EXCLUSIVE LICENSE AGREEMENT

BETWEEN

OHSU AND _____________

FOR INVENTION DISCLOSURE NO(S) ______

This draft, dated __________, is solely for purposes of negotiation. Neither party will be bound by the terms of this agreement until authorized representatives of both OHSU and Licensee have signed a final, written agreement.

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EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement (this "Agreement"), dated and effective as of ______, 200_ (the "Effective Date"), is between the Oregon Health & Science University, having offices at 2525 SW 1st Ave, Suite 120 Portland, Oregon 97201-4753 ("OHSU"), and _____________________, having offices at ___________________ ("Licensee").

1. BACKGROUND

1.1 OHSU is the owner of certain inventions and discoveries generally described as "TITLE" as more specifically described in Invention Disclosure #___, a copy of which has been provided to Licensee (the "Invention Disclosure"). The inventions and discoveries described in the Invention Disclosure were invented in the course of research at OHSU by the inventors listed in the Invention Disclosure.

1.2 OHSU wants those inventions and discoveries to be utilized for the public benefit to the fullest extent possible.

1.3 Licensee intends to bring together the scientific and business talent, facilities and capital to develop and market products and processes based upon OHSU's inventions and discoveries.

1.4 Licensee wishes to obtain from OHSU, and OHSU is willing to grant to Licensee, a license to exploit the OHSU inventions and discoveries described in this Agreement, subject to the terms and conditions set forth below.

2. DEFINITIONS

2.1 "Affiliate" means any entity that controls, is controlled by or is under common control with Licensee, where "control" means beneficial ownership of more than 50% of the outstanding voting securities of an entity or the ability otherwise to elect a majority of the board of directors or other managing authority.

2.2 "Commercial Development Plan" means a plan for commercially developing and exploiting the Licensed Technology. A sample Commercial Development Plan is attached as Appendix C.

2.3 "Commercial Sale," or "Commercially Sell" means any transfer for value of: (a) title to and/or physical possession of a tangible Licensed Product; (b) services using a Licensed Product; or (c) the right to practice the Licensed Technology; but only if in either case neither Licensee nor any of its Affiliates or Sublicensees has any right or power to determine the resale price for subsequent transfers.

2.4 "Confidential Information" means all confidential scientific, technical and business information of a party to this Agreement designated as confidential by such party. The term "Confidential Information" does not include any information that the recipient can demonstrate (a) was at the relevant time available to and known by the general public without violating the terms of this Agreement or any other duty of confidentiality (however, information will not be deemed to be known by the general public merely because individual elements of that information are generally known); (b) was known to the recipient before recipient obtained that information from the other party; or (c) was acquired or developed by the recipient without reference to, use of or benefit from the confidential information of the other party.

2.5 "Field of Use" means ___________________.
2.6 “Inventors” means the individuals listed as Inventors on the Invention Disclosure and/or any patent applications or issued patents as defined in Patent Rights.

2.7 "Know-How" means recorded Confidential Information created by the Inventors and listed in Appendix B that may (a) be necessary or useful in Licensee's practice of the Patent Rights; and/or (b) relate to or be useful in the development, manufacture, use or sale of the Licensed Products. "Know-How" does not include any information contained in the Patent Rights.

2.8 "Know-How License" means the license granted by OHSU to Licensee with respect to the Know-How under Section 3.

2.9 "Licensed Product" means (a) any method, procedure or other process that incorporates any of the Licensed Technology; and (b) any tangible apparatus, materials, equipment, machine or other product that either incorporates or was made using a process that incorporates any of the Licensed Technology.

2.10 "Licensed Technology" means both the Patent Rights and the Know-How.

2.11 "Net Sales" means the gross sales price and/or the monetary equivalent of any other consideration actually received by Licensee, its Affiliates and/or Sublicensees in the Commercial Sale of a Licensed Product, less any of the following items that are itemized on the relevant invoice or which Licensee can demonstrate have been actually paid or credited with respect to that Commercial Sale:

(a) outbound shipping, storage, packing and insurance expenses;
(b) distributor discounts;
(c) amounts repaid or credited as a result of rejections, defects or returns; and
(d) sales and other excise taxes, use taxes, tariffs, export license fees and duties paid to a governmental entity.

Neither sales commissions nor the costs of collection are deductible from the gross sales price when calculating Net Sales. If Licensee or its Affiliates or Sublicensees bundle the Licensed Products with any other goods or services, the term "Net Sales" will mean the fair market value of the Licensed Products.

2.12 "Patent Costs" means all out of pocket costs incurred by OHSU in connection with the preparation, filing, prosecution, interference proceedings and maintenance of the Patent Rights in each jurisdiction. The term "Patent Costs" does not include costs for infringement and patent enforcement actions under Section 11.

2.13 "Patent License" means the license granted by OHSU to Licensee with respect to the Patent Rights under Section 3.3(a).

2.14 "Patent Rights" means the patents and patent applications listed on Appendix A to this Agreement and all continuations, divisionals, reissues, extensions, substitute applications, reexaminations and foreign counterparts of those patents and patent applications.

