payments will be subject to interest calculated at a rate of twelve percent (12%) per annum, or the highest rate allowed by Wisconsin law, whichever is less.

3.11. Royalty Reporting. In conjunction with each payment, COMPANY shall provide UWMRF a written report having sufficient detail to allow a determination of the royalties due UWMRF pursuant to this Agreement. Each report provided to UWMRF shall contain at least the following information using the template found in Exhibit 4:

- a. the gross dollar and number of units sales of Licensed Products Sold by COMPANY, its Affiliates in each country; and,
- b. the calculation of Net Sales for Licensed Products Sold by COMPANY or its Affiliates in each country; and,

- c. the total royalties payable to UWMRF in U.S. Dollars, together with the exchange rates used for conversion; and,
- d. a statement that no royalties are due, if no royalties are due to UWMRF for any reporting period after the first Sale of a Licensed Product; and,
- e. direct fees and revenue, or in the case of non-cash consideration, the cash value of such consideration received by COMPANY from any sublicensee pursuant to any sublicense agreement, for the purposes of calculating amounts due UWMRF pursuant to Article 3.5 hereof.

3.12. Any payment required under this Agreement may be made by check as follows (making reference to this Agreement):

UWM Research Foundation
Attn: President
1440 East North Ave.
Milwaukee, WI 53202

4. TERM AND TERMINATION

- 4.1. Term.** This Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to this Article 4, shall remain in effect until the longer of (a) the expiration of all of COMPANY's payment obligations to UWMRF, or (b) the expiration of the last to expire Licensed Patent.
- 4.2. Early Termination by COMPANY.** COMPANY shall have the right to terminate this Agreement, in its entirety, upon written notice to UWMRF by at least six (6) months' written notice prior to the effective date of termination; provided that in no event may the effective date of such termination precede the second anniversary of the Effective Date. COMPANY will be responsible for any payments due to UWMRF pursuant to this Agreement, which payments obligations matured prior to the effective date of termination.
- 4.3. Termination due to Default.** In the event that either Party is in default of its obligations under this Agreement and fails to remedy such default within sixty (60) days after receipt of written notice thereof regarding a default not solely in the payment of money due hereunder, or thirty (30) days after receipt of written notice thereof regarding a default solely in the payment of money due hereunder or, in either case, to the extent such default cannot be remedied within such thirty (30) or sixty (60) day period, shall fail to have commenced good faith efforts to remedy such breach within such sixty (60) or thirty (30) day period and continue thereafter to remedy such breach, the Party not in default shall have the option of terminating this Agreement by giving written notice of termination to the defaulting Party.
- 4.4. Termination of Exclusivity.** Any time after two (2) years from the Effective Date, if COMPANY, or its' sublicensee, fails to use sustained Diligent Efforts to actively Develop and Commercialize the Licensed Subject Matter, UWMRF has the right to terminate the exclusivity of this license in any such country in the Licensed Territory. UWMRF shall provide written notice to COMPANY evidencing that COMPANY, or its sublicensee, has failed to use sustained Diligent Efforts and if, within ninety (90) days after

receiving such written notice from UWMRF of intended termination of exclusivity, COMPANY fails to provide written evidence to UWMRF that COMPANY, or its sublicensee, has used sustained Diligent Efforts to actively Develop or Commercialize the Licensed Subject Matter in such country then UWMRF will have the right to terminate the exclusivity of this license in such country.

