

DRAFT DATED _____

FOR DISCUSSION PURPOSES ONLY

NON EXCLUSIVE PATENT LICENSE AGREEMENT

This agreement (hereinafter "Agreement") is effective as of this _____ day of _____ 20____ (hereinafter the "Effective Date") and is by and between the University of Rochester, an educational institution chartered by the State of New York and having its principal place of business at 601 Elmwood Avenue, Box OTT, Rochester, New York 14642 ("University") and _____, a corporation organized and existing under the laws of the State of _____ and having a place of business located at _____ (hereinafter "Licensee").

1.0 Preamble

1.1 With the exception of certain rights reserved to the United States Government, University is the owner by assignment of the Patent Rights as defined below.

1.2 University desires that the Patent Rights be used as soon as possible for the development of products for public use and benefit, and to this end desires to license the Patent Rights to a company capable of such development.

1.3 Licensee desires to acquire a license to the Patent Rights so that it can develop products in a timely fashion for public use and benefit. Licensee is under no contractual or other obligation that encumbers, restricts or limits any of the rights granted by University under this Agreement.

2.0 Definitions

2.1 Terms defined in this Article 2.0, and parenthetically defined elsewhere in this Agreement, will throughout this Agreement have the meaning here or there provided. Defined terms may be used in the singular or in the plural, as sense requires.

2.2 "Affiliate" means any corporation or other business entity that controls, is controlled by or is under common control with the Licensee. "Controls," "control" or "controlled" as used in this paragraph means direct or indirect ownership of more than fifty percent (50%) of the voting stock of such corporation, or more than a fifty percent (50%) interest, direct or indirect, in the decision-making authority of such other unincorporated business entity.

2.3 "Confidential Information" means information that is marked as confidential, or, if orally or visually disclosed, is indicated at the time of disclosure as confidential and provided in written

form within thirty days. Notwithstanding the foregoing, the Receiving Party will have no obligation of confidentiality relating to any information of the Disclosing Party that:

- (i) is disclosed by the Disclosing Party without restriction on further dissemination or is otherwise disclosed by the Receiving Party in compliance with the terms of the Disclosing Party's prior written approval; or
- (ii) at the time of receipt by the Receiving Party was independently known or developed by the Receiving Party, or becomes independently known to the Receiving Party thereafter, and can be so documented by written records; or
- (iii) at any time becomes generally known to the public or otherwise publicly available through no fault of Receiving Party; or
- (iv) has been or is made available to Receiving Party by a third party having the lawful right to do so without breaching any obligation of nonuse or confidentiality to Disclosing Party; or
- (v) the Receiving Party is obligated to disclose in order to comply with applicable laws or regulations, or with a court or administrative order, provided that the Receiving Party (i) promptly notifies the Disclosing Party, and (ii) cooperates reasonably with the Disclosing Party's efforts to contest or limit the scope of such disclosure.

2.4 "Field" means _____.

2.5 "First Commercial Sale" means the initial transfer by or on behalf of Licensee or an Affiliate of Licensed Products in exchange for cash or some equivalent to which value can be assigned for the purpose of determining Net Sales Revenue.

2.6 "Licensed Product" means any tangible materials or processes which, in the course of manufacture, use, or sale would, in the absence of this Agreement, infringe one or more issued, unexpired patent claims, or one or more claims in a pending patent application, contained in the Patent Rights in the country of use or sale.

2.7 "Net Sales Revenue" means the gross amount of monies or cash equivalent or other consideration that is invoiced by Licensee or Affiliate to unrelated third parties for sale or transfer of Licensed Products, less (a) all trade, quantity, and cash discounts actually allowed and taken; (b) credits and allowances actually granted and taken on account of rejections, returns, or billing errors; (c) packing costs; (d) transportation; (e) insurance; (f) taxes, duties, tariffs, or other governmental charges imposed on the sale of the Licensed Product, including value added taxes or other governmental charges otherwise measured by the amount paid for the Licensed Product, but specifically excluding taxes based on the net income of the seller. No other deductions shall be made for commissions paid to individuals whether they be with independent sales agencies or regularly employed by Licensee, its Affiliate, or on its payroll. A transfer of Licensed Product to an Affiliate for end use but not resale by the Affiliate shall be treated as an invoiced sale by Licensee at the list price of the Licensee in an arm's-length transaction.

