

2.6 Nothing in the Agreement shall be construed as granting by implication, estoppel, or otherwise any licenses or rights under any patents, patent applications, or know how other than the express license under the PATENT RIGHTS or under KNOW HOW granted in Paragraph 2.1, regardless of whether such patents, patent applications, or know how are dominant of or subordinate to any rights within the PATENT RIGHTS.

2.7 [Government funding?] LICENSEE agrees that LICENSED PRODUCTS used, leased or sold in the United States shall be manufactured substantially in the United States.

2.8 [Government funding?]

Annual Fee in full against all running royalties otherwise due LSU for the same calendar year for which the specific Annual Fee is due. This credit may not ~~otherwise~~ be carried forward or carried back for any other ROYALTY PERIOD.

The Annual Fees are:

- (1) In _____: \$ _____;
- (2) In _____: \$ _____;
- (3) In _____: \$ _____; and
- (4) In __ and in each year thereafter during the term of this Agreement:
\$ _____.

3.2 LICENSEE shall be responsible for the payment of all taxes, duties, levies, and other charges, subject to the deduction from NET SALES allowed by Paragraph 1.7(b).

3.3 LICENSEE is not obligated to pay multiple running royalties to LSU if any LICENSED PRODUCT or LICENSED PROCESS is covered by more than one claim of PATENT RIGHTS, or by more than one patent application or patent within PATENT RIGHTS.

3.4

pursuant to, and subject to the terms of, the form of Stock Transfer Agreement attached hereto as Appendix B

3.9.4 Following the transfer to LSU by LICENSEE of the APPLICABLE

- (c) accounting for all LICENSED PROCESSES used or sold by LICENSEE and all SUBLICENSEES;
- (d) deductions applicable as provided in the definition for NET SALES in Paragraph 1.7;
- (e) any consideration due on additional payments from SUBLICENSEES under Paragraph 3.1(c);
- (f) total running royalties due; and
- (g) names and addresses of all SUBLICENSEES.

LICENSEE shall include the amount of all payments due, and the various calculations used to arrive at those amounts, including the quantity, description (nomenclature and type designation as described in Paragraph 4.3 below), country of manufacture and country of sale of LICENSED PRODUCTS. If no payment is due, LICENSEE shall so report. LICENSEE shall direct its authorized representative to certify that each report is correct to the best of LICENSEE's knowledge and information. Failure to provide reports as required under this Article shall be a material breach of this Agreement.

4.3 LICENSEE covenants that it will promptly establish and consistently employ a system of specific nomenclature and type designations for LICENSED PRODUCTS and LICENSED PROCESSES to permit identification and segregation of various types where necessary. LICENSEE shall consistently employ, and shall require SUBLICENSEES to consistently employ, the system when rendering invoices thereon. On request, LICENSEE shall promptly explain to LSU, or its auditors, all details reasonably necessary to understand such nomenclature system, all additions thereto and changes therein.

4.4 LICENSEE shall keep, and shall require all SUBLICENSEES to keep, true and accurate records containing data reasonably required for the computation and verification of payments due under this Agreement. LICENSEE shall, and it shall require all SUBLICENSEES to:

- (1) open such records for inspection upon reasonable notice during business hours by either LSU auditor(s) or an independent certified accountant selected by LSU, for the purpose of verifying the amount of payments due; and
- (2) retain such records for six (6) years from date of origination.

The terms of this Article shall survive any termination of this Agreement. LSU is responsible for all expenses of such inspection, except that if any inspection reveals an underpayment greater than five percent (5%) of the amounts due LSU for any ROYALTY PERIOD, then LICENSEE shall pay all expenses of that inspection and the amount of the underpayment and interest to LSU within twenty (20) days of written notice thereof. LICENSEE shall also reimburse LSU for reasonable expenses required to collect any amount underpaid.

ARTICLE 5 - DILIGENCE

5.1

6.7 Failure of LICENSEE to meet any of the obligations in this Article 6 shall be considered a material breach or default of this Agreement under Paragraph 11.3.

8.2 If LICENSEE undertakes to enforce or defend the PATENT RIGHTS by litigation in any country, LICENSEE may withhold up to fifty percent (50%) of running royalties (as described in Article 3.1.1(b)) due to LSU for sales in such country in which the litigation is pending to reimburse -of-pocket litigation expenses, including reasonable

does not affect any other payment due to LSU under this Agreement. If LICENSEE recovers

unreimbursed expenses and legal fees for the litigation, next to reimburse LSU for any payments under Article 3 which are past due or were withheld pursuant to this Article 8, and then to reimburse LSU for any other unreimbursed expenses and legal fees for the litigation. The remaining balance shall be divided equally between LICENSEE and LSU.