- 4.5. Termination for Lack of Diligence.** Any time after three (3) years from the Effective Date, if COMPANY, or its' sublicense, fails to use sustained Diligent Efforts to actively Develop and Commercialize the Licensed Subject Matter, UWMRF has the right to terminate this license in any such country in the Licensed Territory. UWMRF shall provide written notice to COMPANY evidencing that COMPANY, or its sublicense, has failed to use such sustained Diligent Efforts and if, within ninety (90) days after receiving written notice from UWMRF of intended termination, COMPANY fails to provide written evidence to UWMRF that COMPANY, or its sublicense, has used sustained Diligent Efforts to actively Develop or Commercialize the Licensed Subject Matter in such country then UWMRF will have the right to terminate this license in such country.
- 4.6. Other Termination.** This Agreement terminates automatically if COMPANY becomes bankrupt or insolvent and/or if the business of COMPANY is placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of COMPANY or otherwise.
- 4.7. Termination Obligations.** If this Agreement is terminated for any cause:
- a. nothing herein will be construed to release either Party of any obligation matured prior to the effective date of the termination; and,
 - b. after the effective date of the termination, COMPANY may Sell all Licensed Products and parts thereof it has on hand at the date of termination, if it pays earned royalties thereon according to the terms of Article 3; and,
 - c. COMPANY will be bound by the provisions of Articles 10 (Indemnification), 12 (Use of Name and Confidential Information) of this Agreement.
- 4.8. Sublicense Continuance.** If this Agreement is terminated by UWMRF, any COMPANY sublicensee(s) not in default of the terms and conditions of its sublicense agreement with COMPANY may make a written election requesting to continue such sublicense agreement directly with UWMRF. Upon such an election by any such sublicensee, UWMRF may promptly negotiate, in good faith, a license continuance agreement with such sublicensee under reasonable terms and conditions. COMPANY shall provide UWMRF all reasonable assistance and cooperation to make such license continuation agreement negotiations as efficient as possible. To the extent reasonably possible, COMPANY must give its sublicensee(s) written notice thirty (30) days prior to the effective date of termination of this Agreement. In any case, sublicensee(s) must make a written election within thirty (30) days after receipt of written notice of termination from COMPANY.

5. PATENTS AND INVENTIONS

- 5.1. Ownership.** Each Party shall own any New Developments made solely by its employees, agents, directors, owners, advisors or independent contractors in the course of conducting its activities under this Agreement together with all intellectual property rights therein ("Sole Inventions"). Any New Developments that are made jointly by employees, agents, or independent contractors of each Party

in the course of performing activities under this Agreement, together with all intellectual property rights therein ("Joint Inventions") shall be owned jointly by the Parties in accordance with joint ownership interests of co-inventors under U.S. patent laws, with each Party having, unless otherwise set forth in this Agreement, the unrestricted right to license and grant rights to sublicense each such Joint Invention, and each Party hereby agrees to consent, without payment of any further consideration or royalty, to the joint Party's licensing of said joint Party's interest in such Joint Invention to third parties.

5.2. Disclosure of Joint Inventions. Each Party must, to the extent not prohibited by third party agreements or obligations, promptly disclose to the other Party any New Development or invention disclosures, or other similar documents, submitted to it by its employees, agents or independent contractors describing inventions that may be Joint Inventions, and all information relating to such inventions.

5.3. Prosecution. Subject to the terms of Article 5.5, each Party has the right to file and prosecute intellectual property applications on any intellectual property to which it holds exclusive title.

5.4. Joint Inventions. The Parties shall use the procedure for the protection and administration of Joint Inventions as specified below in Article 5.5. If one Party does not wish to participate in the preparation, prosecution, and maintenance of intellectual property protection for Joint Inventions, the non-participating Party must offer to assign all its rights, title and interest to the Party electing to pursue intellectual property protection. The non-participating Party shall retain a non-exclusive, royalty free, non-sublicensable license to use the intellectual property for its own non-commercial research purposes. **(THE SECTION IN BLUE ABOVE IS MOST RELEVANT IF THE LICENSEE CONTINUES TO COLLABORATE WITH THE INVENTORS FOR FURTHER DEVELOPMENT OR RESEARCH RELATED TO THE LICENSED SUBJECT MATTER).**