2.8 "Patent Rights" means those patents and patent applications listed in Appendix A and all patents claiming priority thereto or arising therefrom.

2.8.1 “Patent Rights” includes patents and patent applications, whether domestic or foreign, including all provisionals, divisionals, continuations, reissues, reexaminations, renewals, extensions, and supplementary protection certificates of any such patents and patent applications.

2.8.2 Only to the extent that claims issuing therefrom obtain the benefit of a priority date of any of the foregoing applications and contain one or more claims directed to the invention or inventions disclosed in 2.8.1., “Patent Rights” also includes continuations-in-part, and all divisionals and continuations of these continuations-in-part, patents arising therefrom, and foreign patents, extensions, and supplemental protection certificates and applications corresponding thereto.

2.9 “Territory” means _____.

[OPTIONAL DEFINITION UNDER 2.0] -----

2.10 “Technical Information” means any technical facts, data, or advice, written or oral (in the form of information contained in patents and patent applications, reports, letters, drawings, specifications, testing procedures, training and operational manuals, bills of materials, photographs and the like) developed prior to the Effective Date of this Agreement that: (a) is directly related to the Patent Rights; (b) was developed at the University in the laboratory of Dr. _____; (c) is owned or in the possession of University; (d) is not subject to any third party rights; and (e) in University’s best judgment is reasonably necessary or valuable to the commercial exploitation of the Patent Rights.

3.0 Grant; Due Diligence Obligation

3.1 Grant of License. Subject to Licensee's compliance with the provisions of this Agreement, University hereby grants to Licensee, and Licensee accepts, a nonexclusive, royalty-bearing license in the Field under the Patent Rights to import, make, have made, use, and sell Licensed Products in the Territory.

[OPTIONAL PROVISION UNDER 3.0] -----

3. Technical Information. University hereby grants to Licensee a non-exclusive royalty-free license to the Technical Information.

3.2 No Other Rights Granted. This Agreement confers no license or rights by implication, estoppel, or otherwise under any patent applications or patents of University other than the Patent Rights regardless of whether such patents are dominant or subordinate to the Patent Rights.

3.3 No Sublicense Rights. Licensee shall not have the right to enter into sublicense agreements for the rights, privileges, and licenses granted hereunder without the prior written consent of University, which consent will not be unreasonably withheld or delayed.

3.4 Due Diligence Obligation. As an inducement to University to enter into this Agreement, Licensee agrees to use all reasonable efforts and diligence to proceed with the development, manufacture, and sale or lease of Licensed Products, and to diligently develop markets for the Licensed Products pursuant to the Commercial Development Plan outlined on Appendix B. Licensee shall report to the University on its diligence efforts as more fully provided in paragraph 6.1 hereto.

4.0 Confidential Information

4.1 Patent Information. Licensee acknowledges that it has previously received copies of all patents and patent applications comprising the Patent Rights. Pursuant to this Agreement, all information and correspondence relating to the Patent Rights received from University or University's patent counsel is considered the University's Confidential Information, whether or not marked as confidential.

ALTERNATIVE PARAGRAPH 4.1 -----

4.1 Patent and Technical Information. Licensee acknowledges that it has previously received copies of all patents and patent applications comprising the Patent Rights. University agrees to provide Licensee with Technical Information upon request. Pursuant to this Agreement, all information and correspondence relating to the Patent Rights received from University or University's patent counsel and all Technical Information is considered the University's Confidential Information, whether or not marked as confidential.

4.2 Confidentiality Obligation. Beginning on the Effective Date of this Agreement and continuing throughout the term of this Agreement and thereafter for a period of five (5) years, neither party will at any time, without the express prior written consent of the other, disclose or otherwise make known or available to any third party any Confidential Information of the other party. The receiving party will utilize reasonable procedures to safeguard the Confidential Information of the disclosing party, including releasing such Confidential Information only to employees, agents, or Affiliates on a "need-to-know" basis.