8.3 If LICENSEE fails to take action to abate an alleged infringement of a patent within the PATENT RIGHTS within sixty (60) days of a request by LSU to do so (or within a shorter period if required to preserve the legal rights of LSU under applicable law) then LSU has the right to take such action (including prosecution of a suit) at LSU's expense, and LICENSEE shall use reasonable efforts to cooperate in such action, at LICENSEE's expense. LSU has full authority to settle on such terms as LSU determines, except that LSU shall not reach any settlement whereby it provides a license for future activities to a third party under the PATENT RIGHTS in the TERRITORY in the FIELD OF USE without the consent of LICENSEE, which consent LICENSEE may withhold for any reason. LSU retains one hundred percent (100%) of any recovery or settlement under this -of-pocket expenses and payment to LICENSEE

of any unrecovered expenses that LICENSEE pays at LSU's request to third parties in furtherance of such action (such payment not to exceed the recovery or settlement amounts LSU actually receives).

ARTICLE 9 - NO WARRANTIES; LIMITATION ON LSU'S LIABILITY

9.1 LSU, its board members, officers, employees and agents make no representations or warranties that PATENT RIGHTS are or will be held valid or enforceable, nor that the manufacture, importation, use, offer for sale, sale or other distribution of any LICENSED PRODUCTS or the use of LICENSED PROCESSES will be free from infringement of third party patent rights or other third party rights; nor respecting the scope of any of the PATENT RIGHTS.

9.2 LSU, ITS BOARD MEMBERS, OFFICERS, EMPLOYEES AND AGENTS MAKE NO REPRESENTATIONS, AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUME NO RESPONSIBILITIES WHATEVER WITH RESPECT TO DESIGN, DEVELOPMENT, MANUFACTURE, USE, SALE OR OTHER DISPOSITION BY LICENSEE OR SUBLICENSEES OF LICENSED PRODUCTS OR LICENSED PROCESSES.

9.3 LICENSEE AND SUBLICENSEES ASSUME THE ENTIRE RISK AS TO PERFORMANCE OF LICENSED PRODUCTS AND LICENSED PROCESSES. In no event shall LSU, including its board members, officers, employees and agents, be responsible or liable for any direct, indirect, special, incidental, or consequential damages or lost profits or other economic loss or damage with respect to LICENSED PRODUCTS or LICENSED PROCESSES, to LICENSEE, SUBLICENSEES or any other person or entity regardless of legal theory. The above limitations of liability apply even

though LSU, its board members, officers, employees or agents may have been advised of the possibility of such damage.

9.4 LICENSEE shall not, and shall require that its SUBLICENSEES do not, make any statements, representations or warranties whatsoever to any person or entity, or accept any liabilities or responsibilities whatsoever from any person or entity that are inconsistent with this Article 9.

ARTICLE 10 - INDEMNITY; INSURANCE

10.1 LICENSEE shall defend, indemnify and hold harmless and shall require all SUBLICENSEES to defend, indemnify and hold harmless LSU, its board members, officers, employees and agents, from and against any and all claims of any kind arising out of or related to the exercise of any rights granted LICENSEE under this Agreement or the breach of this Agreement by LICENSEE.

10.2 LSU is entitled to participate at its option and expense through counsel of its own selection, and may join in any legal actions related to any such claims, demands, damages and expenses under Paragraph 10.1 above.

10.3(a) Prior to the occurrence of any of the activities specified in subparagraph (b), LICENSEE shall purchase and maintain in effect a commercial general liability insurance policy, including product liability coverage, in the amount determined as set forth in subparagraph (c). Such policy shall provide reasonable coverage for all claims with respect to any LICENSED PROCESS used and any LICENSED PRODUCTS manufactured, used, sold, licensed, or otherwise distributed by LICENSEE.

(b) LICENSEE shall obtain the requisite insurance coverage prior to any manufacture of, use of, distribution of, sale of, offer for sale of, importation of, or commercial activity involving any LICENSED PRODUCT or LICENSED PROCESS, including use in any clinical trial.

- (d) All insurance obtained pursuant to this Paragraph shall be with an insurer with a current A.M. Best rating of A+8 or better.
- (e) All insurance obtained pursuant to this Paragraph shall specify as additional insureds the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, including its board members, officers, agents and employees.
- (f) Prior to commencing any of the activities described in subparagraph (b), LICENSEE shall furnish to LSU a certificate of insurance evidencing that it has obtained the amount and type of insurance required pursuant to this Paragraph.
- (g) LICENSEE shall furnish current certificate(s) of insurance evidencing the required insurance coverage on an annual basis in the annual report due each July 31 under the provisions of Paragraph 4.1. At any time, LSU shall have the right to review the amount of insurance and to require LICENSEE to increase the amount, consistent with the current industry practice.
- (h) The provisions of this paragraph shall apply equally to any SUBLICENSEE (including any ^h only, shall be considered a SUBLICENSEE). Any contract or agreement between LICENSEE and SUBLICENSEE shall require that SUBLICENSEE comply with all insurance requirements provided for in this Paragraph in the same manner required of LICENSEE, including, but not limited to, the requirements for determining the amount, obtaining, and providing evidence of insurance to LSU. No SUBLICENSEE shall commence any of the activities described in subparagraph (b) without complying with the provisions of this Paragraph in the same manner required of LICENSEE.