2.15 "Patent Term" means the period beginning on the Effective Date and ending on the date when all patents and patent applications included in the Patent Rights have expired, been abandoned or been finally adjudicated as invalid.
2.16 "Sublicensees" means any person that directly or indirectly sublicenses Licensed Product or Licensed Technology from Licensee, other than end users.

2.17 “Person” means individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons.

2.18 "Term" means the period beginning on the Effective Date and ending on the date when the Patent Term expires.

2.19 "Territory" means the __________.

3. OWNERSHIP & GRANT OF RIGHTS

3.1 Ownership of Licensed Technology. Licensee acknowledges that OHSU owns the Licensed Technology.

3.2 Authority. OHSU represents and warrants that subject to the limitations described in Section 12, OHSU is entitled and authorized to grant the rights specified in this Agreement.

3.3 Licenses

(a) Exclusive Patent License. Subject to the terms and conditions of this Agreement, OHSU hereby grants to Licensee an exclusive license, to make, have made, use, offer to Commercially Sell and to Commercially Sell Licensed Products for the Field of Use in the Territory.

(b) Non-Exclusive Know-How License. Subject to the terms and conditions of this Agreement, OHSU hereby grants to Licensee a nonexclusive license, to use the Know-How to make, have made, offer to Commercially Sell and to Commercially Sell Licensed Products for the Field of Use in the Territory.

(c) Sublicense. Licensee will have the right to grant sublicenses under the Patent License and the Know-How License for the Field of Use in the Territory, subject to the limitations and restrictions set forth in Section 5 of this Agreement.

3.4 Retained Rights.

(a) OHSU reserves the right to (i) practice and use the Licensed Technology, (ii) distribute biological and other materials related to the Licensed Technology; and (iii) grant non-exclusive licenses to other universities, academic institutions and non-profit research organizations to practice and use the Licensed Technology for research and educational purposes only; and (ii) publish any scientific findings or other information included in the Licensed Technology.

(b) This Agreement does not confer any license or rights by implication, estoppel or otherwise in any patents, know-how or other technology that is not explicitly granted to Licensee in this Section 3, and OHSU expressly retains those rights.

3.5 Government Rights. OHSU reserves on behalf of the U.S. Government a license with respect to the Licensed Technology to the extent required under any applicable law or regulation, including 35 USC Section 200 et. seq. and 37 CFR Part 401. To the extent there is a conflict between any such law or regulation and the terms of this Agreement, the terms of the applicable law or regulation will prevail.
4. LICENSE CONSIDERATION PAYMENTS

As consideration for the rights granted to Licensee under this Agreement, Licensee will pay OHSU the following compensation:

4.1 License Issue Fee. Licensee will pay OHSU a license issue fee within 30 days after the Effective Date. This fee is fully earned and nonrefundable as of the Effective Date.

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<th>LICENSEE WILL PAY OHSU</th>
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<tr>
<td>$</td>
<td>License Issue Fee</td>
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4.2 Milestone Payments. Licensee will pay OHSU the following payments within 30 days of achieving each of the following milestones:

<table>
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<tr>
<th>WHEN LICENSEE ACHIEVES</th>
<th>LICENSEE WILL PAY OHSU</th>
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<tbody>
<tr>
<td>Milestone #1: xxx</td>
<td>US $</td>
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<tr>
<td>Milestone #2: xxx</td>
<td>US $</td>
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<tr>
<td>Milestone #3: xxx</td>
<td>US $</td>
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4.3 Royalty Payments. During the Term, Licensee will pay OHSU a continuing royalty as set forth below. No multiple royalty payments will be payable to OHSU because a Licensed Product may include more than one Patent Right or may include both Patent Rights and Know-How. Should any claim under a Patent Right fail to issue, the parties will negotiate in good faith regarding an equitable adjustment to the royalty rate for Licensed Products that practice that claim.

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<th>%</th>
<th>LICENSEE WILL PAY OHSU</th>
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<tr>
<td>%</td>
<td>Of Net Sales of Licensed Products by Licensee, its Affiliates and Sublicensees</td>
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4.4 Minimum Royalty Payments. During the Term, Licensee will pay OHSU the following minimum royalty payments: These minimum royalty payments will be treated as credits against the continuing royalty payments due under Section 4.3 above.

<table>
<thead>
<tr>
<th>Amount</th>
<th>Due date</th>
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<tbody>
<tr>
<td>US $</td>
<td>[First Commercial Sale][the Effective Date][the first anniversary of the Effective Date]</td>
</tr>
<tr>
<td>US $</td>
<td>[the first anniversary of the first Commercial Sale][the second anniversary of the Effective Date]</td>
</tr>
<tr>
<td>US $</td>
<td>[the second anniversary of the first Commercial Sale][the third anniversary of the Effective Date]</td>
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4.5 Reimbursement of Current Patent Costs. Within 30 days after the Effective Date, Licensee will pay OHSU the sum of US $, which represents all Patent Costs incurred by OHSU as of , 200.

4.6 Payment Terms.

(a) Except as expressly provided otherwise in this Agreement, all payments are due and payable (i) within 30 days from the date of the invoice; or (ii) on the date specified in this Agreement,
whichever is earlier.