4.3 Licensee's Confidential Information. Except as required by law, University will maintain in confidence all information designated in writing by Licensee as Licensee's Confidential Information. In the event of a request for such information, University agrees to inform Licensee of such request.

4.4 Disclosure of Terms of Agreement to Inventors. University may disclose to the Inventors of the Patent Rights the terms and conditions of this Agreement upon their request. If such disclosure is made, University shall request that the Inventors keep such information confidential.

5.0 Licensing Fees and Royalty

5.1 License Issue Fee. As partial consideration for the rights conveyed by University under this Agreement, Licensee must pay to University a one-time, non-refundable, non-creditable license issue fee of _____ Dollars (\$_____), due and payable upon execution of this Agreement.

5.2 Minimal Annual Royalties. During the term of this Agreement, Licensee agrees to pay to University Minimal Annual Royalties according to the following schedule; such Minimum Annual Royalties are due and payable on January 1st of each year and are creditable against earned royalties on a non-cumulative basis which are due and payable in the same year:

5.3 Earned Royalties. Licensee must pay to University Earned Royalties of Net Sale Revenue from Licensed Products, according to the following schedule. Earned Royalties are due and payable within thirty (30) days of the end of each calendar quarter.

_____ (____%) on Sales between Zero (0) and _____ Dollars (\$_____).

_____ (____%) on Sales between _____ Dollars (\$_____) and _____ Dollars (\$_____).

_____ (____%) on Sales over _____ Dollars (\$_____).

5.4 Milestone Payments. Licensee must also pay University the Milestone Payments per product as set forth below:

- (i) _____
- (ii) _____

Licensee must notify University in writing within thirty (30) days upon the achievement of each milestone, such notice to be accompanied by payment of the appropriate milestone payment.

5.5 Licensee Pays Taxes. Licensee will be responsible for the payment of all taxes, duties, levies, and other charges, including but not limited to, sales, use, gross receipts, excise, VAT, ad valorem and any other taxes, any withholdings or deductions, import and custom taxes, any duties, or any other charges imposed by any taxing authority with respect to the royalties payable to University under this Agreement. Should Licensee be required under any law or regulation of any government entity or authority, domestic or foreign, to withhold or deduct any portion of the payments on royalties due to University, then the sum payable to University must be increased by the amount necessary to yield to University an amount equal to the sum it would have received had no withholdings or deductions been made. University will cooperate with Licensee

in the event Licensee elects to assert, at its own expense, University's exemption from any such tax or deduction.

6.0 Payment and Reports

6.1 Progress Report. Until Licensee engages in commercial use or sale of Licensed Product, Licensee must prepare and submit to University within thirty (30) days of December 31st of each year a report regarding the progress of Licensee in developing Licensed Products for commercial exploitation. This report must include such particulars as are necessary to demonstrate compliance with the diligence obligations of Paragraph 3.4 of this Agreement, including but not limited to, a summary of work completed, summary of work in progress, current schedule of anticipated events or milestones, market plans for introduction of Licensed Product, and summary of resources spent during the reporting period.

6.2 Payment Dates and Royalty Reports. Licensee must pay earned royalties to University quarterly within thirty (30) days of each of the following dates: March 31, June 30, September 30, and December 31 of each year. With each payment, Licensee must include a report setting forth such particulars of the business conducted by Licensee during the preceding calendar quarter as will be pertinent to royalty accounting as specified in this Agreement. The report must include at least (a) the number of units of Licensed Products manufactured, used, or sold; (b) gross amounts billed or invoiced for Licensed Products; (c) discounts and allowances; and (d) calculation of total royalties due University. If no sales of Licensed Products were made during any reporting period, Licensee shall so report.

6.3 Form of Payments. All payments required under this Agreement must be made in U.S. dollars by check or money order payable to the University of Rochester, and delivered to University as specified in this Agreement; or, if so directed in writing by University, in such currency, form, and to such account as University may designate. The royalties on sales in currencies other than U.S. Dollars must be calculated using the appropriate foreign exchange rate for such currency quoted in *The Wall Street Journal* on the last business day of the calendar quarter in which the Net Sales Revenue occurred. All non-U.S. taxes related to royalty payments must be paid by Licensee and are not deductible from the payments due University.