5.5. Patent Prosecution. UWMRF, in consultation with COMPANY, shall during the term hereof have the right, but not the obligation, to file patent applications to protect such Inventions or discoveries and to control actions related to the prosecution and maintenance of the U.S. patents and patent applications included within the Licensed Patents, and actions related to the prosecution and maintenance of those foreign patents and patent applications. UWMRF reserves the right to file a patent application, at its own expense, in any countries not requested by COMPANY. UWMRF shall have the right to select legal counsel of its' choice and to make any final determinations with respect to all actions relating to the Licensed Patents. COMPANY shall be entitled to provide comments and suggestions as to such proposed action and UWMRF shall take such comments and suggestions reasonably into account in its prosecution and maintenance of such patent applications and patents. UWMRF shall prosecute and maintain patent applications and patents included within the Licensed Patent(s) diligently. To the extent UWMRF does not prosecute and maintain patent applications and patents included within the Licensed Patents, COMPANY shall have the right to prosecute and maintain such patents and patent applications on UWMRF's behalf (at COMPANY's expense).

5.6. Future Patent Costs. During the time that any rights granted to COMPANY remain exclusive, COMPANY agrees to pay all costs (services and disbursements) incurred by UWMRF after the Effective Date in connection with the preparation, filing, prosecution and maintenance of Licensed Patent(s) ("Patent Related Costs"). COMPANY shall be reasonably included and given reasonable participation rights in all meetings with and communications to and from patent counsel. During the term of this Agreement COMPANY may elect not to proceed with the payment of certain Patent Related Costs and prosecution for any one or more particular patent(s) or patent application(s) (hereafter a "Relinquished Patent") included within the Licensed Patents. Upon provision to UWMRF of written

notice of such election, and effective ten (10) days after the receipt of such notice, this Agreement and Exhibit 1 shall be amended and such Relinquished Patent(s) shall no longer be included within the Licensed Patents and COMPANY shall have no rights with respect thereto. For clarity, any Patent Related Costs accrued prior to the effective date of a Relinquished Patent, must be reimbursed to UWMRF. All rights previously granted to COMPANY with respect to such Relinquished Patent(s) will revert to the sole benefit of UWMRF, and COMPANY shall be fully liable for any infringement thereof caused by its activities after the date of relinquishment.

- 5.7. Challenge of Patent.** If COMPANY, sublicensee, an affiliate, or a third party acting on behalf of COMPANY or one of its affiliates or sublicensees, challenges the validity or enforceability of UWMRF's Patent Rights anywhere in the world, the COMPANY must continue to pay all royalties and other financial obligations required under this Agreement, to include patent costs and fees. If any such challenge is unsuccessful by Licensee, the royalty rates and any non-royalty sublicense income rate set forth in Article 3 above shall automatically double in value, to include all royalty minimums and floors; and COMPANY must reimburse the UWMRF for all fees and costs associated with defending such action, including but not limited to attorney fees and expert fees. The effective date of such increase in royalty rates shall be the date of the first court order or date of issuance of a re-examination certificate (or foreign equivalents thereof) declaring any claim of the Patent Rights as valid or enforceable.

6. DEVELOPMENT, DILIGENCE AND MILESTONES

- 6.1. Development Rights.** COMPANY shall have the sole right and obligation to make all decisions regarding the Development, use, production, Sale, Commercialization, and sublicensing of Licensed Products. COMPANY shall reasonably consider all input and comments received from UWMRF related to COMPANY's Development, use, production, Sale, Commercialization, and sublicensing of Licensed Products.
- 6.2. Diligent Efforts.** COMPANY must exercise Diligent Efforts to Develop the Licensed Products for use throughout the Licensed Field and will give commercially reasonable consideration to the broadest possible application of the Licensed Products within the Field of Use to which the Licensed Patents might be applied. COMPANY shall give reasonable consideration to any comments or suggestions from UWMRF regarding additional applications to which the Licensed Patents could be applied, provided that COMPANY shall make the final determination as to COMPANY's development plan(s) regarding products embraced by the Licensed Patents (subject to the above obligation on COMPANY to exercise Diligent Efforts). Such Diligent Efforts shall include, without limitation, those activities listed in the Development Plan, attached hereto as Exhibit 3, as amended from time-to-time. The Parties agree that a revised copy of a Development Plan will be promptly provided to UWMRF after being amended or modified by COMPANY.
- 6.3. Development Plan.** Beginning with the anniversary of the Effective Date and continuing until the date of first Sale, COMPANY must provide UWMRF annually with a written Development Plan summarizing COMPANY's Development activities since the last Development Plan and any adjustments made by COMPANY to the previous Development Plan. COMPANY agrees to provide each Development Plan to UWMRF on or before thirty (30) days from the end of each annual period and shall set forth in each Development Plan reasonably sufficient detail to enable UWMRF to ascertain COMPANY's progress toward the development of Licensed Products based on the Licensed Patents. It is understood and acknowledged by the Parties that Development Plans shall constitute COMPANY Confidential

