



LICENSE AGREEMENT

between

AUBURN UNIVERSITY

and

This Agreement is made and entered into this ___ day of _____, 20___, (the "Effective Date") by and between AUBURN UNIVERSITY, a university duly established and organized under the laws of the State of Alabama, and with offices located at Office of Technology Transfer, 570 Devall Drive, Auburn, Alabama, 36832 ("AUBURN"), and _____, a corporation duly organized under the laws of _____ and having its principal office at _____ (hereinafter referred to as "LICENSEE").

WITNESSETH

WHEREAS, AUBURN is the owner of certain PATENT RIGHTS (as later defined herein) relating to AUBURN Case No. _____, entitled " _____ " by _____ and has the right to grant licenses under said PATENT RIGHTS;

WHEREAS, AUBURN is committed to policy that ideas or creative works produced at AUBURN should be used for the greatest possible public benefit; and accordingly believes that every reasonable incentive should be provided for the prompt introduction of such ideas into public use, all in a manner consistent with the public interest; and

WHEREAS, LICENSEE is desirous of obtaining an exclusive world-wide license in order to practice the above referenced invention covered by patent rights in the United States and in certain foreign countries, and to manufacture, use and sell in the commercial market the products made in accordance therewith; and

WHEREAS, AUBURN is desirous of granting such a license to LICENSEE in accordance with the terms of this Agreement.

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

ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "FIELD OF USE" means _____.

1.2 "LICENSEE" includes a related company of _____, the voting stock of which is directly or indirectly at least fifty percent (50%) owned or controlled by _____, an organization which directly or indirectly controls more than fifty percent (50%) of the voting stock of _____ and an organization, the majority ownership of which is directly or indirectly common to the ownership of _____.

1.3 "LICENSED PRODUCT" means any product or part thereof which:

- (a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any such product or part thereof is made, used or sold; or
- (b) is manufactured by using a process or is employed to practice a process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any LICENSED PROCESS is used or in which such product or part thereof is used or sold.

1.4 "LICENSED PROCESS" means any process that is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS.

1.5 "NET SALES" means LICENSEE's and its SUBLICENSEES' billings for LICENSED PRODUCTS and LICENSED PROCESSES produced hereunder less the sum of the following:

- (a) discounts allowed in amounts customary in the trade;
- (b) sales, tariff duties and/or use taxes directly imposed and with reference to particular sales;
- (c) outbound transportation prepaid or allowed; and
- (d) amounts allowed or credited on returns.

No deductions shall be made for commissions paid to individuals whether they be with independent sales agencies or regularly employed by LICENSEE and on its payroll, or for cost of

collections. LICENSED PRODUCTS and LICENSED PROCESSES shall be considered "sold" when billed out or invoiced.

1.6 "NON-COMMERCIAL RESEARCH PURPOSES" means the use or practice of the licensed PATENT RIGHTS for academic research and other not-for-profit or scholarly purposes which are undertaken at a non-profit or governmental institution that does not involve the production or manufacture of products for sale or the performance of services for a fee. Without limiting the foregoing: (i) "academic research and other not-for profit or scholarly purposes" includes, in non-limiting fashion, research that leads, or may lead, to patentable or unpatentable inventions that may be licensed or otherwise transferred, either directly or indirectly, to third parties; and (ii) neither (A) receipt of license revenues on account of such inventions or receipt of reimbursements for the costs of preparation and shipping of samples of materials provided to third parties as a professional courtesy, in response to post-publication requests or otherwise in accordance with academic custom nor (B) receipt of funding to cover the direct and/or indirect costs of research, shall constitute sale of products or performance of service for a fee.

1.7 "PATENT RIGHTS" shall mean all of the following AUBURN intellectual property:

- (a) the United States and foreign patents and/or patent applications listed in Appendices A and B;
- (b) United States and foreign patents issued from the applications listed in Appendices A and B and from divisionals and continuations of these applications;
- (c) claims of U.S. and foreign continuation-in-part applications, and of the resulting patents, which are directed to subject matter specifically described in the U.S. and foreign applications listed in Appendices A and B;
- (d) claims of all foreign patent applications, and of the resulting patents, which are directed to subject matter specifically described in the United States patents and/or patent applications described in (a), (b) or (c) above; and
- (e) any reissues of United States patents described in (a), (b) or (c) above.