6.4 Late Fee. Any payment due to University under terms of this Agreement that is more than thirty (30) days past due shall bear interest until paid at a per annum rate equal to two percent (2%) plus the prime rate as set forth by *The Wall Street Journal* on the date on which such payment is due. The payment of such interest amount must be made at the time the overdue payment is made. The payment of such interest amount will not foreclose or limit University from exercising any other rights it may have as a consequence of the lateness of any payment.

7.0 Record Keeping

7.1 Records. Licensee and its Affiliates must keep complete and accurate records and books of account containing all information necessary for the computation and verification of the

amounts to be paid hereunder. Licensee must keep these records and books for a period of five (5) years following the end of the Licensee's fiscal year to which the information pertains.

7.2 Audit Rights. Licensee will, at the request of University, permit one or more accountants selected by University ("Accountant") to have access to Licensee's records and books of account during ordinary working hours to audit with respect to any payment period ending prior to such request, the correctness of any report or payment made under this Agreement; or to obtain information as to the payments due for any such period in which the Licensee failed to report or make payment pursuant to the terms of this Agreement. University agrees that Accountant will not disclose any information relating to the business of Licensee except that which is necessary to inform University of: (a) the accuracy or inaccuracy of Licensee's reports and payments; (b) compliance or noncompliance by Licensee with the terms and conditions of this Agreement; (c) the extent of any inaccuracy or noncompliance; and (d) any information that the Accountant believes materially relates to Paragraph 7.2 of this Agreement. Should the Accountant believe there is an inaccuracy in any of the Licensee's payments or noncompliance by the Licensee with any of such terms and conditions, the Accountant will have the right to make and retain copies (including photocopies) of any pertinent portions of the records and books of account. In the event that Licensee's royalties calculated for any quarterly period are underreported by more than Five Percent (5%), the costs of any audit and review initiated by University will be borne by Licensee; otherwise, University will bear the costs of any audit initiated by University.

8.0 Term and Termination of Agreement

8.1 Term. The term of this Agreement will commence on the Effective Date and will continue until the last of the Patent Rights expires (such expiration to occur only after expiration of extensions of any nature to such patents which may be obtained under applicable statutes or regulations in the respective countries of territory, such as the Drug Price Competition and Patent Term Restoration Act of 1984 in the U.S.A. and similar patent extension laws in other countries), unless sooner terminated in accordance with the provisions set forth in this Article 8.

8.2 Termination for Breach. University may terminate this Agreement effective thirty (30) days after Licensee's receipt of University's Notice of Termination, if Licensee (a) is in default in payment of royalties or in providing reports, (b) intentionally provides a false report, or (c) materially breaches this Agreement and, in each case, does not cure such breach within thirty (30) days after receiving the Notice of Termination by University. Licensee agrees that any and all diligence requirements are material license terms, as are all royalty and payment requirements.

8.3 Termination for Licensee Bankruptcy. This Agreement and the license granted hereunder will terminate immediately in the event that: (a) Licensee seeks liquidation, reorganization, dissolution or winding-up of itself, is insolvent or evidence exists as to its insolvency, or Licensee makes any general assignment for the benefit of its creditors; (b) a petition is filed by or against Licensee, or any proceeding is initiated by or against Licensee, or any proceeding is initiated against Licensee as a debtor, under any bankruptcy or insolvency law, unless the laws then in effect void the effectiveness of this provision; (c) a receiver, trustee, or any similar officer

is appointed to take possession, custody, or control of all or any part of Licensee's assets or property; or (d) Licensee adopts any resolution of its Board of Directors or stockholders for the purpose of effecting any of the foregoing.

8.4 Licensee's Right to Terminate. Licensee will have a right to terminate this Agreement with or without cause, upon ninety (90) days prior written notice to University.

8.5 Financial Obligations Under Agreement Survive. Termination by University or Licensee under the options set forth in this Agreement will not relieve Licensee from any financial obligation to University arising from this Agreement that accrue prior to or after termination, or from performing according to any and all other provisions of this Agreement that survive termination.