(b) Continuing royalty payments are due and payable within 60 days after the end of the calendar quarter in which the Commercial Sale occurred and must be accompanied by a Quarterly Report as more fully described in Section 8.2 below.

(c) Any unpaid invoices or payments will be subject to a late fee of 1.5% per month (18% per annum) until paid.

(d) All amounts payable to OHSU under this Agreement are payable in United States Dollars, including royalties based on Net Sales in foreign countries and sublicense fees payable by sublicensees located in foreign countries.

(e) Dollar amounts will be calculated using the foreign exchange rate published in The Wall Street Journal in effect for that foreign currency on the last business day of each quarter for which a Quarterly Report is required.

(f) Licensee will bear all credit risks associated with its Affiliates and Sublicensees; i.e., Licensee is responsible for paying all royalties, sublicense fees and other sums due and owing under this Agreement by Licensee, its Affiliates and Sublicensees.

(g) All amounts payable to OHSU under this Agreement are net of all taxes and other charges, and Licensee will be responsible for paying all taxes that may be levied by any taxing authority on account of license fees, royalties or any other sums payable under this Agreement.

5. SUBLICENSING

5.1 Method of Granting a Sublicense. Licensee may grant sublicenses under this Agreement by entering into a written sublicense agreement that is signed by and binding on the Sublicensee.

5.2 Duty to Deliver a Copy of the Sublicense Agreement to OHSU. Within 30 days after the sublicense agreement and any amendment to the sublicense agreement has been signed by a Sublicensee, Licensee will deliver a copy of that sublicense agreement and/or amendment to OHSU;

5.3 Sublicense Agreement Requirements. The sublicense agreement will: (i) require that Sublicensee comply with Sections 3.1 ("Ownership of Licensed Technology"), 7 (Restrictions), 8 (Books, Records and Reports), 9 (Confidential Information), 12 (Disclaimer of Warranties and Obligations; Limitation of Liability) and 14 (Indemnification) of this Agreement; and (ii) provide that upon any termination of this Agreement, any Sublicensees’ rights under agreements between Licensee and Sublicensee will also terminate, and any Sublicensee that wishes to continue to commercialize the Licensed Technology may negotiate a separate license with OHSU.

5.4 Sublicense Fee. During the Term, Licensee will pay OHSU _____ percent (___%) of any compensation, whether in the form of money, equipment, property, equity or any other property rights, (other than royalty payments based on Net Sales as described in Section 4.3) received by Licensee from a Sublicensee in connection with the Licensed Technology and/or Licensed Products.

6. COMMERCIALIZATION

6.1 Commercial Development Plan and Benchmarks. Licensee will diligently develop, introduce,
manufacture or have manufactured, market and sell Licensed Products to the public as soon as practicable consistent with sound business practices and judgment. In connection with those efforts, Licensee will:

(a) Provide a Commercial Development Plan to achieve the objectives stated above.

(b) Comply with the then current version of the Commercial Development Plan;

(c) Achieve the following benchmarks by the following deadlines:

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<tr>
<th>BENCHMARK</th>
<th>DEADLINES</th>
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<tbody>
<tr>
<td>Benchmark #1:</td>
<td></td>
</tr>
<tr>
<td>Benchmark #2:</td>
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(d) Submit to OHSU within 60 days after the end of each calendar year an update to the Commercial Development Plan that: (a) is substantially in the form attached as Appendix E; (b) has been signed by Licensee's treasurer or chief financial officer; and (c) is reasonably acceptable to OHSU. That annual update will address the previous year's results and include an updated sales forecast and marketing plan for the next five years that is reasonably acceptable to OHSU.

7. RESTRICTIONS

7.1 Use Restrictions. Neither Licensee, its Affiliates nor its Sublicensees may use the Licensed Products as end users without paying a royalty based on the fair market value of the Licensed Product except to demonstrate the Licensed Products to potential customers.

7.2 Sales, Transfer and Encumbrance Restrictions. Neither Licensee, its Affiliates nor Sublicensees will sell, lease, license or otherwise dispose of any Licensed Products (a) other than as a Commercial Sale; (b) for use other than in the Field of Use; or (c) for use in any location outside the Territory;

7.3 Manufacturing Restrictions. If the Licensed Technology was developed in the course of research sponsored by the U.S. Government, Licensed Products to be sold in the United States must be manufactured substantially in the United States unless Licensee obtains a written waiver in advance from the Government.

7.4 Export Restrictions.

(a) Licensee acknowledges that it is subject to all United States laws and regulations (including the Export Administration Act of 1979 and the Arms Export Control Act (collectively, the "Export Acts")) that control the export of technical data, computer software, laboratory prototypes, biological material and other commodities. The transfer of those items may require a license from the Government or written assurances by Licensee that it will not export such items to certain foreign countries without prior approval from the Government.