1.8 "SUBLICENSEE" means a third party to which LICENSEE has granted a sublicense or an option to a sublicense in accordance with the terms of this Agreement to make, have made, use, lease, sell, and/or import LICENSED PRODUCTS or to practice the LICENSED PROCESSES. Without limiting the generality of the foregoing, a SUBLICENSEE will be deemed to include any third party who is granted a sublicense hereunder by LICENSEE pursuant to the terms of the outcome or settlement of any infringement or threatened infringement action.

1.9 "TERRITORY" means _____.

ARTICLE 2 - GRANT

2.1 Effective upon the full execution of this Agreement and the payment by LICENSEE to AUBURN of the License Issue Fee, AUBURN hereby grants to LICENSEE, subject to the terms and

conditions of this Agreement, the exclusive right and license for the FIELD OF USE to practice under the PATENT RIGHTS to make, have made, use, lease, sell, and import LICENSED PRODUCTS and to practice the LICENSED PROCESSES in the TERRITORY, until the end of the term for which the PATENT RIGHTS are granted unless this Agreement shall be sooner terminated according to the terms hereof.

2.2 The grant in Section 2.1 shall be further subject to, restricted by and non-exclusive with respect to:

- (a) the right of AUBURN, on behalf of itself, the Inventors, all other non-profit academic research institutions, and other non-profit and governmental organizations to practice the licensed PATENT RIGHTS and use the Subject Technology under AUBURN Case No. _____ for any NON-COMMERCIAL RESEARCH PURPOSES, including sponsored research and collaborations. LICENSEE agrees that, notwithstanding any other provision of this Agreement, it has no right to enforce the licensed PATENT RIGHTS against any such institution or Inventor.
- (b) any non-exclusive license of the Subject Technology that AUBURN is required by law or regulation to grant to the United States of America or to a foreign country pursuant to an existing or future treaty with the United States of America.

2.3 This Agreement, unless terminated earlier as hereinafter provided, shall terminate on the expiration of the last of the patents licensed hereunder on a country-by-country basis, whereupon the exclusive licenses granted hereunder shall be fully paid and LICENSEE and its Affiliates and sublicenses shall be free to develop, make, have made, use, sell and have sold LICENSED PRODUCTS or to utilize LICENSED PROCESSES for the FIELD OF USE without further duties or responsibilities to the University.

2.4 LICENSEE agrees that LICENSED PRODUCTS leased or sold in the United States shall be manufactured substantially in the United States, per the terms provided in 37 CFR 401.14(i) when applicable.

2.5 LICENSEE shall have the right to enter into sublicensing agreements for the rights, privileges and licenses granted hereunder. Upon any termination of this Agreement, SUBLICENSEES' rights shall also terminate, subject to Paragraph 13.6 hereof.

2.6 LICENSEE agrees that any sublicenses granted by it shall provide that the obligations to AUBURN of Articles 2, 5, 7, 8, 9, 10, 12, 13, and 15 of this Agreement shall be binding upon the SUBLICENSEE as if it were a party to this Agreement. LICENSEE further agrees to attach copies of these Articles to sublicense agreements.

2.7 LICENSEE agrees to forward to AUBURN a copy of any and all sublicense and option agreements promptly upon execution by the parties.

2.8 LICENSEE shall not receive from SUBLICENSEES anything of value in lieu of cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of AUBURN.

2.9 The license granted hereunder shall not be construed to confer any rights upon LICENSEE by implication, estoppel or otherwise as to any technology not specifically set forth in Appendices A and B hereof.

ARTICLE 3 - DUE DILIGENCE

3.1 LICENSEE shall use its best efforts to bring one or more LICENSED PRODUCTS or LICENSED PROCESSES to market through a thorough, vigorous and diligent program for exploitation of the PATENT RIGHTS and to continue active, diligent marketing efforts for one or more LICENSED PRODUCTS or LICENSED PROCESSES throughout the life of this Agreement.