8.6 Final Report after Termination. Within ninety (90) days of termination of this Agreement, Licensee shall submit a final report. Any royalty payments due to University will become immediately due and payable upon termination.

9.0 Notices

Any notice or other communication will be in writing and will be deemed to have been properly given and be effective (i) upon the date of delivery if delivered in person, by facsimile, or courier service to the respective addresses set forth below, or to such other address as either party will designate by written notice given to the other party, or (ii) five days after mailing, if mailed by first-class or certified mail, postage paid, or to the respective addresses below. If notice or other communication is given by facsimile transmission, said notice will be confirmed by prompt delivery of the hardcopy original.

In the case of Licensee:

ATTN:

In the case of University: **[NOTE: Include only the applicable address]**

Director, Office of Technology Transfer
University of Rochester Medical Center
601 Elmwood Ave. Box OTT
Rochester, NY 14642
Telephone No.: 585-784-8850
Facsimile No.: 585-785-8829

Director, Office of Technology Transfer
University of Rochester (River Campus)
611 Hylan Building, Box 270142
Rochester, NY 14627-0142
Telephone No.: 585-275-3998
Facsimile No.: 585-473-6717

10.0 Proprietary Rights

Licensee will not, by performance under this Agreement, obtain any ownership interest in Patent Rights or any other proprietary rights or information of University, its officers, inventors, employees, students, or agents.

11.0 Patent Marking

Licensee must mark any and all material forms of Licensed Products or packaging pertaining thereto made and sold by Licensee in the United States with an appropriate patent marking identifying the pendency of any U.S. patent application and/or any issued U.S. or foreign patent forming any part of Patent Rights. All Licensed Products shipped to or sold in other countries must be marked in such a manner as to provide notice to potential infringers pursuant to the patent laws and practice of the country of manufacture or sale.

12.0 Patent Infringement

12.1 Notice of Infringement. University and Licensee will promptly notify each other of any infringement or possible infringement of the Patent Rights, as well as any facts that may affect the validity, scope, or enforceability of the Patent Rights, of which either party becomes aware. Both parties shall use reasonable efforts and cooperation to terminate infringement without litigation.

12.2 Declaratory Judgment. In the event that a declaratory judgment action alleging invalidity of any of the Patent Rights shall be brought against University, University agrees to notify Licensee. University does not represent that it will commence legal action to defend against a declaratory action alleging invalidity. Licensee shall take no action to compel University either to initiate or to join in any such declaratory judgment action. Should the University be made a party to any such suit by motion or any other action of Licensee, Licensee shall reimburse University for any costs, expenses, or fees which the University incurs as a result of such motion or other action.

13.0 Use of Names

Nothing contained in this Agreement will be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of a party hereto including any contraction, abbreviation or simulation of any of the foregoing, unless the express written permission of the other party has been obtained, provided that both parties may state the existence of this Agreement and the fact that both parties entered into it. For any other use other than the foregoing, Licensee hereby expressly agrees not to use the name "University of Rochester" without prior written approval from University.

14.0 Representations and Warranties

14.1 University Representation. University represents and warrants as of the Effective Date of this Agreement that it: (a) has an ownership interest in the Patent Rights; (b) the list of the Patent Rights contained in Attachment A is accurate and complete in all respects; (c) has the right to grant the license in and to Patent Rights set forth in this Agreement; and (d) it has not granted any licenses under the Patent Rights which would be in conflict with the rights granted herein.

14.2 Disclaimers. Nothing in this Agreement will be construed as:

- (a) A representation or warranty by University as to the patentability, validity, scope, or usefulness of Patent Rights; or
- (b) A representation or warranty by University that anything made, used, sold, or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of third-party patents or other proprietary rights, or University patents or other proprietary rights not included in Patent Rights;
- (c) An obligation to bring or prosecute actions or suits against third parties for patent infringement;
- (d) An obligation to furnish any know-how not provided in Patent Rights; or

UNIVERSITY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, PERTAINING TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PATENT RIGHTS, THE LICENSED PRODUCTS, OR ANYTHING ELSE LICENSED, DISCLOSED, OR OTHERWISE PROVIDED TO LICENSEE UNDER THIS AGREEMENT. IN NO EVENT SHALL UNIVERSITY, ITS TRUSTEES, OFFICERS, EMPLOYEES OR AFFILIATES BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY OR LOST PROFITS. UNIVERSITY'S TOTAL LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE COSTS AND FEES PAID TO UNIVERSITY UNDER THIS AGREEMENT.