ARTICLE 11 - TERM AND TERMINATION

11.1 If LICENSEE ceases to carry on its business (or that part of its business pertaining to LICENSED PRODUCTS and LICENSED PROCESSES), then this Agreement shall terminate upon written notice by LSU.

11.2 If LICENSEE fails to make any payment due to LSU, LSU shall have the right to terminate

11.4 In the event LICENSEE brings a civil action seeking, through ordinary, declaratory or any other form of relief, to invalidate any patent licensed under this Agreement, LSU may immediately terminate this Agreement upon written notice to LICENSEE.

11.5 L

(6)

whether the other agreement is intended to continue in effect; or if the present Agreement is intended to supersede the prior agreement.

14.4 If a court of competent jurisdiction or an arbitrator finds any term of this Agreement invalid, illegal or unenforceable, that term will be curtailed, limited or deleted, but only to the extent necessary to remove the invalidity, illegality or unenforceability, and without in any way affecting or impairing the remaining terms.

14.5 LICENSEE agrees to mark all LICENSED PRODUCTS in the United States with all

15.1
Louisiana Code of Governmental Ethics.

Permanent Memorandum 67, and the

15.2 Unless LSU provides appropriate formal written approvals, all development, manufacture, and marketing of LICENSED PRODUCTS and LICENSED PROCESSES will take place without the use of LSU funds, facilities, other resources of LSU, or funds administered by LSU.

15.3 LICENSEE shall cooperate with LSU in developing and implementing appropriate plans for management of potential conflicts of interest and conflicts of LSU employees



Add the following if LSU is taking equity for consideration:

APPENDIX B
TO THE LICENSE AGREEMENT FOR LSU FILE _____
EFFECTIVE THE _____ DAY OF _____ 02 _____
BETWEEN _____
AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL COLLEGE

requisite[corporate] power to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is in good standing and qualified to do business as a foreign corporation in Louisiana and every other jurisdiction where required by law.

(b) Stock The Company has _____ shares of Common Stock duly authorized, of which _____ are issued and outstanding. [Describe other classes of capital stock, if any, authorized and all outstanding, options, warrants, etc.]

(c) [Corporate] Power The Company has all requisite legal [corporate] power and authority to enter into this Agreement, to issue and transfer the shares of LSU Common Stock hereunder and to carry out and perform its obligations under the terms of this Agreement.

(d) Authorization. Issuance of all [shares][units] of the LSU Common Stock has been duly authorized, and all such [shares][units] are validly issued, fully paid and nonassessable, and free of any liens, encumbrances, or security interests whatsoever; *provided, however,* that the LSU Common Stock may be subject to restriction transfer under state and/or federal securities laws. [Describe other restrictions on transfer, if any]

(e) Certificate; Bylaws A true and complete copy of the Certificate, including all amendments thereto, is attached hereto Exhibit 1. A true and complete copy of the Bylaws of the Company, including all amendments thereto, is attached hereto Exhibit 2.

(f) The Company has the full right, power and authority to enter into this Agreement and to make the representations and warranties contained hereunder. This Agreement constitutes the valid and binding obligation of the Company enforceable in accordance with its terms.

(g) No consent, approval or authorization of, or designation, declaration or filing with, any governmental authority or other person or entity on the part of the Company is required in connection with the valid execution, delivery or performance of this Agreement by the Company.

4. Representations and Warranties of LSU LSU hereby represents and warrants to the Company as follows:

(a) (i) Except for the transfer of a portion of the LSU Common Stock as permitted by Paragraph 4(a)(iii), the LSU Common Stock is being (and with respect to any additional LSU Common Stock issued to LSU in the future pursuant to Paragraph 3.9 of the License

with a view to, or for the purpose of resale in connection with, any distribution or public
Securities

Act

(ii) LSU does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or otherwise dispose of the LSU Common Stock except for transfers to inventor(s) pursuant to Paragraph 4(a)(iii).

(iii) At the request of LSU, portion of the LSU Common Stock may be transferred to and registered in the name of the inventor(s) as permitted by the Regulations of LSU.

(b) LSU understands that the ~~shares~~ ~~units~~ LSU Common Stock has not been registered under the Securities Act by reason of their issuance in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act.

(c) the

THE BOARD OF SUPERVISORS OF
LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL
COLLEGE

By: _____

Name: _____

Title: President

Address:

LSU System Office

LSU Campus

3810 Lakeshore Drive

Baton Rouge, LA 70808

Attention: President

SCHEDULE A
INITIAL ISSUANCE OF LSU COMMON STOCK

[shares][units]

EXHIBIT 1
CERTIFICATE OF [INCORPORATION][FORMATION] OF THE COMPANY

EXHIBIT 2
[BYLAWS][OPERATING AGREEMENT] OF THE COMPANY

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