3.2 In addition, LICENSEE shall adhere to the following performance milestones:

Milestone A:

Milestone B:

Milestone C, etc.:

3.3 LICENSEE shall inform AUBURN, on or before the deadline for meeting any performance milestone, whether such performance milestone has been met.

3.4 No later than sixty (60) days after December 31 of each calendar year, LICENSEE shall provide to AUBURN a written annual progress report describing progress by LICENSEE and any SUBLICENSEE(S) on research and development, regulatory approvals, manufacturing, sublicensing, marketing and sales during the most recent twelve (12) month period ending December 31 and plans for the forthcoming year. If multiple technologies are covered by the license granted hereunder, the progress report shall provide the information set forth above for each technology. LICENSEE also shall provide any additional data AUBURN reasonably requires to evaluate LICENSEE'S performance and compliance with the terms of this Agreement.

3.5 Except as otherwise noted, LICENSEE's failure to perform in accordance with Articles 3.1, 3.2, 3.3, and 3.4 above shall be grounds for AUBURN to terminate this Agreement pursuant to Article 13.3 hereof.

ARTICLE 4 - ROYALTIES

4.1 For the rights, privileges and license granted hereunder, LICENSEE shall pay royalties to AUBURN in the manner hereinafter provided to the end of the term of the PATENT RIGHTS or until this Agreement shall be terminated:

- (a) License Issue Fee of _____, which said License Issue Fee shall be deemed earned and due within thirty (30) days of the Effective Date and subject to the terms of Article 13.2.
- (b) Running Royalties in an amount equal to _____ percent (____%) of NET SALES of the LICENSED PRODUCTS and LICENSED PROCESSES used, leased or sold by and/or for LICENSEE and/or its SUBLICENSEES. If a LICENSED PRODUCT is bundled in a larger device, the fair market value of a stand alone LICENSED PRODUCT will be used as the royalty base to calculate the royalty.
- (c) LICENSEE shall pay License Maintenance Fees of _____ Dollars (\$_____) per year payable on January 1, 200_, and on January 1 of each year thereafter; provided, however, that Running Royalties subsequently due on NET SALES for each said year, if any, shall be creditable against the License Maintenance Fee for said year. License Maintenance Fees paid in excess of Running Royalties shall not be creditable to Running Royalties for future years.
- (d) In addition to Running Royalties, LICENSEE shall pay AUBURN a percentage on all non-royalty consideration for the LICENSED PRODUCTS and LICENSED PROCESSES received by LICENSEE from any SUBLICENSEE according to the following schedule based upon milestones as defined in Article 3.2:

Before achieving Milestone A: 75%

After achieving Milestone A, but before B: 50%

After achieving Milestone B, but before C: 35% (for example)

4.2 All payments due hereunder shall be paid in full, without deduction of wire transfer fees, taxes or other fees which may be imposed by any government and which shall be paid by LICENSEE.

4.3 No multiple royalties shall be payable because any LICENSED PRODUCT, its manufacture, use, lease or sale are or shall be covered by more than one PATENT RIGHTS patent application or PATENT RIGHTS patent licensed under this Agreement.

4.4 Royalty payments shall be paid in United States dollars in Auburn, Alabama, or at such other place as AUBURN may reasonably designate consistent with the laws and regulations controlling in any foreign country. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate prevailing at the Regions Bank on the last business day of the calendar quarterly reporting period to which such royalty payments relate.

ARTICLE 5 - REPORTS AND RECORDS

5.1 LICENSEE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to AUBURN hereunder. Said books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. Said books and the supporting data shall be open at all reasonable times for five (5) years following the end of the calendar year to which they pertain, to the inspection of AUBURN or its agents for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement. Should such inspection lead to the discovery of a greater than ten percent (10%) discrepancy in reporting to AUBURN's detriment, LICENSEE agrees to pay the full cost of such inspection.