15.0 Indemnification

15.1 INDEMNIFICATION BY LICENSEE. EACH PARTY WILL NOTIFY THE OTHER OF ANY CLAIM, LAWSUIT OR OTHER PROCEEDING RELATED TO THE PATENT RIGHTS. LICENSEE AGREES THAT IT WILL DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY, ITS FACULTY MEMBERS, SCIENTISTS, RESEARCHERS, EMPLOYEES, OFFICERS, TRUSTEES AND AGENTS AND EACH OF THEM (THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LAWSUITS OR OTHER PROCEEDINGS (THE "CLAIMS") FILED OR OTHERWISE INSTITUTED AGAINST ANY OF THE

INDEMNIFIED PARTIES RELATED DIRECTLY OR INDIRECTLY TO OR ARISING OUT OF THE DESIGN, PROCESS, MANUFACTURE OR USE BY LICENSEE, ITS SUBLICENSEES OR ANY OF THEIR CUSTOMERS OF THE LICENSED PRODUCTS AND ANY EMBODIMENT OF THE PATENT RIGHTS; PROVIDED, HOWEVER, THAT SUCH INDEMNITY WILL NOT APPLY TO ANY CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY. LICENSEE WILL ALSO ASSUME RESPONSIBILITY FOR ALL COSTS AND EXPENSES RELATED TO SUCH CLAIMS FOR WHICH IT IS OBLIGATED TO INDEMNIFY THE INDEMNIFIED PARTIES PURSUANT TO THIS PARAGRAPH 15.1, INCLUDING, BUT NOT LIMITED TO, THE PAYMENT OF ALL REASONABLE ATTORNEYS' FEES AND COSTS OF LITIGATION OR OTHER DEFENSE.

15.2 INDEMNIFICATION BY UNIVERSITY. UNIVERSITY AGREES THAT IT WILL DEFEND, INDEMNIFY AND HOLD HARMLESS LICENSEE, SUBLICENSEES AND THEIR EMPLOYEES, CONSULTANTS, DIRECTORS, OFFICERS, CUSTOMERS AND AGENTS AND EACH OF THEM (THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LAWSUITS OR OTHER PROCEEDINGS (THE "CLAIMS") FILED OR OTHERWISE INSTITUTED BY THIRD PARTIES AGAINST ANY OF THE INDEMNIFIED PARTIES RELATED DIRECTLY OR INDIRECTLY TO OR ARISING OUT OF THE BREACH OF UNIVERSITY OF ITS REPRESENTATIONS IN SECTION 14.1 OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT SUCH INDEMNITY WILL NOT APPLY TO ANY CLAIMS ARISING FROM THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDMENIFIED PARTY. UNIVERSITY WILL ALSO ASSUME RESPONSIBILITY FOR ALL COSTS AND EXPENSES RELATED TO SUCH CLAIMS FOR WHICH IT IS OBLIGATED TO INDEMNIFY THE INDEMNIFIED PARTIES PURSUANT TO THIS PARAGRAPH 15.2, INCLUDING, BUT NOT LIMITED TO, PAYMENT OF ALL REASONABLE ATTORNEYS' FEES AND COSTS OF LITIGATION OR OTHER DEFENSE.

15.3 NOTICE. IT SHALL BE A CONDITION PRECEDENT TO AN INDEMNIFIED PARTY'S RIGHT TO SEEK INDEMNIFICATION UNDER PARAGRAPH 15.1 OR 15.2 THAT SUCH PARTY SHALL (A) PROMPTLY NOTIFY THE INDEMNIFYING PARTY OF A CLAIM AS SOON AS IT BECOMES AWARE OF SUCH CLAIM, (B) ALLOW THE INDEMNIFYING PARTY TO ASSUME CONTROL OF THE DEFENSE OF SUCH CLAIM, AND (C) COOPERATE WITH THE INDEMNIFYING PARTY IN SUCH DEFENSE.

16.0 Applicable Laws

16.1 Compliance with Laws. Licensee will abide by all applicable federal, state, and local laws and regulations pertaining to the management and commercial deployment of Licensed Products under this Agreement.

16.2 Government Rights. This Agreement is subject to Title 35, Sections 200-204 of the United States Code. Among other things, these provisions provide the U.S. Government with non-exclusive rights in the Patent Rights licensed hereunder.

16.3 Compliance with Export Laws. It is understood that University and Licensee are 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 United States Government and/or written assurances by Licensee that Licensee will not export data or commodities to certain foreign countries without prior approval of the United States Government. University represents neither that a license will not be required nor that, if required, such a license will be issued.

16.4 Governing Law and Venue. This Agreement will be construed in accordance with, and its performance will be governed by, the laws of the State of New York, without giving effect to the principles of conflict of laws of New York. Any suit, action, or proceeding arising out of or relating to this Agreement will take place in Rochester, New York.

17.0 General

17.1 Severability. If any provision of this Agreement will be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be in any way affected or impaired thereby.

17.2 No Waiver. No omission or delay of either party hereto in requiring due and punctual fulfillment of the obligations of any other party hereto will be deemed to constitute a waiver by such party of its rights to require such due and punctual fulfillment, or of any other of its remedies hereunder.

17.3 Amendments. No amendment or modification hereof will be valid or binding upon the parties unless it is made in writing, cites this Agreement, and is signed by duly authorized representatives of University and Licensee.

17.4 Assignment. This Agreement, and any rights or obligations hereunder, may be assigned by University but will not be assigned, transferred, or delegated in whole or in part by Licensee, except in connection with a merger of Licensee or a sale of all or substantially all of Licensee's assets, without University's express written approval, such approval not to be unreasonably withheld. Any attempted assignment, transfer or delegation in breach of this provision will be deemed to be void and no effect, and will entitle University to terminate this Agreement upon written notice to Licensee. Except as otherwise provided, this Agreement will be binding upon and inure to the benefit of the parties' successors and lawful assigns.

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

17.6 University's Disclaimers. Neither University, nor any of its faculty members, scientists, researchers, employees, officers, trustees or agents assumes any responsibility for the manufacture, product specifications, sale or use of the Licensed Products that are manufactured by or sold by Licensee.

17.7 No Endorsement. By entering into this Agreement, University neither directly nor indirectly endorses any product or service provided, or to be provided, by Licensee, whether directly or indirectly related to this Agreement. Licensee will not state or imply that this Agreement is an endorsement by University or its employees.

17.8 Independent Contractors. The parties hereby acknowledge and agree that each is an independent contractor and that neither party will be considered to be the agent, representative, master or servant of the other party for any purpose whatsoever, and that neither party has any authority to enter into a contract, to assume any obligation or to give warranties or representations on behalf of the other party. Nothing in this relationship will be construed to create a relationship of joint venture, partnership, fiduciary or other similar relationship between the parties.

17.9 Force Majeure. No liability hereunder will result to a party by reason of delay in performance caused by circumstances beyond the reasonable control of the Party, including, without limitation, acts of God, fire, flood, earthquake, war, terrorism, civil unrest, labor unrest, or shortage of or inability to obtain material or equipment.

17.10 Survival. Article 4 (Confidential Information), Article 5 (Fees and Royalties), Article 6 (Payments and Reports), Article 7 (Record Keeping), Article 9 (Notices), Article 10 (Proprietary Rights), Article 13 through Article 17, and any other provisions that by their content would survive will survive termination of this Agreement.

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

The offer of this license is made on this _____ day of _____, and shall be good for thirty (30) days from the date of the offer.

IN WITNESS WHEREOF, University and Licensee have executed this Agreement, in duplicate originals but collectively evidencing only a single contract, by their respective duly authorized officers, on the dates hereinafter written.

COMPANY

UNIVERSITY OF ROCHESTER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**APPENDIX A
Patent Rights as of the Effective Date**

Patent Name	Application Number	Country	Filing Date

APPENDIX B
Commercial Development Plan