(b) If Licensee wishes to export any of the Licensed Products, Licensee will at all times (a) comply with the Export Acts and obtain all required export licenses and approvals necessary to comply with the Export Acts and any other applicable law; and (b) be solely responsible for ensuring that the Licensed Products comply with all applicable laws, rules, regulations, orders, decrees, judgments and other governmental acts of any foreign governmental authorities having
jurisdiction over Licensee or the Licensed Products (including any health and safety rules and regulations and any patent, copyright, trademark or other infringement laws). Without in any way limiting the disclaimers and limitations in Section 12 or elsewhere in this Agreement,

(c) OHSU expressly disclaims any representation or warranty that the Licensed Technology or Licensed Products comply with any law, statute, regulation or implied warranties of any jurisdiction outside the United States of America.

7.5 Endorsement: Use of OHSU’s name.

(a) At Licensee's request, Licensee and OHSU will issue a joint press release regarding the existence of this Agreement in a form acceptable to both parties. Licensee will not use the name, likeness or logos of OHSU or any employee of OHSU in any press release, general publication, advertising, marketing, promotional or sales literature, in each case without the prior written consent of OHSU.

(b) By entering into this Agreement, OHSU does not directly or indirectly endorse any product or service provided, or to be provided, by Licensee. Licensee will not state or imply that this Agreement is an endorsement by OHSU, or any of its employees.

(c) Licensee will not make any warranty on behalf of OHSU.

7.6 Marking. Licensee will mark, and cause each Affiliate and Sublicensee to mark, all Licensed Products with patent right notices that will enable the Patent Rights to be enforced to their full extent in any country where the Licensed Products are made, used or sold.

8. BOOKS, RECORDS AND REPORTS

8.1 Notice of First Commercial Sale. Licensee will notify OHSU of the date of the first Commercial Sale in each country in the Territory within 30 days after the date of that sale.

8.2 Quarterly Reports. Licensee will deliver to OHSU within 60 days after the end of each calendar quarter following the Effective Date (each, a "Reporting Period") a written report substantially in the form attached as Appendix D that has been signed by Licensee's treasurer or chief financial officer and includes the information necessary or desirable to confirm the amount of the continuing royalty payments due under Section 4.3 above for the Reporting Period, including (a) the quantity of Licensed Products delivered in a Commercial Sale during the Reporting Period; (b) the gross sales and Net Sales made and the licensing revenue received during the Reporting Period and the computation for calculating the continuing royalties and sublicense fees earned during the Reporting Period (or if there were no gross sales/Net Sales or licensing revenue, Licensee will provide a short written statement to OHSU stating that fact); (c) any minimum royalties available as a credit for the Reporting Period; and (d) either the amount due to OHSU for the Reporting Period or the amount of any prepaid minimum royalties that remain available as a credit to Licensee and that will be carried forward to the next Reporting Period.
8.3 **Books and Records.** Licensee will keep proper records and books of account in accordance with accounting practices generally accepted in the United States of America. Those books and records will accurately reflect the sales upon which the continuing royalty payments are based and all other information necessary for the accurate determination of payments to be made under this Agreement. Licensee will retain those records and books for at least five years following their creation.

8.4 **Audits.** Upon reasonable written notice, OHSU will have the right to copy, inspect and audit the books and records of License, its Affiliates and Sublicensees at least once each calendar year during normal business hours for the purpose of verifying the correctness of the payments due under this Agreement. Examination of the books and records for any Reporting Period will not take place more than five years following the end of that Reporting Period. Licensee will, within ten days of the date Licensee receives notice of the amount of any shortfall, pay OHSU that shortfall, plus interest at five percent above the prime rate of interest set forth in *The Wall Street Journal* on the date of the shortfall notice. The expense of any such audit will be born by OHSU unless the audit discloses that Licensee underpaid any continuing royalty due by 5% or more during any Reporting Period being audited, in which case, Licensee will pay the costs of the audit.

9. **CONFIDENTIAL INFORMATION**

9.1 Each party to this Agreement who receives Confidential Information (the "recipient") from the other party (the "disclosing party") will protect and keep that Confidential Information secret and will not (a) disclose that Confidential Information to any person other than to recipient's employees and independent contractors with a need to know who have signed written confidentiality agreements that are as protective of that information as this Section 9; or (b) use that Confidential Information for any purpose other than to exercise its rights and perform its obligations under this Agreement. Notwithstanding the preceding, the recipient is authorized to disclose any Confidential Information specifically required by order of any governmental agency or court so long as before the delivery of that information, the recipient gives the disclosing party prompt written notice (if permitted by law) so the disclosing party can seek an appropriate protective order or exemption from that order. Without in any way limiting the preceding, the parties acknowledge and agree that (i) the Commercial Use Plan, the Quarterly Report and copies of the sublicense agreements delivered to OHSU under Section 8.2 constitute the Confidential Information of Licensee; and (ii) the Know-How, the patent applications and all other nonpublic information related to the Patent Rights constitute the Confidential Information of OHSU.