5.2 Before the first commercial sale of a LICENSED PRODUCT or LICENSED PROCESS, LICENSEE shall submit progress reports due under Article 3.4. After the first commercial sale of a LICENSED PRODUCT or LICENSED PROCESS, LICENSEE, within sixty (60) days after March 31, June 30, September 30 and December 31, of each year, shall deliver to AUBURN true and accurate reports, giving such particulars of the business conducted by LICENSEE and its SUBLICENSEES during the preceding three-month period under this Agreement as shall be pertinent to a royalty accounting hereunder. These shall include at least the following:

- (a) number of LICENSED PRODUCTS manufactured and sold by LICENSEE and all SUBLICENSEES;
- (b) total billings for LICENSED PRODUCTS sold by LICENSEE and all SUBLICENSEES;
- (c) accounting for all LICENSED PROCESSES used or sold by LICENSEE and all SUBLICENSEES;
- (d) deductions applicable as provided in Article 1.5;
- (e) royalties due on additional payments from SUBLICENSEES under Article 4.1 (d);
- (f) total royalties due; and
- (g) names and addresses of all SUBLICENSEES of LICENSEE.

5.3 With each such report submitted, LICENSEE shall pay to AUBURN the royalties due and payable under this Agreement. If no royalties shall be due, LICENSEE shall so report.

5.4 On or before the ninetieth (90th) day following the close of LICENSEE's fiscal year, LICENSEE shall provide AUBURN with LICENSEE's certified financial statements for the preceding fiscal year including, at a minimum, a Balance Sheet and an Operating Statement.

5.5 The royalty payments set forth in this Agreement and amounts due under Article 6 shall, if overdue, bear interest until payment at a per annum rate two percent (2%) above the prime rate in effect at the Regions Bank on the due date. The payment of such interest shall not foreclose AUBURN from exercising any other rights it may have as a consequence of the lateness of any payment.

ARTICLE 6 - PATENT PROSECUTION

6.1 AUBURN shall apply for, seek prompt issuance of, and maintain during the term of this Agreement the PATENT RIGHTS in the United States and in the foreign countries listed in Appendix B hereto. Appendix B may be amended by verbal agreement of both parties, such agreement to be confirmed in writing within ten (10) days. The prosecution, filing and maintenance of all PATENT RIGHTS patents and applications shall be the primary responsibility of AUBURN; provided, however, LICENSEE shall have reasonable opportunities to advise AUBURN and shall cooperate with AUBURN in such prosecution, filing and maintenance.

6.2 Payment of all fees and costs relating to the filing, prosecution, and maintenance of the PATENT RIGHTS shall be the responsibility of LICENSEE, whether such fees and costs were incurred before or after the date of this Agreement.

6.3 In the event LICENSEE elects not to file a patent application under the PATENT RIGHTS or decides to discontinue prosecution or maintenance of any such application or part thereof or maintenance of any patent issued thereon, or if LICENSEE elects not to continue to pay the patent expenses under the PATENT RIGHTS, in any country, LICENSEE shall give AUBURN thirty (30) days advance written notification. AUBURN may at its own expense file, prosecute, and/or maintain any such patent application or patent, as the case may be, in such country, and LICENSEE shall thereafter have no rights under this Agreement to any such patent application or patent.

ARTICLE 7 - INFRINGEMENT

7.1 LICENSEE shall inform AUBURN promptly in writing of any alleged infringement of the PATENT RIGHTS by a third party and of any available evidence thereof.

7.2 During the term of this Agreement, AUBURN shall have the right, but shall not be obligated, to prosecute at its own expense all infringements of the PATENT RIGHTS and, in furtherance of such right, LICENSEE hereby agrees that AUBURN may include LICENSEE as a party plaintiff in any such suit, without expense to LICENSEE. The total cost of any such infringement action commenced or defended solely by AUBURN shall be borne by AUBURN and AUBURN shall keep any recovery or damages for past infringement derived therefrom.