Information, shall be provided by COMPANY for informational purposes only and shall not (apart from the diligence obligations set forth in Article 6.2 above) subject the COMPANY to allegations of breach or termination of this Agreement.

- 6.4. Lack of Diligence.** COMPANY has or will obtain the expertise necessary to independently evaluate the Licensed Patent(s) and intends to promote the development of Licensed Products for the commercial market. COMPANY acknowledges that any failure by COMPANY to exercise Diligent Efforts to reasonably implement the Development Plan, as amended from time to time, or to make timely submission to UWMRF of any updated Development Plan, or the providing of any false information to UWMRF regarding COMPANY's development activities hereunder, shall be a breach of this Agreement subject to the requirements of Article 4.3 hereof.

7. PROTECTION OF LICENSED PATENTS AND INFRINGEMENT

- 7.1. Product Packaging.** In a manner that is reasonable and consistent with industry practice and applicable legal requirements, COMPANY agrees that all packaging containing Licensed Product(s), and documentation therefore, or Licensed Products sold by COMPANY or its sublicensees will be permanently and legibly marked with the number of the applicable Licensed Patents in accordance with each country's intellectual property laws, including 35 U.S.C. 287 of U.S. law.
- 7.2. Infringement Notification.** Each party must promptly, but no later than fourteen calendar (14) days after obtaining notice of infringement regarding the Licensed Products, notify the other in writing of such notice, including providing a copy of the notice of infringement.
- 7.3. Third Party Infringement.** In the event that either Party believes there is infringement of any Licensed Patent(s) by a Third Party, such Party must provide the other Party with written notice that such infringement is occurring, including reasonable evidence of the infringement as soon as practicable.
- 7.4. Infringement Enforcement.** COMPANY, at its own expense, may enforce any patent exclusively licensed hereunder against infringement by Third Parties and shall have the right and option to take action to abate such infringement e.g., by threatening suit, filing suit, injunction or license. Upon request by COMPANY, UWMRF shall take action, join in any action, and otherwise provide COMPANY with such assistance and information as may be useful to COMPANY in connection with COMPANY's taking such action (if the cause of action arose during the Term of the Agreement and COMPANY reimburses Licensors for their reasonable out-of-pocket expenses reasonably incurred in connection with any such request). Any recovery or damages for infringement derived through COMPANY taking such action shall be applied as follows:
- a.** first, to UWMRF to reimburse UWMRF for their expenses in assisting with such litigation (to the extent not previously reimbursed), including reasonable attorney's fees;
 - b.** second, to COMPANY to reimburse COMPANY for the expenses of the litigation, including reasonable attorney's fees; and,
 - c.** the balance of any recovery or damages shall be treated as Net Sales and divided ninety seven percent (97%) to COMPANY and three percent (3%) to UWMRF.
- 7.5. Infringement and Lack of Action.** If COMPANY has not taken action to abate any alleged Third Party infringement within three (3) months of knowledge thereof, then at any time UWMRF may bring action to enforce the Licensed Patents on behalf of itself and/or COMPANY, with UWMRF retaining all recoveries from such enforcement.