10. **PROSECUTION AND MAINTENANCE OF PATENTS**

10.1 **Prosecution and Maintenance.** OHSU will consult with Licensee on all patent matters in advance of filing, responding or taking other actions concerning material patent matters, and OHSU will use reasonable good faith efforts to implement all reasonable requests made by Licensee with regard to material aspects of the preparation, filing, prosecution and/or maintenance of the patent applications and patents included in the Patent Rights. Further, OHSU will provide Licensee with copies of all material written communications with respect to the patent applications and patents contained in the Patent Rights. OHSU will endeavor to give Licensee at least 30 days prior written notice of its intent to abandon the prosecution of any patent application or to discontinue the maintenance of any patent or patent application included in the Patent Rights. However, both parties agree that OHSU will have the sole right to file, prosecute and maintain; determine whether or not, and where, to file patent applications; to abandon the prosecution of any patents or patent applications; and to discontinue the maintenance of any patents or patent applications included in the Patent Rights. Notwithstanding the preceding, if OHSU elects not to file any patent application in any jurisdiction or if OHSU elects to
abandon any patent or patent application included in the Patent Rights, Licensee may elect at its sole cost to pursue those actions, provided it permits OHSU to review and approve all filings to be made with respect to those Patent Rights.

10.2 **Reimbursement of Ongoing Patent Costs.** OHSU will submit to Licensee separate invoices for any other Patent Costs associated with each jurisdiction in which OHSU intends to apply or has applied for protection of the Patent Rights. Licensee agrees to reimburse OHSU for those Patent Costs unless Licensee elects to surrender its rights under Section 10.4 below. To the extent Licensee pays the Patent Costs for a jurisdiction, that jurisdiction will be included in the definition of "Territory" as indicated in a written amendment to this Agreement.

10.3 **Cooperation and Disclosure.** Each party will promptly inform the other as to all matters that come to its attention that may affect the preparation, filing, prosecution or maintenance of the Patent Rights and permit each other to provide comments and suggestions with respect to the preparation, filing and prosecution of Patent Rights, which comments and suggestions will be considered by the other party.

10.4 **Loss of Rights.** If Licensee elects to discontinue payment for the filing, prosecution and/or maintenance of any patent or patent application or fails to pay any such invoice submitted by OHSU for those Patent Costs within 30 days after the date of that invoice, the jurisdiction described in that invoice will be excluded from the term "Territory" and the patent or patent application described in that invoice will be excluded from the term "Patent Rights" and all rights relating to those patent applications and patents will revert to OHSU and may be freely licensed by OHSU to others. If Licensee elects not to pay the Patent Costs for the filing, prosecution and/or maintenance of any patent application or patent in any country or for any patent or patent application, and OHSU acting in reliance on that election ceases to prosecute that patent application or maintain that patent in that country, Licensee will not sell any product or provide any processes covered by the claims of that patent as issued, or in the case of an application, covered in the claims as written at the time Licensee notifies OHSU of its decision not to support the application, unless Licensee agrees to pay royalties under this Agreement on sales in that country.

11. **INFRINGEMENT AND PATENT ENFORCEMENT**

11.1 **Enforcement Rights.** If either OHSU or Licensee becomes aware of any actual or threatened infringement of the Licensed Technology, that party will promptly notify the other of each infringement or possible infringement, as well as any facts that may affect the validity, scope or enforceability of the Patent Rights (the "Infringement Notice"). Both parties will reasonably cooperate with each other to terminate that infringement without litigation.

(a) If within 120 days after the date of the Infringement Notice attempts to abate such infringement are unsuccessful, then Licensee may bring an action at its own expense, provided Licensee first notifies OHSU and carefully considers OHSU’s views before initiating that suit. In that case, OHSU will cooperate with Licensee as reasonably requested, at Licensee's expense. OHSU may, at any time on its own initiative, join in that suit.

(b) If Licensee fails to bring an action within 180 days after the date the Infringement Notice, OHSU may bring an action at its own expense, in which case Licensee will cooperate with OHSU as reasonably requested, at OHSU’s expense.

In either (a) or (b), the party initiating and maintaining the action will keep the other party reasonably apprised of the status and progress of that litigation.
11.2 **Fees and Costs.** In any infringement action brought under Section 11.1(a), Licensee will pay all expenses including costs, fees, attorney fees and disbursements.

11.3 **Defense Rights.** If a third person brings a declaratory judgment action alleging invalidity or non-infringement of any of the Licensed Technology or raises that allegation by way of counterclaim or affirmative defense in an infringement suit brought by Licensee under Section 11.1(a), Licensee may (a) defend that suit in its own name, at its own expense; (b) enjoin infringement in that suit and collect for the infringer's use; and (c) settle that claim or suit for declaratory judgment involving the Licensed Patent Rights. If Licensee fails to take such action within a reasonable time, then OHSU will have the right to take those actions and will in any event have a continuing right to intervene in that suit.

11.4 **Settlement and Recovery.**

(a) Licensee will not settle any action or other proceeding in any manner that is prejudicial to any of the Licensed Technology without OHSU's prior written approval.

(b) Any recovery made by Licensee, through court judgment or settlement, will be applied first to reimburse Licensee for its reasonable out-of-pocket litigation expenses, and second, to reimburse OHSU for royalties that it would have received had the actions taken by the defendant occurred in compliance with this Agreement. Any remaining recoveries will be shared equally between Licensee and OHSU. Should OHSU be made a party to any suit described in this Section 11, Licensee will reimburse OHSU for any costs, fees and expenses, including attorney fees OHSU incurs as a result of and in opposing that action.

12. **DISCLAIMER OF WARRANTIES AND OBLIGATIONS; LIMITATION OF LIABILITY**

12.1 Licensee agrees that OHSU has no obligation to file any patent application or maintain any patent in any jurisdiction or to commence any legal action against third persons infringing the Licensed Technology.

12.2 **OHSU does not warrant the validity of the Patent Rights and makes no representations whatsoever (a) with regard to the scope, accuracy, completeness or usefulness of the Licensed Technology; or (b) that the Licensed Technology can be exploited without infringing other patents or other intellectual property rights of third parties; or (c) that the Licensed Technology will accomplish any particular results or are safe or fit for any purpose.**

12.3 Except as expressly provided in this Agreement, all information, materials, services, subject matter defined by the claims of the Patent Rights, intellectual property and other property or rights granted or provided by OHSU under this Agreement are on an AS IS basis, and OHSU makes no other warranties, expressed or implied, as to any matter, and OHSU expressly disclaims the warranties of merchantability, fitness for a particular purpose, exclusivity or results obtained from use.

12.4 **In no event will OHSU be liable for any incidental, consequential, special or punitive damages resulting from the sale of the Licensed Products, the use of the Licensed Technology or Licensee's exercise of any other rights under this Agreement or the use of the Licensed Technology.**

13. **INSURANCE**

13.1 Licensee will maintain and provide evidence of insurance with deductibles and minimum limits of
liability in amounts commensurate with industry standards. Evidence will be provided to OHSU upon request.

14. INDEMNIFICATION

14.1 Licensee will indemnify, defend and hold harmless OHSU, its directors, trustees, officers, employees, students, fellows, agents, consultants, the sponsors of the research that led to the Licensed Technology and the inventors of the Licensed Technology from and against all claims, liability, demands, damages, costs, expenses (including attorney fees and costs) and losses, including for death, personal injury, illness and property damage, arising from or relating in any way to this Agreement, the Licensed Products or the Licensed Technology, including: (a) the use by or on behalf of Licensee, its Affiliates, Sublicensees, their customers, suppliers, independent contractors and other third persons of any Licensed Technology; and (b) the design, manufacture, distribution, storage, sale or use of any Licensed Products or other products or processes developed in connection with or arising out of the Licensed Technology. To the extent necessary to indemnify and hold OHSU harmless from any claims by any employees of Licensee, and to the extent permitted by law, Licensee expressly waives any immunity or exemption from liability for the personal injury or death of its employees that may exist under, or any right to receive contribution from OHSU created by, the workers' compensation laws of the state where the injury occurs or the employee is located.

15. TERM AND TERMINATION

15.1 This Agreement is effective as of the Effective Date and unless sooner terminated under this Section 15, will expire at the end of the Term. However, in the case where no valid patent claims issue under the Patent Rights, the Term will be for a period of five (5) years from the date of the first Commercial Sale.

15.2 OHSU's Termination Rights. OHSU may, at its election, either (i) terminate this Agreement; or (ii) convert Licensee's exclusive license rights under Section 3.3(a) into nonexclusive rights, upon the occurrence of any one or more of the following events:

(a) Licensee fails to pay any amount due under this Agreement within 10 days after Licensee receives written notice of that failure;

(b) Licensee breaches Section 9 (Confidential Information);

(c) Licensee is found to have under reported or under paid any royalty under Section 8.4 for two or more Reporting Periods;

(d) Licensee fails to enter into a Commercial Sale by the date set forth in Licensee's Commercial Development Plan;

(e) Licensee fails to meet any of the other benchmarks by the later of 90 days after (i) the date set forth in Section 6.1(c); and (ii) the date Licensee receives written notice from OHSU of that failure;

(f) Licensee fails to make the Commercial Sales or fails to receive the Net Receipts for any calendar year as set forth in the Commercial Development Plan;

(g) Licensee fails to cure any breach of any of its other obligations under this Agreement within 30
days after Licensee receives written notice of that breach;

(h) Licensee becomes insolvent or becomes the subject of any bankruptcy or other debtor relief proceeding, and in the case of an involuntary proceeding, that proceeding is not dismissed within 90 days; and/or

(i) Licensee fails to submit an updated Commercial Development Plan that is reasonably acceptable to OHSU.

15.3 **Licensee's Termination Rights.** Licensee may terminate this Agreement and/or either or both the Patent License and the Know-How License in any country by giving OHSU 60 days written notice and paying OHSU all sums then due and payable.

15.4 **Consequences of Termination.** Upon expiration or earlier termination of this Agreement for any reason whatsoever:

(a) Licensee will discontinue, and will cause its Affiliate and Sublicensees to discontinue, the manufacture, use, marketing and sale of the Licensed Products except that after termination of this Agreement under Section 15.2(d), (e), (f) or (h), if Licensee, its Affiliates or Sublicensees then possess, have started the manufacture of or have accepted binding orders for Licensed Products, then Licensee, its Affiliates and Sublicensees may sell their inventories, complete the manufacture of and market and sell the finished Licensed Products to the extent necessary to dispose of those inventories and fill those orders, subject at all times to Licensee's obligation to pay OHSU the continuing royalty payments under Section 4.3 and the sublicense fee under Section 5.4 and to deliver the reports required in Section 8.2 of this Agreement.

(b) Licensee will not be discharged from any liability or obligation to OHSU that arose or became due or payable before the effective date of the expiration or termination;

(c) Within 90 days after the expiration or earlier termination of this Agreement for any reason, Licensee will submit a final report in form and content similar to the Quarterly Report and pay all amounts due to OHSU under this Agreement;

(d) Sections 3.1 (Ownership of Licensed Technology), 7 (Restrictions), 8 (Books, Records and Reports), 9 (Confidential Information), 12 (Disclaimer of Warranties and Obligations; Limitation of Liability) 14 (Indemnification) and 16 (General Provisions) of this Agreement will survive;

(e) Each party will promptly return or destroy the Confidential Information of the other party (except that OHSU may retain one copy of Licensee's Confidential Information solely for archival purposes), and will deliver a certificate signed by one of its authorized officers that it has done so;

(f) All rights licensed or transferred by OHSU to Licensee under this Agreement will revert to OHSU, and Licensee agrees to execute and deliver all instruments necessary or desirable to re-vest those rights in OHSU.

16. **GENERAL PROVISIONS**

16.1 **Notices.** All notices, payments and other communications required or permitted under this Agreement
will be in writing and sent by prepaid, first class, registered or certified mail, properly addressed to the
other party as follows:

If to OHSU, to:  Technology and Research Collaborations, AD120
Oregon Health & Science University
2525 SW 1st Avenue, Suite 120
Attention:  Director
Portland, OR 97201
Phone: 503-494-8200
Fax: 503-494-4729
Email: techmgmt@ohsu.edu

If to Licensee, to:  

All notices and communications will be effective on the date of the postmark of that notice or
communication.  Either party may change its address by giving notice of that change to the other party.

16.2  **Waivers.** Neither party will be deemed to have waived any of its rights under this Agreement until it
has signed a written waiver of those rights.  Without limiting the preceding, no failure or delay by either
party in exercising any rights, powers or remedies under this Agreement will operate as a waiver of any
such right, power or remedy, and no waiver will constitute a waiver of any other provision, breach, right
or remedy, nor will any waiver constitute a continuing waiver or be effective except for the specific
instance and for the specific purpose given.

16.3  **Amendments.** If either party wishes to modify this Agreement, the parties will confer in good faith to
determine the desirability of such modification.  No modification will be effective until a written
amendment is signed by both parties to this Agreement.

16.4  **Assignment.** Licensee will not assign or transfer its interests in nor delegate its obligations under this
Agreement, whether by transfer, merger, operation of law or otherwise without OHSU's written consent.
A change in the control of Licensee (voting or otherwise) will be deemed an assignment for purposes of
this Section.

16.5  **Governing Law; Jurisdiction and Venue.** This Agreement will be governed by and construed in
accordance with the laws of the State of Oregon without reference to its choice of law provisions or the
International Convention on the Sale of Goods.  Any claim, action or suit between OHSU and Licensee
that arises out of or relates to performance of this Agreement will be brought and conducted solely and
exclusively within the Circuit Court for Multnomah County, Oregon, and Licensee consents to the
jurisdiction of and venue in those courts.  However, if any such claim, action or suit may be brought
only in a federal forum, it will be brought and conducted solely and exclusively within the United States
District Court of Oregon.

16.6  **Severability.** If any provision of this Agreement is rendered invalid or unenforceable by any law or
regulation, or declared null and void by any court of competent jurisdiction, that part will be reformed,
if possible to conform to law and if reformation is not possible, that part will be deleted and the
remainder of the provisions of this Agreement will, subject to this paragraph, remain in full force and
effect, unless enforcement of this Agreement without the invalid or unenforceable clause would be
grossly inequitable under the circumstances or would frustrate the primary purpose of this Agreement.
16.7 **Compliance with Law.** Licensee agrees to comply with all federal, state, county, and local laws, ordinances and regulations. Failure or neglect on the part of the Licensee to comply with any or all such laws, ordinances, rules and regulations will not relieve the Licensee of these obligations nor of the requirements of this Agreement.

16.8 **Dispute Resolution.** The Parties agree to attempt to settle amicably any controversy or claim arising under this Agreement or a breach of this Agreement. Thereafter, both parties agree that all disputes between them arising out of or relating to this Agreement will be submitted to non-binding mediation unless the parties mutually agree otherwise. Licensee further agrees to include a similar provision in all sublicenses with Sublicensees under this Agreement thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. All parties agree to exercise their best effort in good faith to resolve all disputes in mediation.

16.9 **Independent Contractor; Agency.** The parties are separate and independent legal entities, and each is an independent contractor. Neither party will be deemed to be the employee, representative, agent, joint venturer or partner of the other party for any purpose. Neither party has the authority to bind the other or to incur any liability on behalf of the other.

16.10 **Interpretation.** Both parties have had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that favors or disfavors either party will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms. The captions or headings of this Agreement are for convenience of reference only. They will not limit or otherwise affect the meaning or interpretation of any provision of this Agreement. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The word "person" includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The term "and/or" means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The word "will" is a synonym for the word "shall". All attachments to this Agreement are a part of and are incorporated in this Agreement.

16.11 **Counterparts; Facsimile Delivery.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same Agreement. This Agreement may be delivered by facsimile, and when so delivered will have the same force and effect as delivery of an original signature.

16.12 **Attorneys Fees.** In any legal action or proceeding arising out of or related to this Agreement, the prevailing party will be entitled to recover all reasonable attorney fees incurred at trial, on appeal and on any petition for review, together with other costs allowed by law. For purposes of this Agreement, "prevailing party" means the party that prevails either affirmatively or by means of a successful defense with respect to claims having the greatest value or importance as reasonably determined by the court with jurisdiction over the matter, after taking into consideration any settlement offers made by the parties.

[THE REMAINDER OF THIS PAGE IS BLANK]
16.13 **ENTIRE AGREEMENT.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO ITS SUBJECT MATTER, AND THERE ARE NO OTHER UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN BETWEEN THE PARTIES.

**OHSU:**
OREGON HEALTH & SCIENCE UNIVERSITY

__________________________________    _______________
Arundeep S. Pradhan       Date
Director, Technology and Research Collaborations

**LICENSEE:**

____________________________________
By: _________________________________    _______________
    Signature of Authorized Official      Date

Printed Name___________________________

Title_______________________________

Appendix A: Patent Rights
Appendix B: Know-How
Appendix C: Sample Commercial Development Plan
Appendix D: Form of Quarterly Report
Appendix E: Form of Annual Update
APPENDIX A
PATENT RIGHTS

1. PATENTS

2. PATENT APPLICATIONS
APPENDIX B
KNOW-HOW

1. __________________;
2. __________________; and
3. All inventions that are the subject of the invention disclosures giving rise to, or that are described in, patent applications included in the Patent Rights that do not issue into patents.
APPENDIX C
SAMPLE COMMERCIAL DEVELOPMENT PLAN

1. **Sales Forecast**
   (a) Year 1/ Twelve Months ending December 31, 200__: [insert]
   (b) Year 2/ Twelve Months ending December 31, 200__: [insert]
   (c) Year 3/ Twelve Months ending December 31, 200__: [insert]
   (d) Year 4/ Twelve Months ending December 31, 200__: [insert]
   (e) Year 5/ Twelve Months ending December 31, 200__: [insert].

2. **Other Data** [insert] (example: funding (VC, STTR), Prototype built, 1st commercial sale)
APPENDIX D
FORM OF QUARTERLY REPORT

Name of Licensee: __________________________ Invention Disclosure # ________________

Reporting Period: _________________________

A. Royalties

1. Quantity of Licensed Products delivered in a Commercial Sale during the Reporting Period

2. Gross sales and Net Sales made during the Reporting Period and the computation for calculating the continuing royalties earned during the Reporting Period (or if there were no gross sales/Net Sales, Licensee will provide a short written statement to OHSU stating that fact)

3. Any minimum royalties available as a credit for the Reporting Period

4. Either the amount of royalties due to OHSU for the Reporting Period or the amount of any prepaid minimum royalties that remain available as a credit to Licensee and that will be carried forward to the next Reporting Period.

B. Sublicense fees

1. List of persons to whom Licensee has sublicensed all or any part of the Licensed Technology.

2. Amount of compensation received by Licensee under Section 5.4 of the Agreement (other than royalty payments covered by Section 4.3 of the Agreement).

3. Sublicensing rate set forth in Section 5.4 of the Agreement

4. The amount of sublicense fees due to OHSU for the Reporting Period.

THE INFORMATION IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE FOR THE REPORTING PERIOD SPECIFIED ABOVE.

LICENSEE:

______________________________________
By: __________________________
    Signature of Authorized Official

______________________________
    Date

Printed Name__________________________

Title__________________________________
APPENDIX E

FORM OF ANNUAL UPDATE TO THE COMMERCIAL DEVELOPMENT PLAN

To: Oregon Health & Science University ("OHSU")

From: ________________ ("Licensee")

Date: __________________

Period Covered by Report: January 1, 200__ through December 31, 200_ (the "Reporting Period").

This Annual Update to the Commercial Development Plan Report (this "Report") is provided by Licensee to OHSU pursuant to their Exclusive License Agreement dated ______ regarding Invention Disclosure No(s) ______ (the "Agreement").

1. A copy of Licensee's Commercial Development Plan in effect for the Reporting Period covered by this Report is attached to this Report as Exhibit A (the "Current Plan").

2. Licensee's discussion of the results for the Reporting Period is attached to this Report as Exhibit B. That discussion includes, among other things, Licensee's explanation of the reasons why Licensee's progress differs in any material way from that projected in the Current Plan.

3. A copy of Licensees updated five year sales forecast (for the five year period beginning the day after the period covered by this Report) is attached to this Report as Exhibit C (the "New Plan").

4. Licensee will provide any additional data reasonably required by OHSU to evaluate Licensee's performance under the Current Plan and its anticipated efforts under the New Plan.

This Report is true, accurate and complete in all material respects.

[must be signed by Licensee's treasurer or chief financial officer]