7.3 If within six (6) months after having been notified of any alleged infringement, AUBURN shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if AUBURN shall notify LICENSEE at any time prior thereto of its intention not to bring suit against any alleged infringer for the FIELD OF USE, then, and in those events only, LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense any infringement of the PATENT RIGHTS for the FIELD OF USE, and LICENSEE may, for such purposes, use the name of AUBURN as party plaintiff. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the consent of AUBURN, which consent shall not unreasonably be withheld. LICENSEE shall

indemnify AUBURN against any order for costs that may be made against AUBURN in such proceedings.

7.4 In the event that LICENSEE shall undertake the enforcement and/or defense of the PATENT RIGHTS by litigation, LICENSEE may withhold up to fifty percent (50%) of the payments otherwise thereafter due AUBURN under Article 4 hereunder and apply the same toward reimbursement of up to half of LICENSEE's expenses, including reasonable attorneys' fees, in connection therewith. Any recovery of damages by LICENSEE for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of LICENSEE relating to such suit, and next toward reimbursement of AUBURN for any payments under Article 4 past due or withheld and applied pursuant to this Article 7. The balance remaining from any such recovery shall be divided equally between LICENSEE and AUBURN

7.5 In the event that a declaratory judgment action alleging invalidity or infringement of any of the PATENT RIGHTS shall be brought against LICENSEE, AUBURN, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

7.6 In any infringement suit as either party may institute to enforce the PATENT RIGHTS pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

7.7 LICENSEE, during the exclusive period of this Agreement, shall have the sole right in accordance with the terms and conditions herein to sublicense any alleged infringer for the FIELD OF USE for future use of the PATENT RIGHTS. Any upfront fees as part of such a sublicense shall be shared equally between LICENSEE and AUBURN; other royalties shall be treated per Article 4.

ARTICLE 8 - PRODUCT LIABILITY

8.1 LICENSEE shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold AUBURN, its trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property, or resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the LICENSED PRODUCT(s) and/or LICENSED PROCESS(es) or arising from any obligation of LICENSEE hereunder, excepting only claims that the PATENT RIGHTS infringe third party intellectual property.

8.2 LICENSEE shall obtain and carry in full force and effect commercial, general liability insurance that shall protect LICENSEE and AUBURN with respect to events covered by Article 8.1 above. Such insurance shall be written by a reputable insurance company authorized to do business in the State of Alabama, shall list AUBURN as an additional named insured thereunder, shall be endorsed to include product liability coverage and shall require thirty (30) days written notice to be given to AUBURN prior to any cancellation or material change thereof. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) per occurrence with an aggregate of Five Million

Dollars (\$5,000,000) for personal injury or death, and Three Million Dollars (\$3,000,000) per occurrence with an aggregate of Five Million Dollars (\$5,000,000) for property damage. LICENSEE shall provide AUBURN with Certificates of Insurance evidencing the same.

8.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, AUBURN, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY AUBURN THAT THE PRACTICE BY LICENSEE OF THE LICENSE GRANTED HEREUNDER SHALL NOT INFRINGE THE PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT SHALL AUBURN, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER AUBURN SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY.

ARTICLE 9 - EXPORT CONTROLS

It is understood that AUBURN is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign countries without prior approval of such agency. AUBURN neither represents that a license shall not be required nor that, if required, it shall be issued.

ARTICLE 10 - NON-USE OF NAMES

LICENSEE shall not use the names or trademarks of Auburn University, nor any adaptation thereof, nor the names of any AUBURN employees, in any advertising, promotional or sales literature without prior written consent obtained from AUBURN, or said employee, in each case, except that LICENSEE may state that it is licensed by AUBURN under one or more of the patents and/or applications comprising the PATENT RIGHTS.

ARTICLE 11 - ASSIGNMENT

This Agreement is not assignable and any attempt to do so shall be void.