- 7.6. UWMRF Infringement Enforcement.** If UWMRF chooses to bring an action against the infringer of the Licensed Patents under such circumstances, it shall do so at its own expense. Any recovery of damages for infringement derived through UWMRF taking such action shall be applied as follows:
- a. first, to COMPANY to reimburse COMPANY for its expenses, if any, in assisting with such litigation, including reasonable attorney's fees; and,
 - b. second, to UWMRF to reimburse UWMRF for the expenses of the litigation, including reasonable attorney's fees; and,
 - c. the balance of any recovery or damages shall be 100% retained by UWMRF.

8. DISPUTE RESOLUTION AND INTERPRETATION

- 8.1. Governing Law.** This Agreement and performance hereunder shall be governed, construed and enforced in accordance with the laws of the United States of America and of the laws of the State of Wisconsin (notwithstanding any choice of law principles).
- 8.2. Dispute Resolution.** The Parties to this Agreement agree, as an initial matter, to meet, negotiate in good faith, and attempt to resolve amicably, without litigation, any controversy or any disputed claim by either Party against the other Party arising under or related to this Agreement. Prior to resorting to litigation, the Parties shall confer in good faith with respect to the possibility of resolving the matter through mediation with a mutually acceptable third party.
- 8.3. Court Resolution.** If the Parties are unable to resolve the matter themselves, the Parties agree on the state and federal courts sitting in the State of Wisconsin as the sole and exclusive venues for resolving disputes, and the Parties hereby submit to the jurisdiction of such courts.
- 8.4. Validity.** If any provision of this Agreement is determined to be invalid or unenforceable, or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the Parties or this Agreement, those provisions shall be deemed automatically deleted, if such deletion is allowed by relevant law; the remaining provisions of this Agreement shall not be affected thereby and shall be binding upon the Parties hereto, and shall be enforceable, as though said invalid or unenforceable provision were not contained herein. Without limiting the generality of the preceding sentence, if any remedy set forth in this Agreement is determined to have failed of its essential purpose, then all other provisions of this Agreement, including the limitation of liability and exclusion of damages, shall remain in full force and effect.

9. ASSIGNMENT

- 9.1. Assignment Consent.** This Agreement and all rights and obligations are personal to the Parties, and may not be assigned without the written consent of the other Party unless otherwise provided for in Articles 9.1 or 9.2. With prior written notification to COMPANY, UWMRF shall have the right to assign or transfer its rights and obligations under this Agreement; provided the party to whom such rights and obligations are assigned or transferred has also been assigned all rights to the Licensed Patents, and has agreed to assume all of the obligations of UWMRF hereunder.
- 9.2. Assignment Transfer.** Upon written notice, this Agreement may be assigned or transferred by COMPANY without UWMRF's consent in connection with the acquisition of COMPANY by merger, sale

of all (or substantially all) of COMPANY's assets, or other sale of equity or reorganization resulting in a change of 50% or more in the ownership of COMPANY's stock, provided the assignee or successor has agreed to assume all of the obligations of COMPANY hereunder. COMPANY shall use best efforts to provide at least thirty (30) days written notice informing UWMRF of any potential or pending assignment of rights under the Agreement. In the event such COMPANY rights are so assigned, or in the event of any transfer by operation of law (e.g., a merger or reorganization or consolidation of COMPANY), COMPANY, or its successor, must pay to UWMRF a non-refundable fee equal to _____ percent (X%) of the transaction value, upon the consummation of the assignment or transfer.

10. WARRANTY, INDEMNIFICATION & SUPERIOR-RIGHTS

- 10.1. Superior Rights.** Except for the rights, if any, of the Government of the United States, as set forth herein, UWMRF represents and warrants its belief that (a) it is the owner of the entire right, title, and interest in and to the Licensed Patents, (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 to COMPANY except as stated herein.
- 10.2. Government Rights.** It is understood that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any of the inventions of the Licensed Patents were conceived or made, the United States Government is entitled, as a right, under the provisions of 35 U.S.C. § 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the inventions of such patents for governmental purposes. Any license granted to COMPANY pursuant to this Agreement shall be subject to such right. This Agreement is explicitly made subject to the Government's rights under any agreement and any applicable law or regulation. If there is a conflict between an agreement, applicable law or regulation and this Agreement, the terms of the Government agreement, applicable law or regulation shall prevail.
- 10.3. No Representations.** COMPANY understands and acknowledges that UWMRF, by this Agreement, makes no representation as to the operability or fitness for any use, safety, efficacy, ability to obtain regulatory approval, patentability, and/or breadth of the Licensed Subject Matter. UWMRF, by this Agreement, also makes no representation as to whether there are any patents now held, or which will be held, by others or by UWMRF in the Licensed Field, nor does UWMRF make any representation that the inventions contained in Licensed Patents or any Licensed Products do not infringe any other patents now held or that will be held by others or by UWMRF.
- 10.4. No Notice of Claims.** UWMRF represents and warrants, to the best of its knowledge, (a) there are no liens, conveyances, mortgages, assignments, or other agreements which would prevent or impair the exercise of all substantive rights granted to COMPANY pursuant to the terms and conditions of this Agreement; and (b) that to the best of its knowledge, there is no claim, legal action, suit, arbitration, governmental investigation or other legal administrative proceeding, nor any decree or judgment in progress, pending or in effect, or, to the knowledge of UWMRF, threatened against or relating to UWMRF's know-how or the transactions contemplated by this Agreement.
- 10.5. Due Diligence.** COMPANY, by execution hereof, acknowledges, covenants and agrees that it has not been induced in any way by UWMRF, University of Wisconsin System, University or its employees to enter into this Agreement, and further warrants and represents that (a) it has conducted sufficient due diligence with respect to all items, issues, and matters pertaining to this Agreement; and (b)

COMPANY has adequate knowledge and expertise, or has utilized knowledgeable and expert consultants, to adequately conduct the due diligence, and agrees to accept all risks inherent herein.

- 10.6. Express Warranties.** THE EXPRESS WARRANTIES SET FORTH IN ARTICLES 10.1 and 10.4 ABOVE ARE THE ONLY WARRANTIES MADE BY UWMRF TO COMPANY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. UWMRF MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY ASPECT OF THIS AGREEMENT OR WITH RESPECT TO THE LICENSED PRODUCTS.
- 10.7. Indemnification.** COMPANY agrees to hold harmless and indemnify UWMRF, University of Wisconsin System, University, its regents, officers, employees and agents from and against any claims, demands, or causes of action whatsoever, including without limitation those 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 license granted hereunder by COMPANY, its Affiliates and their officers, employees, agents or representatives.
- 10.8. Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

11. INSURANCE

- 11.1. Insurance Coverage.** Beginning at the time when any Licensed Product is being distributed or Sold (including for the purpose of obtaining regulatory approvals or endorsements) by COMPANY or by a sublicensee, COMPANY must, at its sole cost and expense, procure and maintain commercial general liability insurance adequate to cover its obligations hereunder and which are consistent with normal business practices of prudent companies similarly situated. The minimum amounts of insurance coverage required shall not be construed to create a limit of COMPANY s liability with respect to its indemnification under this Agreement. In the event COMPANY makes a commercially reasonable effort to comply with the requirements of this Article 11.1 and is not able to obtain all said insurance coverage, then COMPANY must provide written documentation of its efforts to obtain such coverage with supporting independent confirmation of any ineligibility or noncompliance by insurance carrier or broker.
- 11.2. Evidence of Insurance.** COMPANY must provide UWMRF with written evidence of such insurance upon UWMRF's request. COMPANY must provide UWMRF with written notice of at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance.

12. CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS

- 12.1. Nondisclosure of Confidential Information.** Each Party agrees it shall not disclose Confidential Information of the other Party in any manner, either oral or written, except as authorized in this Article 12. For all purposes hereunder, the Party disclosing Confidential Information shall be the "Disclosing Party" and the other Party shall be the "Receiving Party". UWMRF and COMPANY each agree that all Confidential Information forwarded to one by the other (a) be received in strict confidence, (b) be used only for the purposes of this Agreement, and (c) not be disclosed by the

Receiving Party, its agents, directors, owners, advisors or employees without the prior written consent of the Disclosing Party, except to the extent that the Receiving Party can establish 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 Receiving Party, its employees, agents, successors or assigns; or,
- c. was lawfully disclosed to the Receiving Party by a Third party having the right to disclose it; or,
- d. was already known by the Receiving Party at the time of disclosure; or,
- e. was independently developed by the Receiving Party; or,
- f. is required by law or regulation to be disclosed.

12.2. Authorized Disclosure. A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in the following instances:

- a. filing or prosecuting Patents; or,
- b. prosecuting or defending litigation; or,
- c. complying with applicable governmental regulations; or,
- d. disclosure, in connection with the performance of this Agreement, to such Party's Affiliates, potential collaborators, partners, and licensees (including potential co-marketing and co-promotion contractors), research collaborators, employees, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 12.

12.3. Confidential Disclosures. The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Notwithstanding the foregoing, such terms may be disclosed by a Party to individuals or entities covered by 12.2.(d) above, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 12, and COMPANY may disclose the aggregate license terms in single company meetings with potential investment bankers, investors, lenders, and investors solely for the purpose of raising capital. In addition, a copy of this Agreement may be filed by COMPANY with the Securities and Exchange Commission in connection with any public offering of COMPANY' securities. In connection with any such filing, COMPANY shall endeavor to obtain confidential treatment of the Agreement as far as legally possible in particular of research, economic and trade secret information contained in the Agreement.

12.4. Obligation of Confidence. It is acknowledged that each Party's obligation of confidence hereunder shall be fulfilled by using at least the same degree of care with the other Party's confidential information as it uses to protect its own confidential information. This obligation shall exist while this Agreement is in force and for a period of three (3) years thereafter.

12.5. Rights to Publish. UWMRF (on behalf of itself, the University and the Inventor) and COMPANY reserves their rights to release or publish, either written or orally, the results of research related to the

Licensed Subject Matter, to the scientific and business community in scientific journals or at any industry, field, trade, business, scientific or technical conference, seminar, symposia or similar event, so long as such publication does not conflict with the other provisions of this Article 12. Without limiting the generality of the foregoing, COMPANY shall be entitled to present, publish and release the results of its scientific work and development efforts without notification to or consent from UWMRF. In the event UWMRF or University (or any of their respective faculty, employee(s) or students) desires to publish the results of research related to the Licensed Subject Matter, such party shall give COMPANY no less than thirty (30) days prior to the submission for publication a copy of the proposed publication (or an outline of such oral disclosure) to review the proposed publication and provide UWMRF with its comments and suggested changes. UWMRF shall take such comments and suggested changes reasonably into account. Within this thirty (30) day period the COMPANY may request UWMRF, in writing, to delay such submission for publication or oral disclosure for a maximum of an additional thirty (30) days in order to protect the potential patentability of any invention described therein, and UWMRF shall comply with any such request so long as it is reasonable and cooperate with COMPANY towards that end. Such delay must not, however, be imposed on the filing of any student thesis or dissertation by way of this Article 12.5. In no event shall the public release of any proposed publication or oral disclosure be delayed more than sixty (60) days from the date of its submission to COMPANY. Upon the expiration of such thirty (30) day period from receipt by COMPANY of such proposed publication, then UWMRF shall be free to proceed with the written publication or the oral presentation, unless COMPANY has requested the delay described above. **(WE CANNOT PREVENT PUBLICATION OF THE INVENTOR RESEARCH).**

- 12.6. Publicity.** The Parties agree that the initial public announcement of the execution of this Agreement shall be in the form of the press release attached as Exhibit 2, if any. During the Agreement Period, UWMRF and COMPANY shall submit to the other for review and comment, not less than seventy-two (72) hours prior to release, all press releases or other public announcements directly relating to the license granted under this Agreement.
- 12.7. Use of Name.** A Party shall not use the name of another Party in any public announcement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

13. NOTICES

- 13.1.** All notices required or permitted under this Agreement shall be in writing (including by facsimile or PDF copy attached to an email) and provided by certified or registered air mail, personal delivery, or facsimile or email to the appropriate Party at the following addresses or such other addresses as the Parties may hereafter designate by notice:

13.2.

If to UWMRF:	UWM Research Foundation Attn: President 1440 East North Avenue Milwaukee, WI 53202	With a copy to (UWMRF):	UWM Foundation Attn: Chief Operating Officer 1440 East North Avenue Milwaukee, WI 53202
If to COMPANY:	Company Attn: Address:	With a copy to (COMPANY):	Attn: Address:

Each Party may change the address or title of the person to whom notices will be sent by giving notice in the manner set forth herein.

14. GENERAL

- 14.1. Complete Agreement. This Agreement, together with the agreements expressly referenced herein, constitutes the entire and only agreement between the Parties for Licensed Subject Matter and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by a written document signed by both Parties.
- 14.2. Force Majeure. No Party to this Agreement shall be responsible or liable to any other Party hereunder for failure or delay in performance of this Agreement due to any war, fire, accident or other casualty, or any labor disturbance or act of God or the public enemy or any other contingency beyond such Party's reasonable control. In the event of the applicability of this Article 14.2, the Party affected thereby shall use its commercially reasonable efforts to eliminate, cure and overcome any such causes and resume performance of its obligations under this Agreement.
- 14.3. Regulations. COMPANY must comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this Agreement, including without limitation, export regulations.
- 14.4. No Waiver. Failure of UWMRF to enforce a right under this Agreement will not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.
- 14.5. Use of Titles and Headings. The titles and headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or affect the meaning of this Agreement.
- 14.6. Severability. If any provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement shall be construed as if such provision had never been contained in the Agreement.
- 14.7. The use of the singular shall also mean the plural; the use of the plural shall also mean the singular. The use of "including" shall be by way of illustration and shall mean "including without limitation." All defined terms shall have the defined meaning whether used before or after such term is defined.
- 14.8. This Agreement may be executed in a number of identical counterparts each of which for all purposes shall be deemed an original. This Agreement shall not be binding on the Parties until all Parties have signed the same Agreement or identical counterparts thereof and each Party has received the signature page signed by the other Party, whether that signature page is an original, facsimile, digital or electronic copy.

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IN WITNESS WHEREOF, Parties hereto have caused their duly authorized representatives to execute this Agreement.

University of Wisconsin-Milwaukee Research Foundation

By _____

Name: Brian D. Thompson

Title: President

Date: _____

COMPANY Group, LLC.

By _____

Name: _____

Title: _____

Date: _____

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Exhibit 1
Licensed Patents

Title *Anticipated Title	Application Number	Type	Filing Date *Anticipated Filing Date

Exhibit 2
Initial Press Release

Exhibit 3
Development Plan
(To be provided by COMPANY)

Exhibit 4

ROYALTY REPORT

LICENSEE: _____

Period Covered: From _____ Through: _____

Prepared By: _____ Date: _____

Approved By: _____ Date: _____

Report Type: **Single Product Line Report**
 Multiproduct Summary Report. Page 1 of _____ Pages

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

Report Currency: **U.S. Dollars** **Other** _____

Country	Product or Tradename	Quantity Sold	Unit Price	Net Sales	* Less Allowances	Royalty Rate	Period Royalty Amount	
							This Year	Last Year
				\$	\$		\$	\$
TOTAL:				\$	\$		\$	\$

Total Royalty Due: \$ _____

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

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

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