ARTICLE 12 - DISPUTE RESOLUTION

12.1 Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with the Agreement, including any dispute relating to patent validity or infringement, which the parties shall be unable to resolve within sixty (60) days shall be mediated in good faith. The party raising such dispute shall promptly advise the other party of such claim, dispute or controversy in a writing that describes in reasonable detail the nature of such dispute. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such representative. By not later than ten (10) business days after the date of such notice of dispute, the party against whom the dispute shall be raised shall select a mediation firm in the Birmingham area and such representatives shall schedule a date with such firm for a mediation hearing. The parties shall enter into good faith mediation and shall share the costs equally. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the State of Alabama or in the United States District Court for the Middle District of Alabama, to whose jurisdiction for such purposes AUBURN and LICENSEE each hereby irrevocably consents and submits.

12.2 Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

ARTICLE 13 - TERMINATION

13.1 If LICENSEE shall cease to carry on its business, this Agreement shall terminate upon notice by AUBURN.

13.2 Should LICENSEE fail to make any payment whatsoever due and payable to AUBURN hereunder, AUBURN shall have the right to terminate this Agreement effective on thirty (30) days' notice, unless LICENSEE shall make all such payments to AUBURN within said thirty (30) day period. Upon the expiration of the thirty (30) day period, if LICENSEE shall not have made all such payments to AUBURN, the rights, privileges and license granted hereunder shall automatically terminate.

13.3 Upon any material breach or default of this Agreement by LICENSEE (including, but not limited to, breach or default under Article 3.5), other than those occurrences set out in Articles 13.1 and 13.2 hereinabove, which shall always take precedence in that order over any material breach or default referred to in this Article 13.3, AUBURN shall have the right to terminate this Agreement and the rights, privileges and license granted hereunder effective on ninety (90) days' notice to LICENSEE. Such termination shall become automatically effective unless LICENSEE shall have cured any such material breach or default prior to the expiration of the ninety (90) day period.

13.4 LICENSEE shall have the right to terminate this Agreement at any time on six (6) months' notice to AUBURN, and upon payment of all amounts due AUBURN through the effective date of the termination.

13.5 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination; and Articles 1, 8, 9, 10, 13.5, 13.6, and 15 shall survive any such termination. LICENSEE and any SUBLICENSEE thereof may, however, after the effective date of such termination, sell all LICENSED PRODUCTS, and complete LICENSED PRODUCTS in the process of manufacture at the time of such termination and sell the same, provided that LICENSEE shall make the payments to AUBURN as required by Article 4 of this Agreement and shall submit the reports required by Article 5 hereof.

13.6 Upon termination of this Agreement for any reason, any SUBLICENSEE not then in default shall have the right to seek a license from AUBURN. AUBURN agrees to negotiate such licenses in good faith under reasonable terms and conditions.

ARTICLE 14 - PAYMENTS, NOTICES
AND OTHER COMMUNICATIONS

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of AUBURN:

Director
Office of Technology Transfer
Auburn University
570 Devall Drive
Auburn, AL 36832

In the case of LICENSEE:

<title>
<company>
<address>

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Alabama, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

15.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and all prior representations and warranties have been merged into this document and are thus superseded in totality by this Agreement.

This Agreement shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

15.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

15.4 LICENSEE agrees to mark the LICENSED PRODUCTS sold in the United States with all applicable United States patent numbers. All LICENSED PRODUCTS shipped to or sold in other countries shall be marked in such a manner as to conform with the patent laws and practice of the country of manufacture or sale.

15.5 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

AUBURN UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: John M. Mason
Title: Associate Provost and
Vice President for Research
Date: _____

APPENDIX A

UNITED STATES PATENT RIGHTS

AUBURN Case No. _____:

- U.S. Patent Application Entitled " _____ "

U.S. Patent Application Number _____

Inventors: _____

Filing Date: _____

APPENDIX B

1. Foreign patent applications and patents within the PATENT RIGHTS as of Effective Date:

For AUBURN Case No. _____:

- PCT Patent Application Entitled " _____ "

PCT Patent Application (or Patent Issue) Number _____

Inventors: _____

Filing Date: _____

2. Foreign countries in which PATENT RIGHTS shall be filed, prosecuted and maintained in accordance with Article 6:

For AUBURN Case No. _____: