**LicA#1**

Exhibit 10.1

**LICENSE AGREEMENT**

This LICENSE AGREEMENT ("Agreement") is made and effective as of this 19th day of January, 2012 (the "Effective Date"), by and between EATING Is FUN, INC., (“Licensor”) a Nevada Corporation, with its principal offices located at [...] and CREAMY DELIGHTS, INC. (“Licensee”) a New York corporation, with its principal place of business located at [...], New York 10473 (together the "Parties").

**WITNESSETH**

WHEREAS, Licensor is the developer of Yum Yum Custard, and is the registered owner of the registered mark *Yum Yum Custard,* (“Licensed Mark”) and has the sole and exclusive rights to license Yum Yum Custard and the Licensed Mark pursuant to the terms hereof; and,

WHEREAS, Licensee is familiar with the business of manufacturing, promoting and selling ice cream products and Licensee desires to obtain from Licensor, the exclusive right and license to sell, manufacture, market, distribute, promote, advertise and sell Yum Yum Custard in the Territory (as hereinafter defined), and to use the Licensed Mark in connection with the manufacturing, marketing, distribution, promotion, advertising and selling of Yum Yum Custard; and,

WHEREAS, Licensor is willing to grant the license pursuant to the terms contained herein.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the Parties hereto covenant and agree as follows:

**ARTICLE 1**

**DEFINITIONS**

The following definitions shall apply:

A. TERRITORY. All supermarkets, club stores, independent markets, chain convenience stores and mom & pop stores in the United States of America.

B. LICENSED PRODUCT.  The Yum Yum Custard products listed on Schedule 1 attached hereto, including any additional flavors and/or line extensions to the current line.

C. NET SALES. The sales price at which Licensee or any Subsidiary or Affiliate (as hereinafter defined) bills its Non-Subsidiary or Non-Affiliate customers for Licensed Product less any off invoice promotional allowances, but for the purposes of this Agreement shall not be net of any advertising expenses or slotting allowances, whether such advertising expenses or slotting allowances are paid in cash, or with Licensed Product.

D. SUBSIDIARY. Any corporation or other entity which is 100% directly or indirectly owned by Licensee.

E. AFFILIATE. Any corporation or other entity which (i) is at least 50% owned by the Licensee, (ii) is otherwise controlled by Licensee or (iii) controlled by the principals of the Licensee.

**ARTICLE 2**

**GRANT OF LICENSE RIGHTS**

Upon the terms and conditions of this Agreement, Licensor hereby grants to Licensee, during the term of this Agreement, the sole and exclusive right and license to manufacture and sell the Licensed Product, and to use the Licensed Mark in connection with such sales of the Licensed Product in the Territory.

**ARTICLE 3**

**EXCLUSIVITY OF LICENSE**

Licensor shall not grant any other license effective during the term of this Agreement for the Licensed Product, or the Licensed Mark in the Territory.  Licensor acknowledges that Licensee can and presently does manufacture and/or distribute in parts of the Territory goods similar to the Licensed Product covered by this Agreement. Licensor further acknowledges and consents to Licensee obtaining other additional licenses for the manufacture and/or distribution of other similar lines of goods during the term of this Agreement. Licensee shall not, during the term of this Agreement and thereafter, challenge either Licensor's title in and to the Licensed Product or the validity of this License.

**ARTICLE 4**

**TERM OF AGREEMENT**

A.  Subject to the rights of termination set forth in Article 13 of this Agreement, the initial term of this Agreement shall be for three (3) years commencing on the execution date above and terminating on December 31, 2014.

B.  Licensee shall have the option to renew this Agreement for an initial three-year period, so long as Licensee has achieved gross sales greater than or equal to $300,000 in the year ended December 31, 2014.

C.  To the extent that the Agreement is renewed pursuant to Article 4(b), and until such time as the Licensee’s annual Net Sales, on a calendar basis, are less this than one million five hundred thousand dollars ($1,500,000), this Agreement shall be automatically renewed for subsequent three (3) year periods so long as the Licensee’s Net Sales increases, for each two (2) year period commencing January 1, 2015, are greater than or equal to ten percent (10%).  For purposes of this Article 4(c), the initial two (2) year period shall be the year commencing on January 1, 2015 and ending December 31, 2016, and every two (2) year period retrospectively beginning on each January 1st thereafter until such time as annual Net Sales, on a calendar basis, are greater than or equal to one million five hundred thousand dollars ($1,500,000).  The base year to calculate such Net Sales increases shall be the year ended December 31, 2014.

D.  To the extent that the Agreement is renewed pursuant to Article 4(b) or 4(c), and the Licensee’s annual Net Sales, on a calendar basis, are greater than one million five hundred thousand dollars ($1,500,000), this Agreement shall be automatically renewed for subsequent three (3) year periods, so long as the Licensee’s Net Sales increases, for each retrospective two (2) year period commencing on January 1st of the year following the calendar year that annual Net Sales are equal to or greater than one million five hundred thousand dollars ($1,500,000), are greater than or equal to five percent (5%).  The base year to calculate such Net Sales increases shall be the year ended December 31st of the year that Net Sales were equal to or greater than one million five hundred thousand dollars ($1,500,000).

E.  Licensee may terminate this Agreement at any time upon ninety (90) days prior written notice to Licensor, and Licensee shall notify Licensor of its intent to either renew or not renew this Agreement not later than  one hundred eighty (180) days prior to any termination date pursuant to this Agreement.

**ARTICLE 5**

**CONFIDENTIALITY**

The Parties acknowledge that all information relating to the business and operations of Licensor and Licensee which they learn or have learned during or prior to the term of this Agreement, including the Licensed Product’s proprietary recipe to make the Licensed Product, is confidential (the “Confidential Information”). Both Parties acknowledge the need to preserve the confidentiality and secrecy of the Confidential Information, especially the Licensed Product’s proprietary recipe and agree that both during the term of this Agreement and after the expiration or termination hereof, they shall not use or disclose the Confidential Information, and shall take all necessary steps to preserve in all respects such confidentiality and secrecy of the Confidential Information. The provisions of this paragraph shall not apply with respect to any Confidential Information which has entered the public domain so long as such Confidential Information was not released (i) as a result of the fault of either Party or, (ii) by any person subject to a separate confidentiality agreement with either Party. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

**ARTICLE 6**

**DUTIES OF LICENSEE**

A. Best Efforts. During the term of this Agreement, Licensee will use its best efforts to exploit the rights herein granted throughout the Territory and to sell the maximum quantity of Licensed Product therein consistent with the Licensor’s high standards for manufacturing the Licensed Product.

B. Manufacturing, Sales and Marketing Expenses. Licensor shall not be responsible for the cost of manufacturing the Product, or any cost associated with marketing and advertising the Licensed Product including any slotting allowances. Licensee shall bear any and all costs related thereto.

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**ARTICLE 7**

**QUALITY STANDARDS**

A. Manufacture of Licensed Product; Quality Control.

(i) The manufactured Licensed Product shall at all times be of the highest quality consistent with the Licensed Product currently manufactured by the Licensor.  Licensee agrees to obtain pre approval from Licensor for (i) any and all ingredients used to manufacture the Licensed Product, (ii) any vendors providing ingredients to manufacture the Licensed Product, (iii) any vendors providing retail packaging for the Licensed Product and (iv) any co-packer to manufacture the Licensed Product.

(ii) All Licensed Product shall be manufactured, labeled, sold, distributed and advertised in accordance with all applicable national, state and local laws and regulations.

(iii) Licensee shall submit to Licensor for approval any new product for Licensor's review (“Proposed New Products”), which approval shall not be unreasonably withheld.  In the event that Licensor does not respond to Licensee within ten 10 days of the receipt of the Proposed New Products, any and all items included in the Proposed New Products shall be deemed approved.

B.  Purchase of Raw Materials from Licensor. Licensor will sell to Licensee all of its existing raw materials inventory, on a when and as needed basis, to the Licensee at the lower of ninety percent (90%) of the Licensor’s cost, or at the avoidable cost of similar raw materials which could otherwise be purchased by the Licensee.  Licensor represents and warrants that the raw materials sold to Licensee under this Article 7B are good and salable.

**ARTICLE 8**

**SALES ROYALTY**

A. Licensee shall pay to Licensor a royalty on sales of the Licensed Product equal to four percent (X%) of each month’s Net Sales (the “Sales Royalty”). The Sales Royalty payable hereunder shall be accounted for and paid on a monthly basis within thirty (30) days after the close of the prior month’s sales.  In other words, the actual Sales Royalty will be paid thirty (30) days in arrears computed on the basis of Net Sales during the calendar month immediately preceding the day upon which Sales Royalties are being paid.

B. In connection with any Licensed Product sold and/or distributed by Licensee to any entity at a price lower than the price otherwise charged in the normal equivalent channels of trade, the Sales Royalty payable thereon shall be equal to four percent (4%) of the price otherwise charged in the normal equivalent channels of trade.

**ARTICLE 9**

**SALES STATEMENT; BOOKS AND RECORDS; AUDITS**

A. Sales Statement. Licensee shall deliver to Licensor at the time each Sales Royalty payment is due, a reasonably detailed report indicating the Net Sales and a computation of the amount of Sales Royalty payable hereunder for said period. Such statement shall be furnished to Licensor whether or not any Licensed Product has been sold during the period of which such statement is due.

B. Books and Records; Audits. Licensee shall prepare and maintain, in such manner as will allow Licensor’s accountants to audit same in accordance with generally accepted accounting principles, complete and accurate books of account and records (specifically including without limitation the originals or copies of documents supporting entries in the books of account) in which accurate entries will be made covering all transactions, arising out of or relating to this Agreement. Licensor and its duly authorized representatives shall have the right, for the duration of this Agreement and for two (2) years thereafter, during regular business hours and upon seven (7) business days advance notice (unless a shorter period is appropriate in the circumstances), to audit said books of account and records and examine all other documents and material in the possession or under the control of Licensee with respect to the subject matter and the terms of this Agreement, including, without limitation, invoices, credits and shipping documents, and to make copies of any and all of the above. All such books of account, records, documents and materials shall be kept available by Licensee for at least two (2) years after the end of the period to which they relate. If, as a result of any audit of Licensee's books and records, it is shown that Licensee's payments were less than the amount which should have been paid with respect to sales occurring during the period in question, Licensee shall reimburse Licensor for the cost of such audit and shall make all payments required to be made to eliminate any discrepancy revealed by said audit within ten (10) days after Licensor's demand therefore.

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**ARTICLE 10**

**INDEMNIFICATION AND INSURANCE**

A. Indemnification of Licensor. Licensee hereby agrees to save and hold Licensor and its agents harmless of and from and to indemnify them against any and all claims, suits, injuries, losses, liability, demands, damages and expenses (including, subject to subparagraph D below, Licensor's reasonable attorneys' fees and expenses) which Licensor may incur or be obligated to pay, or for which either may become liable or be compelled to pay in any action, claim or proceeding against it, for or by reason of any acts, whether of omission or commission, that may be committed or suffered by Licensee or any of its servants, agents or employees in connection with Licensee's performance of this Agreement, including but not limited to those arising out of the alleged defect in any Licensed Product produced by Licensee under this Agreement, the manufacture, labeling, sale, distribution or advertisement of any Licensed Product by Licensee in violation of any national, state or local law or regulation or the breach of Article 5 hereof. The provisions of this paragraph and Licensee's obligations hereunder shall survive the expiration or termination of this Agreement.

B. Indemnification of Licensee. Licensor hereby represents and warrants that it has the right and the corporate authority to enter into this Agreement, and that it has (i) received any and all permissions and (ii) taken any and all necessary corporate action, including obtaining a Board of Directors Resolution to allow the Licensor to enter in this Agreement.  Licensor agrees to save and hold Licensee and its agents harmless of and from, and to indemnify them against any and all claims, suits, injuries, losses, liability, demands, damages and expenses (including Licensee’s reasonable attorneys' fees and expenses) which may arise from any claim by any shareholder, lender, or third party as a result of the Licensor entering into this Agreement.

C. Insurance Policy. Licensee shall procure and maintain at its own expense in full force and effect at all times during which the Licensed Product is being sold, with a responsible insurance carrier acceptable to Licensor, a public liability insurance policy including products liability coverage with respect to the Licensed Product with a limit of liability not less than one million dollars ($1,000,000). It shall be acceptable if such coverage is provided by a product liability policy and an additional umbrella policy. Such insurance policies shall be written for the benefit of Licensee and Licensor and shall provide for at least thirty (30) days prior written notice to said parties of the cancellation or substantial modification thereof. Licensor shall be a named insured on each such policy. Such insurance may be obtained by Licensee in conjunction with a policy which covers products other than Licensed Product.

D. Evidence of Insurance. Licensee shall, from time to time upon reasonable request by Licensor, promptly furnish or cause to be furnished to Licensor evidence in form and substance satisfactory to Licensor of the maintenance of the insurance required by subparagraph B above, including, but not limited to, copies of policies, certificates of insurance (with applicable riders and endorsements) and proof of premium payments. Nothing contained in this paragraph shall be deemed to limit in any way the indemnification provisions of the subparagraph A above.

E. Notice. Licensor will give Licensee notice of any action, claim, suit or proceeding in respect of which indemnification may be sought and Licensee shall defend such action, claim, suit or proceeding on behalf of Licensor. In the event appropriate action is not taken by Licensee within thirty (30) days after its receipt of notice from Licensor, then Licensor shall have the right, but not the obligation, to defend such action, claim, suit or proceeding. Licensor may, subject to Licensee's indemnity obligation under subparagraph A above, be represented by its own counsel in any such action, claim, suit or proceeding. In any case, the Licensor and the Licensee shall keep each other fully advised of all developments and shall cooperate fully with each other in all respects in connection with any such defense as is made. Nothing contained in this paragraph shall be deemed to limit in any way the indemnification provisions of the subparagraph A above except that in the event appropriate action is being taken by Licensee by counsel reasonably acceptable to Licensor, with respect to any not-trademark or intellectual property, action, claim, suit or proceeding. Licensor shall not be permitted to seek indemnification from Licensee for attorneys' fees and expenses incurred without the consent of Licensee. In connection with the aforesaid actions, claims and proceedings, the parties shall, where no conflict of interest exists, seek to be represented by common reasonably acceptable counsel. In connection with actions, claims or proceedings involving trademark or other intellectual property matters which are subject to indemnification hereunder, Licensor shall at all times be entitled to be represented by its own counsel, for whose reasonable fees and disbursements it shall be entitled to indemnification hereunder.

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**ARTICLE 11**

**THE LICENSED TRADEMARK**

A. Licensee shall not join any name or names with the Licensed Mark so as to form a new mark, unless and until Licensor consents thereto in writing. Licensee acknowledges the validity of the Licensed Mark and the rights of Licensor with respect to the Licensed Mark in the Territory in any form or embodiment thereof and the goodwill attached or which shall become attached to the Licensed Mark in connection with the business and goods in relation to which the same has been, is or shall be used. Sales by Licensee shall be deemed to have been made by Licensor for purposes of trademark registration and all uses of the Licensed Mark by Licensee shall inure to the benefit of Licensor. Licensee shall not, at any time, do or suffer to be done, any act or thing which may in any way adversely affect any rights of Licensor in and to the Licensed Mark or any registrations thereof or which, directly or indirectly, may reduce the value of the Licensed Mark or detract from its reputation.

B. Licensee shall use the Licensed Mark in each jurisdiction in the Territory strictly in compliance with the legal requirements obtained therein and shall use such markings in connection therewith as may be required by applicable legal provisions. Licensee shall cause to appear on all Licensed Product and on all materials on or in connection with the sale of the Licensed Product the Licensed Mark.

D. Licensee shall never challenge the validity of the Licensed Mark or any application for registration thereof, or any trademark registration hereof, or any rights of Licensor therein. The foregoing shall not be deemed to prevent Licensee from asserting, as a defense to a claim of breach of contract brought against Licensee by Licensor for failure to perform its obligations hereunder, that its ceasing performance under this Agreement was based upon Licensor's failure to own the Licensed Mark in the United States of America, provided that it is established in a court of law that Licensor does not own the Licensed Mark, so as to preclude the grant of the license provided herein.

E. In the event that Licensee learns of any infringement or imitation of the Licensed Mark or of any use by any person of a trademark similar to the Licensed Mark, it promptly shall notify Licensor thereof. In no event, however, shall Licensor be required to take any action if it deems it inadvisable to do so.

**ARTICLE 12**

**SALE OF THE LICENSED MARK & ASSETS**

Licensor agrees that during the term of this Agreement, or within 365 days after any termination of this Agreement, other than as permitted Article 13A1, A2, A3 & A5 of this Agreement that if the Licensor shall sell any of its assets related to the Licensed Product or the Licensed Mark, or if the Licensor is sold (the “Sale,” as hereinafter defined), Licensee, or its designees shall be entitled to receive, as compensation for increasing the value of the Licensed Product and the Licensed Mark an amount of money (“Licensed Mark Sale Compensation”):based upon the following formula:

(Gross Sales Proceeds from the sale of the Licensed Mark, or any asserts related thereto -

Direct Costs of Sale - $1 million) x \_\_\_ percent (XX%)) = Licensed Mark Sale Compensation

As used herein, the term "Sale" means (i) any sale, lease, exchange or other transfer (in one transaction or series of transactions) of any of the assets related to the Licensed Product and/or the Licensed Mark;  (ii) any consolidation or merger of the Licensor with any other entity (including, without limitation, a triangular merger) where the stockholders of the Licensor immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own, directly or indirectly, shares representing at least eighty percent (80%) of the combined voting power of all of the outstanding securities of the entity issuing cash or securities in the consolidation or merger (or its ultimate parent corporation, if any, or (iii) the Licensor is sold in its entirety.  As used herein, the term "Gross Sales Proceeds" means any and all consideration, including, without limitation, cash, notes, securities or otherwise, received by Licensor, or any stockholder of Licensor, including, without limitation, any such consideration payable over time as an earn-out or subject to any contingency’s.  Notwithstanding anything to the contrary, to the extent that the Licensor is sold in its entirety, "Gross Sales Proceeds" means only that portion of the sales price attributable to the assets of the Licensed Mark, and not the total sales price of the Licensor.

Direct Costs of Sale means any and all commissions and professional fees, including legal & accounting fees, directly attributable to the Sale.

Licensor shall (i) provide Licensee with at least thirty (30) days prior written notice of a pending Sale, (ii) provide to Licensee such information regarding the Sale as Licensee may request, and (iii) cause the purchaser or any other person paying the Gross sales proceeds in the Sale to pay the Licensed Mark Sale Compensation directly to the Licensee or its designees.  In the event the Licensor or any such Stockholder receives any of the Gross Sales Proceeds, Licensor, or such stockholder, as the case may be, shall hold such amount in trust for Licensee and promptly pay such amount to Licensee.

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**ARTICLE 13**

**DEFAULTS; TERMINATION**

A. The following conditions and occurrences shall constitute "Events of Default" by Licensee:

1.

The failure to pay Licensor the full amount due it under any of the provisions of this Agreement by the prescribed date for such payment;

2.

The failure to deliver full and accurate reports pursuant to any of the provisions of this Agreement by the prescribed due date therefore;

3.

The making or furnishing of a knowingly false statement in connection with or as part of any material aspect of a report, notice or request rendered pursuant to this Agreement;

4.

The failure to maintain the insurance required by Article10;

5.

The use of the Licensed Mark or sale of the Licensed Product in an unauthorized or unapproved manner;

6.

The commencement against Licensee of any proceeding in bankruptcy, or similar law, seeking reorganization, liquidation, dissolution, arrangement, readjustment, discharge of debt, or seeking the appointment of a receiver, trustee or custodian of all or any substantial part of Licensee's property, not dismissed within sixty (60) days, or Licensee's making of an assignment for the benefit of creditors, filing of a bankruptcy petition, its acknowledgment of its insolvency or inability to pay debts, or taking advantage of any other provision of the bankruptcy laws;

7.

The material breach of any other material promise or agreement made herein.

B. In the event Licensee fails to cure (i) an Event of Default within thirty (30) days after written notice of default is transmitted to Licensee under Article 13A.1, A2, A.3, A.5, A.6, or A.7; or (ii) Licensee fails to cure any other Event of Default within sixty (60) days after written notice of default is transmitted to Licensee or within such further period as Licensor may allow, this Agreement shall, at Licensor's option, be terminated, on notice to Licensee, and all Sales Royalties as in Article 8 above shall become due, without prejudice to Licensor's right to receive other payments due or owing to Licensor under this Agreement or to any other right of Licensor, including the right to damages and/or equitable relief.

C. Upon the termination of this Agreement, in the event this Agreement is not renewed as provided in Article 4 above, or in the event of the termination or expiration of a renewal term of this Agreement, Licensee, except as specified herein, will immediately discontinue use of the Licensed Mark, and sales of the Licensed Product and will not resume the use thereof, or adopt any colorable imitation of the Licensed Mark, or the Licensed Product.

D. The following condition and occurrence shall constitute Events of Default by Licensor:

1.

Granting by the Licensor of a license to either the Licensed Product or the Licensed Mark to any other person or entity during the term of this Agreement.

E. In the event Licensor fails to cure the Event of Default within thirty (30) days after written notice of default is transmitted to Licensee under Article 13D.1, Licensee may take any action deemed necessary by the Licensee to protect the license and any other rights granted to Licensee under this Agreement.

**ARTICLE 14**

**RIGHTS ON EXPIRATION OR TERMINATION**

A. If this Agreement expires or is terminated, Licensee shall cease to manufacture the Licensed Product (except for work in process or to balance component inventory) but shall be entitled, for an additional period of twelve (12) months only, on a non-exclusive basis, to sell and dispose of its inventory. Such sales shall be made subject to all of the provisions of this Agreement and to an accounting for and the payment of Sales Royalty thereon.

B. Notwithstanding any termination in accordance with Article 13 above, Licensor shall have and hereby reserve all rights and remedies which it has, or which are granted to it by operation of law, to enjoin the unlawful or unauthorized use of the Licensed Mark and the sale of the Licensed Product, and to Sales Royalties payable by Licensee pursuant to this Agreement and to be compensated for damages for breach of this Agreement.

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**ARTICLE 15**

**SUBLICENSING AND DISTRIBUTION**

A. (i) This Agreement and the License or other rights granted hereunder may be assigned, sublicensed or transferred by Licensee, upon the approval of Licensor in advance, in writing, which approval will not be unreasonably denied or delayed. Any transferee shall be required to prove to Licensor that it is capable of marketing, distributing and/or manufacturing the Licensed Product.

(ii) Consolidation. Notwithstanding anything contained to the contrary in this Agreement, this Agreement shall not terminate if Licensee is merged or otherwise consolidated into another entity which is the surviving entity of equal or superior financial strength.

B. Licensee shall be entitled to use distributors in connection with its sale of the Licensed Product under this Agreement without approval of Licensor. No such distributor, however, shall be entitled to exercise any of Licensee's rights hereunder except for the sale of Licensed Product which have been approved by Licensor hereunder.

**ARTICLE 16**

**MISCELLANEOUS**

A. Representations. The parties respectively represent and warrant that they have full right, power and authority to enter into this Agreement and perform all of their obligations hereunder and that they are under no legal impediment which would prevent their signing this Agreement or consummating the same. Licensor represents and warrants that it has the right to license the Licensee the Licensed Mark and the Licensed Product and that Licensor has not granted any other existing license to use the Licensed Mark or to sell the Licensed Product in the Territory and that no such license will be granted during the term of this Agreement except in accordance with the provisions hereof.

B. Licensor's Rights. Notwithstanding anything to the contrary contained in this Agreement, Licensor shall not have the right to negotiate or enter into agreements with third parties pursuant to which it may grant a license to use the Licensed Mark in connection with the manufacture, distribution and/or sale of the Licensed Product covered hereunder in the prior to the termination or expiration of this Agreement.

C.  Governing Law; Entire Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York applicable to agreements made and to be performed in said State, contains the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral or written understandings and agreements relating thereto and may not be modified, discharged or terminated, nor may any of the provisions hereof be waived, orally.

D. No Agency. Nothing herein contained shall be construed to constitute the parties hereto as partners or as joint venturers, or either as agent of the other, and Licensee shall have no power to obligate or bind Licensor in any manner whatsoever.

E. No Waiver. No waiver by either party, whether express or implied, of any provision of this Agreement, or of any breach or default thereof, shall constitute a continuing waiver of such provision or of any other provision of this Agreement. Acceptance of payments by Licensor shall not be deemed a waiver by Licensor of any violation of or default under any of the provisions of this Agreement by Licensee.

F. Void Provisions. If any provision or any portion of any provision of this Agreement shall be held to be void or unenforceable, the remaining provisions of this Agreement and the remaining portion of any provision held void or unenforceable in part shall continue in full force and effect.

G. Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if those words or phrases were never included in this Agreement, and no implication or inference shall be drawn from the fact that the words or phrases were so stricken out or otherwise eliminated.

H. Force Majeure. Neither party hereto shall be liable to the other for delay in any performance or for the failure to render any performance under the Agreement (other than payment to any accrued obligation for the payment of money) when such delay or failure is by reason of lockouts, strikes, riots, fires, explosions, blockade, civil commotion, epidemic, insurrection, war or warlike conditions, the elements, embargoes, act of God or the public enemy, compliance with any law, regulation or other governmental order, whether or not valid, or other similar causes beyond the control of the party effected. The party claiming to be so affected shall give notice to the other party promptly after it learns of the occurrence of said event and of the adverse results thereof. Such notice shall set forth the nature and extent of the event. The delay or failure shall not be excused unless such notice is so given.

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Notwithstanding any other provision of this Agreement, either party may terminate this Agreement if the other party is unable to perform any or all of its obligations hereunder for a period of six (6) months by reason of said event as if the date of termination were the date set forth herein as the expiration date hereof.

I. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective successors, Licensor's transferees and assigns and Licensee's permitted transferees and assigns.

J. Resolution of Disputes. Any controversy or claim arising out of, in connection with, or relating to this Agreement, shall be determined by arbitration by a three person arbitration panel at the office of the American Arbitration Association. Both Parties shall share equally the cost of such arbitration (except each shall bear its own attorney's fees). Any decision rendered by the arbitrators shall be final and binding, and judgment may be entered in any court having jurisdiction.

K. Consolidation. Notwithstanding anything contained to the contrary in this Agreement (a) this Agreement shall not terminate if Licensor is merged or otherwise consolidated into another entity which is the surviving entity. (b) Licensor shall be entitled to assign this Agreement to any Corporation to which the Licensed Mark, or the Licensed Product is assigned.

L. Survival. The provisions of Articles 9, 10A, 10D, 11, 12, 14, 15, and 16 shall survive any expiration or termination of this Agreement.

M. Paragraph Headings. The paragraph headings in this Agreement are for convenience of reference only and shall be given no substantive effect.

**ARTICLE 17**

**NOTICES**

Any notice or other communications required or permitted by this Agreement to be given to a party will be in writing and will be considered to be duly given when sent by any recognized overnight courier service to the party concerned to the following persons or addresses (or to such other persons or addresses as a party may specify by notice to the other):

TO LICENSOR:

Pamela S. Bender , III, President

Eating Is FUN, Inc.

[...]

Telephone:  (213) [...]

Email: [...]

WITH A COPY TO:

Tom Whittins

Financial Associates

[...]

Telephone: [...]

Email: [...]

TO LICENSEE:

Frank L. Habib

Owner

[...]

Telephone: [...]

Email:  [...]

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Notice of the change of any such address shall be duly given by either party to the other in the manner herein provided.

EXECUTED as of the day and year first written above:

CREAMY DELIGHTS, INC.

*/s/ Frank L. Habib*

By: Frank L. Habib

Owner

EATING IS FUN, INC.

*/s/ Pamela S. Bender*

By:  Pamela S. Bender

President

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**SCHEDULE 1**

**Schedule of Licensed Products**

1. A

2. B

3. C

4. D

5. E

6. F

7. G

8. H

9. I

10. K

**LicA#2**

LICENSING AGREEMENT

Exhibit 10.21

Date:

January 31, 2007

CMS # 5344

**REALLY COOL STUFF INC.**

**Merchandise License Agreement**

THIS MERCHANDISE LICENSE AGREEMENT (“Agreement”) dated as of January 31, 2007 by and between REAL COOL STUFF, Inc. (hereinafter referred to as “RCS” or "Licensor"), [...], NJ and Beyond Brothers, Inc., [...] MI 48334 (hereinafter referred to as "Licensee").

**THIS WILL CONFIRM OUR AGREEMENT AS FOLLOWS:**

**1.**

**GRANT OF LICENSE:**  Subject to the terms and conditions of this Agreement, Licensor grants to Licensee for the Term (defined herein), the license to use the trademarks, copyrights, characters, designs, and likenesses described in Schedule A (collectively called the "Property"), solely in connection with the manufacture, distribution, promotion, advertisement and sale of the article(s) described in Schedule B (herein called the "Licensed Products"). This license does not constitute and may not be used so as to imply the endorsement of the Licensed Products by Licensor.  The license granted herein is non-exclusive; nothing herein shall be construed so as to prevent Licensor from either granting any other licenses for the Property (including without limitation, licenses for the same or similar products to the Licensed Products) or from itself using the Property in any matter whatsoever.

**2.**

**TERRITORY:**  Licensee shall be entitled to use the license granted hereunder only in the territory described in Schedule C (called the "Territory").

**3.**

**LICENSE PERIOD:**  The license granted hereunder shall be effective and terminate as of the dates specified in Schedule D (the "Term"), unless sooner terminated or renewed in accordance with the terms and conditions hereof.

**4.**

**PAYMENT:**

(a)

**Royalty Rate**. Licensee shall pay to Licensor a royalty equal to the sum of the percentages set forth in Schedule E on all Net Sales (as defined below) by Licensee of the Licensed Products.  The term "Net Sales" shall mean the gross amount of sales of Licensed Products at the invoiced selling price, net:

(i) normal and reasonable cash and quantity discounts; and

(ii) actual returns for credit not to exceed two percent (2%) of sales in any quarterly reporting period.

No deduction shall be made by Licensee for uncollectible accounts or for costs incurred in manufacturing, selling, distributing, advertising (including cooperative allowances).

(b)

**Minimum Royalties**.

(i) During the Term, Licensee shall pay to Licensor a minimum royalty consisting of an advance payment to be applied against a minimum guarantee for the Term. The amounts of the advance and minimum guarantee and the payment dates for such amounts are specified in Schedule F. No part of any such minimum royalty for the Term shall in any event be repayable to Licensee. Any royalty payments received by Licensor which exceed the Term's minimum royalty shall not be credited toward the next succeeding term's minimum royalty.

(ii) The royalties due from Licensee to Licensor pursuant to Paragraph 4 (a) with respect to sales made of Licensed Products during the Term shall be applied first against any advance payment made to Licensor for the Term.  After such advance payment has been recouped for the Term, all royalties due with respect to sales made of Licensed Products during the Term that are in excess of the advance payment made to Licensor for the Term shall be paid by Licensee to Licensor in accordance with this Paragraph 4.  If as of the date a minimum guarantee installment payment is due, the total of the advance payment and royalty payments made to Licensor with respect to sales made of the Licensed Products prior to the due date during the Term for such installment payment  is less than the total minimum guarantee owed as of such installment due date. Licensee shall, for avoidance of doubt, also pay to Licensor on the expiration of the Term the difference between the minimum guarantee less all prior advance payments and royalty payments made by Licensee to Licensor with respect to the Term.  Licensee shall also pay to Licensor when due any royalty payments due with respect to sales of Licensed Products made during the last quarter of the Term and the sell off period to the extent that such royalty payments exceed the difference between the minimum guarantee for the Term less all prior advance payments and royalty payments made by Licensee to Licensor with respect to the Term.

(iii) During any renewal term (“Renewal Term”), Licensee shall also pay Licensor a minimum royalty consisting of an advance payment to be applied against a minimum guarantee for the Renewal Term. The amounts of the Renewal Term advance and minimum guarantee and the payment dates for such amounts are specified in Schedule F.  No part of any such minimum guarantee for the Renewal Term shall in any event be repayable to Licensee.  Any royalty payments received by Licensor which exceed the Renewal Term’s minimum royalty shall not be credited toward the prior term or the next succeeding, if any, Renewal Term’s minimum royalty.

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(iv) The royalties due from Licensee to Licensor pursuant to Paragraph 4 (a) for sales made of Licensed Products during the Renewal Term shall be applied first against any advance payment made to Licensor for the Renewal Term.  After such advance payment has been recouped for the Renewal Term, all royalties due with respect to sales made of Licensed Products during the Renewal Term that are in excess of the advance payment made to Licensor for the Renewal Term shall be paid by Licensee to Licensor in accordance with this Paragraph 4.  If as of the date during the Renewal Term a minimum guarantee installment payment is due, the total of the advance payment and royalty payments made to Licensor with respect to sales made of the Licensed Products prior to the due date for such installment payment during the Renewal Term is less than the total minimum guarantee owed as of such installment due date for the Renewal Term, Licensee shall pay to Licensor on such installment due date the difference between the total minimum guarantee owed as of such installment due date less all prior advance payments and royalty payments made by Licensee to Licensor with respect to the Renewal Term prior to such installment due date.  Licensee shall also pay to Licensor when due any royalty payments due with respect to sales of Licensed Products made during the last quarter of the Renewal Term and the sell off period to the extent that such royalty payments exceed the difference between the minimum guarantee for the Renewal Term less all prior advance payments and royalty payments made by Licensee to Licensor with respect to the Renewal Term.

(c)

**Periodic Statements**. Within twenty (20) days after the end of the calendar quarter in which the initial shipment of Licensed Products is made, and thereafter within twenty (20) days after the end of each calendar quarter, Licensee shall furnish to Licensor (in a form to be supplied by Licensor, or in the absence thereof, in a form acceptable to Licensor) complete and accurate statements certified to be accurate by Licensee showing the number, description, gross sales price, itemized deductions from gross sales price, and the Net Sales of each Licensed Product sold by Licensee and any returns made during the period, together with a computation of the royalties due. Licensee shall provide such statements to Licensor whether or not any of the Licensed Products have been sold during said period. All information shall be shown separately for each country within the Territory. Licensee agrees that royalty reports will indicate clearly (by name or character or similar description) the Licensed Products sold and will be given in sufficient detail to enable Licensor to separate royalties by Licensed Products. It is understood that timely rendering of all statements required hereunder is essential under the terms of this Agreement.

(d)

**Royalty Payments**. Licensee shall remit the royalties due for each calendar quarter within twenty (20) days after the end of each calendar quarter, and payment shall be made with the statement rendered for that quarter. The receipt or acceptance by Licensor of any of the statements hereunder, or any royalties paid hereunder, or the cashing of any royalty check paid hereunder, shall not preclude Licensor from questioning the correctness thereof at any time. In the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified by Licensee and Licensee shall make appropriate payment to the Licensor within fifteen (15) days of such discovery.

(e)

**Records and Audits**. At its principal place of business, Licensee shall keep and maintain accurate records of the transactions underlying the statements to be furnished hereunder.  Licensee shall allow representatives of Licensor during office hours, upon reasonable notice and at reasonable intervals (not to exceed two times per calendar year), to audit and make copies of such records for the purpose of ascertaining the correctness of such statements. If any such audit shall disclose any deficiency of five percent (5%) or more, Licensee shall pay, in addition to such deficiency, the actual and reasonable cost of such audit. Upon demand of Licensor, not to exceed two times per calendar year, Licensee shall at its own expense furnish to Licensor a detailed statement signed and verified by Licensee's chief financial officer showing the number, description, gross sales price, itemized deductions from gross sales price and Net Sales of the Licensed Products covered by this Agreement distributed and/or sold by Licensee (and any of its affiliated, associated, or subsidiary companies) up to the date of Licensor's demand. All books of account and records shall be kept available for at least three (3) years after the termination or expiration of this Agreement.

(f)

**Payments**. Until otherwise instructed in writing by Licensor, all payments of royalties hereunder including advance payments and minimum guarantees, shall be made in the currency set forth in Schedule I to the order of "Agent", as defined in Schedule J, or to any other party designated by Licensor in writing. In the event Licensee fails to make any payment due hereunder in a timely manner, any such late payment shall bear interest at the rate of the twelve (12%) per annum calculated from the date such payment was due until the date such payment is received by Licensor or by any other party designated by Licensor in writing.

**5.**

**LICENSED PRODUCTS, QUALITY AND APPROVALS**:

In order to ensure that the Licensed Products are consistent with the values, mission and purposes of Licensor and consistent with the protection of the good will in the Property, Licensee agrees as follows:

(a)

**General Quality.**   Licensee agrees that the Licensed Products shall:

(i)  be of high standard and of such style, appearance and quality so as to protect and enhance the Property and the good will pertaining thereto;

(ii)  meet Licensor's quality standards and specifications; and

(iii)  be manufactured, sold, distributed, advertised, and promoted in accordance with all applicable U.S. and foreign federal, state and local laws, regulations, and ordinances.

(b)

**Preapproval of Licensed Products & Related Materials.**  Before distributing, selling, advertising, or promoting each of the Licensed Products, Licensee shall deliver to  Licensor, for each of the Licensed Products, free of cost, for Licensor’s written approval, the

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following in the order listed:

(i) sketches;

(ii) finished artwork and final proofs;

(iii) pre-production samples or strike-offs;

(iv) the number of post-production samples of each Licensed Product as set forth in Schedule K; and

 (v) all other finished cartons, labels, containers, packing and wrapping material, and similar materials upon which the Property appears (collectively the "Related Materials").  For purposes of this Agreement, Licensor’s approval shall include the approval of any other parties who may have contractual rights in the Licensed Products and the Related Materials.  At the time of initial shipment of each of the Licensed Products, Licensee shall deliver to Licensor fifteen (15) samples of each such Licensed Product.

(c)

**Packaging/Components.** Licensor shall have the right to approve how each of the Licensed Products is packaged, and shall have the right to approve which Licensed Products and other products may be packaged together.

(d)

**Additional Samples.** In addition to the samples provided to Licensor pursuant to Paragraph 5(b), Licensor may request, from time to time, up to twelve (12) samples per year, individual random samples of each Licensed Product and the Related Materials.

(e)

**Notices.**  Licensee shall cause to appear on or within each Licensed Product and all Related Materials the notice set forth in Schedule G, or other notice specified by Licensor.

(f)

**Advertising, Promotional and Display Materials.**  Before finalizing, using or distributing any advertising, promotional, display or other similar materials bearing the Property, Licensee shall deliver same to Licensor for its prior written approval.

(g)

**Approvals.** All items requiring approval pursuant to this Paragraph 5 shall be delivered to Licensor.  Licensor shall use reasonable commercial efforts to approve or disapprove all items submitted within ten (10) business days of the receipt of such items by Licensor.  Each item submitted by Licensee shall be deemed disapproved by Licensor if Licensee has not received the written approval of Licensor of the item in question within twenty (20) days after its receipt by Licensor.

**6.**

**ARTWORK AND OWNERSHIP OF PROPERTY**:

(a)

**Artwork.**  Licensor shall provide to Licensee, free of charge, one set of digital artwork supplied on CD-ROM (depicting some, but not necessarily all, of the Property) that Licensor generally makes available to its merchandise licensees.  All artwork and related material on said CD-Rom as well as any original artwork and designs created by Licensee or under Licensee’s authority and involving the Property, (notwithstanding their invention, creation, or use by Licensee), shall be and remain the property of Licensor; and Licensor shall be entitled to use the same and to license the use of same by others without restriction. Licensee agrees that any such artwork and Related Materials shall be considered “work made for hire” as that term is defined in The Copyright Act of 1976, as a work created as a contribution to a collective work, a supplementary work, a compilation, or otherwise; provided, however, that if and to the extent any such artwork and Related Materials shall not be considered “work for hire”, Licensee hereby assigns any and all of its right, title, and interest in such artwork and related materials to Licensor and shall take all steps reasonably necessary to assist Licensor to effectuate such assignment.

(b)

**Ownership of Property.**

(i)  Licensee recognizes all of Licensor's rights and interests in and to the Property, and that all use of the Property licensed hereunder inures to the benefit of Licensor or its grantor(s).  Licensee shall not take any action which may harm or adversely affect Licensor’s rights or goodwill in the Property, including without limitation using or registering a name or mark which is identical to or confusingly similar to any name or mark included in the Property, and, further, Licensee shall not during the Term or at any time after expiration or termination of this Agreement, challenge the validity of Licensor’s ownership of the Property.

(ii)  No right, title, or interest, in and to the property except the license interest granted by Paragraph 1 hereof, is transferred by this Agreement.   Licensee hereby assigns, transfers and conveys to Licensor or its grantor(s) all trademarks, service marks, trade dress, copyrights, equities, good will, titles or other rights in and to the Property which may have been obtained by Licensee or which may have vested in Licensee as a result of its activities under this Agreement, and Licensee will, at Licensor's expense in connection with the preparation thereof, execute any instruments reasonably requested by Licensor to confirm the foregoing, including the documents referenced in Paragraph 9 of this Agreement. No consideration other than the mutual covenants and consideration of this Agreement shall be necessary for any such assignment, transfer or conveyance.

(iii) Licensor shall acquire no right, title or interest in or to any trademarks, service marks, trade dress and/or copyrights owned by Licensee and used by Licensee in connection with the Property (“Licensee IP”), which rights to such Licensee IP shall be and remain those of Licensee.

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**7.**

**EXPLOITATION BY LICENSEE:**

As a result of entering into this Agreement with Licensee, Licensor may be foregoing other opportunities and, accordingly:

(a)

**Channels of Distribution.**

 (i) Licensee shall diligently and continuously manufacture, sell, distribute, advertise, and promote the Licensed Products during the Term, and shall make and maintain adequate arrangements for the distribution of the Licensed Products solely to the Channels of Distribution set forth in Schedule M.  Licensee shall offer the Licensed Products for sale in substantial quantities by the marketing date specified in Schedule H, with delivery within a reasonable time thereafter, including at least one of the Licensed Products in each of the categories listed in Schedule B.

(ii) If, at any time thereafter, Licensee for a period of three (3) consecutive months has failed to sell any of the Licensed Products (or any class or category of the Licensed Products) covered hereunder to any of the Channels of Distribution set forth in Schedule M, Licensor, in addition to all other remedies available to it hereunder, may terminate this license with respect to such Licensed Products or class or category thereof which have not been sold during such period by giving written notice of termination to such effect to Licensee.  Such written notice of termination shall become effective thirty (30) days thereafter with respect to any Licensed Products (or any class of category of the Licensed Products) that has not been sold within said thirty (30) day cure period.

(b)

**Sale/Distribution.**  With regard to the sale and distribution of the Licensed Products covered by this Agreement, Licensee agrees as follows:

(i) Licensee shall sell and distribute the Licensed Products outright and not on an approval, consignment, or guaranteed sale or return basis;

(ii) except with the prior written consent of Licensor, Licensee shall not directly or indirectly sell or distribute the Licensed Products for Promotional Purposes (defined below).

(iii) except with the prior written consent of Licensor, Licensee will not use, or knowingly permit the use of, the Licensed Product as a Premium (defined herein).  The term "Premium" includes, but is not limited to, free or self-liquidating items offered to the public in conjunction with the sale or promotion of a product or service, including traffic building or continuity visits by the consumer/customer, or any similar scheme or device, the prime intent of which is to use the Licensed Product(s) in such a way as to promote, publicize and/or sell the products, services, or business image of the third party company or manufacturer.  "Premium" also includes distribution of the Licensed Products for retail sale through distribution channels offering earned discounts or "bonus" points based upon the extent of usage of the offeror's product or service; and

(iv) in the event that any sale is made at a special price to any of Licensee's subsidiaries or to any other person, firm or corporation related in any manner to Licensee, or its officers, directors, or major stockholders, there shall be a royalty paid on such sales based upon the price generally charged the trade by Licensee.

Licensor specifically reserves the sole and exclusive right unto itself to use, manufacture, sell, and/or directly or indirectly distribute, or license third parties to use, manufacture, sell, and/or distribute, products similar to or the same as the Licensed Products, which may use all, some, or none of the Property, for Promotional Purposes.  “Promotional Purposes” shall be defined to include any of the following, regardless of whether the product(s) is given away free or a fee is charged to the end consumer: promotions including on-pack promotions, in-pack promotions, instant win games, tours or exhibitions; and any other premium or promotion; any giveaway; any sweepstakes or contest; any mail order; any movie, video, or show, or record-related promotion, premium, or publicity; or any other similar type of publicity.  Licensee specifically acknowledges that Licensor may exercise its rights contained in this concurrently with the rights exercised to Licensee under this Agreement;

(c)

**Distributors.**  Licensee shall advise all of its distributors of the Channels of Distribution set forth above.  Licensee shall be liable for any sale by such distributors or, of Licensed Products outside of the Channels of Distribution set forth in Schedule M.

(d)

**Suggested Retail Price.**  Licensee agrees to keep Licensor, at Licensor's request, advised of the wholesale and suggested retail prices at which Licensee sells the Licensed Products covered hereunder.

(e)

**Sales to Licensor.**  Licensee agrees to sell to Licensor such reasonable quantities of the Licensed Products as Licensor shall request at a rate at least as low and on as good terms as Licensee sells similar quantities of the Licensed Products to the general trade.

**8.**

**LICENSOR'S LIMITED WARRANTY:**

(a)

**Limited Warranty.**    Licensor represents and warrants that (i) Licensor controls all such rights and interest in the Property as are required to permit Licensor to enter into this Agreement and grant the rights herein granted (ii) and the Property does not infringe upon the copyrights, trademarks or other intellectual property rights of any third party.

(b)

**Licensor Indemnity.**   Licensor shall indemnify Licensee and shall defend Licensee against, and hold Licensee harmless

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from, all claims, liabilities, suits, losses, damages, and expenses (including reasonable attorneys' fees) brought by a third party against Licensee arising out of or relating to any breach or alleged breach by Licensor of any of its duties, obligations, representations and warranties set forth herein.

(c)

**LIMITATION ON WARRANTY**. ASIDE FROM THE WARRANTIES NOTED ABOVE, LICENSOR DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PROPERTY. EXCEPT FOR ANY LIABILITY OF LICENSOR PURSUANT TO PARAGRAPH 8(b), IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY MATTER WHATSOEVER RELATING TO (1) THE USE BY LICENSEE OF THE PROPERTY, OR (2) THE MANUFACTURING, MARKETING, ADVERTISING, DISTRIBUTION, SALE AND/OR PROVISION BY LICENSEE OF ANY PRODUCTS AND/OR SERVICES UNDER OR IN CONNECTION WITH THE PROPERTY.  NOTWITHSTANDING ANYTHING HEREIN OR IN ANY OTHER AGREEMENT BETWEEN THE PARTIES, REGARDLESS OF THE TYPE OF CLAIM, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF INFORMED THAT THEY MAY OCCUR.

**9.**

**PROTECTION OF LICENSOR'S RIGHTS:**

(a)

**Infringements by Third Parties.**    Licensee shall promptly notify Licensor in writing of any infringements, improper usage or imitations of the Property on Licensed Products similar to those covered by this Agreement which may come to Licensee's attention.  Licensor shall have the sole right to commence and/or defend a legal action or negotiate a settlement relating to any alleged infringement of the Property. Licensee shall not institute any suit or take any actions on account of any such infringements, improper usages or imitations without first obtaining the written consent of the Licensor.  Licensee shall use its best efforts to give Licensor all reasonable assistance and cooperation in any such legal action including, but without limitation, executing reasonably necessary documents and giving reasonably necessary testimony to permit Licensor, in its own name and/or on behalf of Licensee or jointly, to commence or defend the legal action. If Licensor wishes to commence litigation in the name of Licensee or name Licensee as a party to such suit, Licensor shall obtain Licensee’s prior written approval, such approval not to be unreasonably withheld. Any reasonable out of pocket costs incurred by Licensee in rendering such assistance requested by Licensor shall be paid for or reimbursed by Licensor. Licensor shall be entitled to any recovery or damages collected as a result of such legal action or negotiated settlement.  No settlement by Licensor shall impose a monetary liability on Licensee without Licensee’s consent to such settlement.

(b)

**Alleged Infringements by Licensor.**   With respect to any claim or suit that Licensor is not possessed of such right, title, and interest in the Property as to be entitled to grant this license to Licensee, Licensor shall have the option to undertake and conduct the defense of any suit so brought and no settlement of any such claim or suit shall be made without the prior written consent of Licensor.  Licensee agrees to cooperate fully with Licensor in any such action. Any reasonable out of pocket costs incurred by Licensee in rendering such assistance requested by Licensor shall be paid for or reimbursed by Licensor.

(c)

**Copyright Documents**.   At Licensor's sole cost and expense, Licensee agrees to assist Licensor with protecting Licensor's Property, including without limitation, executing the form of Copyright Assignment attached hereto as Exhibit B, which form shall be signed by Licensee simultaneously with Licensee’s execution of this Agreement.

**10.**

**LICENSEE WARRANTY AND INDEMNITY:**

(a)

**Licensee Warranty**.      Licensee expressly warrants that it is authorized to enter into this Agreement.  Licensee further represents and warrants that Licensee and its affiliates, shall assume full responsibility for all acts, omissions and misrepresentations by Licensee, its affiliates, agents, employees and third party manufacturers arising out of or relating to:

(i) any and all uses of the Property, (subject to any Licensor liability pursuant to Paragraph 8(b) above); and

(ii) the manufacture, distribution, sale and advertisement of the Licensed Products.

(b)

**Licensee Indemnity.**   Licensee shall indemnify Licensor and shall defend Licensor against, and hold Licensor harmless from, all claims, liabilities, suits, losses, damages, and expenses (including reasonable attorneys' fees) brought by a third party against Licensor arising out of or relating to any breach or alleged breach by Licensee of any of its duties, obligations, representations and warranties set forth herein, including, without limitation, claims based on:

(i) any alleged or actual unauthorized use of any intellectual property right (including, but without limitation, any copyright, patent, trademark, or other intellectual property right) by Licensee in connection with the Licensed Products (except for claims that the Property infringes any copyright, patent, or trademark); or

(ii) any alleged or actual defect in the Licensed Products (including, but without limitation, any claim of product liability);

(iii) any alleged or actual act or omission by Licensee or Licensee's agents, third party manufacturers or employees (whether wrongful, negligent, or otherwise) in connection with the Licensed Products or this Agreement: or

(iv) Licensee’s or any third party’s design, manufacture, distribution, shipment, advertising, promotion or sale of the Licensed Products or the packaging material.

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(c)

**Defense**.   Upon notice from Licensor, Licensee shall undertake the defense of any such claim or suit.  In such event, Licensor shall have the right

(i) to approve the attorney selected by Licensee, such approval not to be unreasonably withheld;

(ii) to be kept informed at all times about such claim or suit; and

(iii) to approve any settlement offer or agreement (other than one solely for money damages where Licensee pays the full amount of such settlement), such approval not to be unreasonably withheld.

Notwithstanding the above, Licensor shall have the right to defend any such action with attorneys of its own selection.

As used in this paragraph 10 only, "Licensor" shall also include the grantor(s), officers, directors, employees and agents (including 4Kids Entertainment Licensing, Inc. and affiliates) of Licensor and its affiliates and the officers, directors and employees of any other indemnitees.  This indemnity shall survive the termination or expiration of this Agreement.

**11.**

**INSURANCE:**

(a)

**Type of Insurance/Amount.**  During the Term and any Renewal Term, Licensee shall obtain and maintain, at its own expense, comprehensive general liability insurance (including products' liability insurance) and advertisers liability, from an insurance company acceptable to Licensor, providing adequate protection for Licensee against any claims, liabilities, suits, losses, damages and expenses arising out of or relating to the circumstances set forth in Paragraphs 10 and 20(c), in the minimum annual amount of U.S. One Million and no/100 Dollars (U.S. $1,000,000) per occurrence with no deductible and in the annual aggregate amount of U.S. Two Million and no/100 Dollars (U.S. $2,000,000), with no deductible. Such insurance shall remain in full force during the Term, any Renewal Term, and for a period of three (3) years thereafter.

(b)  **Certificate/Additional Insured.**  Simultaneously with the execution of this Agreement by Licensee, and thereafter as requested by Licensor, Licensee shall provide Licensor and Agent with a certificate of insurance (the original or a translation of which must be provided in English) evidencing such insurance.  Licensor and Agent shall be named as additional insureds on such insurance coverage.  Such certificate shall provide for ten (10) days notice to Licensor from the insurer by certified or registered mail, return receipt requested, of any modification, cancellation or termination.

**12.**

**LIMITATION OF LIABILITY:**IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT) WHETHER OR NOT LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY OR NEGLIGENCE.  ANY LIABILITY OF LICENSOR FOR ANY AND ALL CAUSES OF ACTION WITH RESPECT TO THIS AGREEMENT AND THE RIGHTS GRANTED HEREIN SHALL BE LIMITED TO THE AMOUNT OF ROYALTIES PAID BY LICENSEE TO LICENSOR HEREUNDER.

**13.**

**DEFAULT AND TERMINATION:**

(a)

**Bankruptcy**.   This Agreement may be terminated by Licensor, in its sole discretion to the fullest extent permitted by law at the time of the occurrence, if:

(i) a petition in bankruptcy is filed by or against Licensee, or if Licensee becomes insolvent, or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or

(ii) Licensee discontinues its business or if a receiver is appointed for it or its business.

(b)

**Licensee Infringement.**This Agreement may be terminated by Licensor, in its sole discretion, if Licensee becomes subject to or otherwise involved in any claim or lawsuit of the kind set forth in Paragraph 10 herein, which in the sole judgment of Licensor materially interferes with Licensee’s ability to perform its duties and obligations hereunder or harms the reputation of Licensor or the Property.

(c)

**Unapproved Merchandise/ Unapproved Distribution.**   In the event that Licensee ships or sells any Licensed Product that has not been fully approved in writing by Licensor (including written approval of Licensor for the Related Materials) or in the event that Licensee sells, or any distributor of Licensee sells, Licensed Products outside of the Channels of Distribution set forth on Schedule M, Licensor shall have the right to terminate this Agreement immediately by delivering a written notice to Licensee.  In addition to Licensor’s rights and remedies at law or in equity or pursuant to this Agreement which rights and remedies shall be deemed to be cumulative and in addition to the rights and remedies set forth herein, Licensee agrees to pay Licensor as liquidated damages and not as penalty a royalty of twenty five (25%) of Net Sales of all such unapproved Licensed Products that have been sold or on any Licensed Products sold outside the Channels of Distribution set forth on Schedule M.  Licensee further agrees to pay Licensor for the cost of an audit to determine the quantity of unapproved Licensed Products sold by Licensee or Licensed Products sold outside the Channels of Distribution set forth on Schedule M.  Licensee shall also immediately cease and desist from selling such unapproved Licensed Products and shall recall all such unapproved Licensed Products from wholesalers and retailers.  Licensee shall also immediately recall any Licensed Products sold in any unauthorized

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Channels of Distribution from such unauthorized distributors or retailers.

(d)

**Assignment Without Consent**.   This Agreement may be terminated by Licensor in its sole discretion, immediately upon written notice if Licensee voluntarily or involuntarily breaches Paragraph 20 of this Agreement.

(e)

**Failure to Distribute.** Licensor shall have the right to terminate this Agreement as provided in and in accordance with Paragraph 7 in the event Licensee fails to distribute the Licensed Products as required by Paragraph 7.

(f)

This Agreement may be terminated by Licensor in its sole discretion, in the event Licensee becomes subject to a voluntary or involuntary order or notice of any governmental agency involving the recall of any Licensed Product or packaging material because of safety, health or other hazards of risk to the public.

(g)

**Other Breach**.   In addition to the other events of default and termination set forth above in this Paragraph 13, this Agreement may be terminated by Licensor if Licensee breaches any other covenant or fails to perform any of its other obligations under the terms of this Agreement and  Licensee fails to remedy such breach within thirty (30) days of Licensee’s receipt  of Licensor’s written notice of breach; provided however, that with regard to any failure or breach relating to Licensee’s obligations with respect to copyright, trademark or service mark notices, monetary payments or royalty statements, Licensee’s cure period shall be fifteen (15) days from Licensee’s receipt of Licensor’s written notice of breach.

**14.**

**EFFECT OF TERMINATION:**

(a)

**Termination of Right to Sell**.   In the event this license is terminated as provided above in Paragraph 13, Licensee, its receivers, representatives, trustees, agents, administrators, successors, and/or assigns shall have no right to sell, exploit, or in any way deal with or in any Licensed Products or any Related Material.  Termination of the license under the provisions of this Agreement shall be without prejudice to any rights which Licensor may otherwise have against Licensee.

(b)

**Royalties and Minimum Guarantee Due on Termination.**   Upon termination of this license, all royalties on sales theretofore made shall become immediately due and payable; no advances against royalties shall be repayable; and the balance of any minimum royalty shall be immediately due and payable.

(c)

**Reversion of Rights**.  Upon or  after the expiration or termination of this license, all rights granted to Licensee hereunder shall forthwith revert to Licensor, and Licensee shall refrain from further use of the Property or any further reference to it, direct or indirect, or anything deemed by Licensor to be similar to the Property in connection with the manufacture, sale, distribution, or promotion of Licensee's products, except as provided in Paragraph 16 and Licensee shall deliver to Licensor all Related Materials and advertising or promotional materials related to the Property.

**15.**

**FINAL STATEMENT UPON TERMINATION OR EXPIRATION:**  Sixty (60) days before the expiration of this Agreement and, in the event of its termination, ten (10) days after receipt of notice of termination or the happening of the event which terminates this Agreement where no such notice is required, a statement showing the number and description of Licensed Products covered by this Agreement on hand or in process shall be furnished by Licensee to Licensor.  Licensor shall have the right to take a physical inventory to ascertain or verify such inventory and statement, and refusal by Licensee to submit to such physical inventory by Licensor shall forfeit Licensee's right to dispose of such inventory, Licensor retaining all other legal and equitable rights Licensor may have in the circumstances.

**16.**

**DISPOSAL OF STOCK UPON TERMINATION OR EXPIRATION:**

(a)

**Sell-Off**.   After termination or expiration of this Agreement, (unless such termination by Licensor is due to a default or material breach of this Agreement by Licensee), Licensee may dispose of approved Licensed Products covered by this Agreement which are on hand or in process at the time notice of termination is received or upon the expiration date,(it being agreed that Licensee may not produce quantities of additional Licensed Products during the last three (3) calendar quarters that are in excess of the then current demand for such Licensed Products) for the sell-off period set forth in Schedule L on a non-exclusive basis, provided Licensee is not in breach or otherwise in default under this Agreement.  All applicable royalties shall be paid on Licensed Products sold during the sell-off period within twenty (20) days following the expiration of the sell-off period. If this Agreement is terminated by Licensor due to a default or material breach by Licensee, Licensee shall not have any right to sell-off any Licensed Products.

(b)

**Faulty Copyright or Trademark Notices**.   Notwithstanding anything to the contrary herein, if Licensor terminates this Agreement due to the failure of Licensee to comply with Paragraph 5 Licensee shall not manufacture, sell, or dispose of any Licensed Products covered by this license after its expiration or its termination.

(c)

**Inventory.**   Licensor may, at its sole discretion, purchase any or all of Licensee’s remaining inventory during or after the sell-off period at a price equal to the cost of manufacture.

**17.**

**LICENSOR'S REMEDIES**:  Licensee acknowledges that its failure (except as otherwise provided herein) to cease the manufacture, sale, distribution, advertising, or promotion of the Licensed Products covered by this Agreement or any class or category thereof at the termination or expiration of this Agreement or any portion thereof may result in immediate and irreparable damage to Licensor and to the rights of any subsequent licensee.  Licensee acknowledges and admits that there is no adequate remedy at law for such failure to cease manufacture, sale, distribution, advertising, or promotion, and Licensee agrees that in the event of such failure, Licensor shall be entitled to

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equitable relief by way of temporary and permanent injunctions and such other and further relief as any court of competent jurisdiction may deem just and proper.

**18.**

**NOTICES:** All notices and statements required under this Agreement shall be in writing addressed to the parties at the addresses above, unless notification of a change of address is given in writing.  All notices shall be sent by:

 (i) registered mail, return receipt requested;

 (ii) overnight courier (e.g. Express Mail, Federal Express); or

 (iii) telefax or e-mail with a follow up copy by regular mail.

All statements of account may be sent by regular mail.  The date of mailing shall be deemed the date the notice or statement is received by a party.

**19.**

**RELATIONSHIP BETWEEN THE PARTIES:**  Neither party shall represent itself as the agent or legal representative of the other party for any purpose whatsoever, and neither party shall have the right to create or assume any obligation of any kind, express or implied, for or on behalf of the other party in any way whatsoever.  This Agreement shall not create or be deemed to create any agency, partnership, or joint venture between the parties.

**20.**

**NO ASSIGNMENT OR SUBLICENSE:**

(a)

**No Assignment**.   This Agreement is personal to Licensee and may not be sold, assigned, delegated, sublicensed or otherwise transferred or encumbered, in whole or in part, including without limitation, by operation of law, without the prior written consent of Licensor, which consent may be withheld by Licensor in its sole discretion.  For purposes of determining whether an assignment of this Agreement by Licensee (but not by Licensor) has occurred under this Paragraph 20, a merger of Licensee into another business entity or a merger of another business entity into Licensee; the sale or transfer of more than fifty percent (50%) of the stock of Licensee or substantially all of Licensee’s assets, shall be deemed an assignment requiring notice to, and the prior written consent of, Licensor, which consent may be withheld by Licensor in its sole discretion.  Any attempted sale, assignment, delegation, sublicense or other transfer in violation of the preceding sentences shall be deemed null and void, and of no effect, and in such event, notwithstanding anything in this Agreement to the contrary, Licensor shall have the immediate, unqualified right to terminate this Agreement in addition to all other rights and remedies it may obtain due to Licensee’s breach.

(b)

**Licensor Assignment**.   This Agreement may be assigned by Licensor upon written notice to Licensee but without any consent, provided, however, that any such assignment shall not release the Licensor from its obligations to the Licensee under this Agreement.

 (c)

**Third Party Manufacturer**.   Nothing herein shall be deemed to prevent Licensee from causing the Licensed Products to be manufactured by third parties subject to and in accordance with the terms and conditions of this Agreement on condition that Licensee shall indemnify Licensor against any loss or damage arising as a result of any breach by any third party manufacturer of Licensee’s obligations under the Agreement or otherwise arising out of acts, omissions or misrepresentations by any third party manufacturer in derogation of Licensor’s rights in and to the Property.  If any  manufacturing of the Licensed Products shall be conducted outside the Territory, in addition to any other obligations under this Agreement, Licensee shall advise Licensor in advance of the name, address and manufacturing location and any third party contractors shall sign the “Manufacturer’s Agreement” set forth in Exhibit A annexed hereto.

(d)

**Successors and Assigns**.    Subject to the restrictions against assignment provided above, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**21.**

**FORCE MAJEURE:**  The inability of Licensee to commence or complete its obligations hereunder by the dates herein required resulting from delays caused by strikes, picketing, insurrection, acts of God, war, emergencies, shortages, or unavailability of materials, limitations imposed by exchange control regulations or foreign investments regulations, or other causes beyond Licensee's reasonable control, except Licensee’s obligation to remit royalty payments, shall excuse performance during the continuation thereof and extend the period for the performance of the obligations for the period equal to the period(s) of any such delay(s).  Notwithstanding the foregoing, in the event performance by Licensee is suspended for three (3) consecutive months in accordance with this Paragraph 21, then Licensor may, by written notice to Licensee, elect to terminate this Agreement without any liability for either Licensor or Licensee.

**22.**

**ENTIRE AGREEMENT:**  This Agreement is intended by the parties as a final and complete expression of their agreement with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous agreements and understandings relating to it.

**23.**

**MODIFICATION AND WAIVER:**  This Agreement may not be modified and none of its terms may be waived, except in writing signed by both parties.  The failure of either party to enforce, or the delay by either party in enforcing, any of its rights shall not be deemed a continuing waiver or a modification of this Agreement.

**24.**

**SEPARABILITY:**  If any part of this Agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity of the balance of this Agreement, provided, however, that if any provision of this Agreement pertaining to the payment of monies to Licensor shall be declared invalid or unenforceable, Licensor shall have the right, at its sole option, to terminate this Agreement upon giving not less than ten (10) days written notice to Licensee.

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**25.**

**GOVERNING LAW/JURISDICTION:**  The parties agree that this Agreement shall be governed by the laws of the State of New York, or where applicable, the laws of the United States as interpreted by federal courts in the state of New York, as to all matters, without giving effect to the principles of conflicts of law.  Licensor and Licensee agree that any judicial proceeding brought against any of the parties to this Agreement arising from this Agreement or any matter related hereto may be brought in the State Courts situated in New York, New York, or in the United States District Court Southern District of New York, located in New York, New York.  Licensee, by execution of this Agreement, hereby accepts for itself the non-exclusive jurisdiction of the aforesaid courts.  Licensee further appoints \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as its agent to receive on its behalf service of process in any such proceeding covered by Paragraph 25.  The foregoing consent to jurisdiction and appointment of agent for service of process shall not constitute a general consent to service of process in the State of New York for any purpose except as provided in this Paragraph 25 and shall not be deemed to confer rights on any person other than the parties to this Agreement.

**26.**

**COMPLIANCE WITH LAWS:** Each party agrees that it will at all times comply with all applicable laws and regulations.  Without limiting the generality of the foregoing, neither party will export, re-export, transfer or make available, directly or indirectly, any regulated items or information to:

 (a)

anyone outside of the United States in violation of any export laws and regulations of the United States or

 (b)

otherwise in violation of any laws and regulations of any country or organizations of nations within whose jurisdiction either party may operate or do business.  Licensee shall seek and obtain at its sole expense any necessary regulatory consents and approvals with respect to the manufacture or sale of the Licensed Products from any country or organizations of nations outside of the United States within whose jurisdiction Licensee may operate or do business.

**27.**

**COUNTERPARTS:**Counterpart copies of this Agreement may be executed for the convenience of the parties, and each counterpart shall de deemed to be an original instrument.

**28.**

**PARAGRAPH HEADINGS:**  The headings of the Paragraphs are for convenience only and in no way limit or affect the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above written.

[Signature Block]

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**REALLY COOL STUFF INC.**

**Merchandise License Agreement**

**SCHEDULE PAGE**

Schedules Annexed to the License Agreement dated as of January 31, 2007, between REALLY COOL STUFF INC. ("Licensor") and Beyond Brothers, Inc. ("Licensee").

***Schedule A****:*

**The Property:**The characters, artwork, trademarks, logos, designs and visual representations associated with REALLY COOL STUFF INC..

***Schedule B****:*

**Licensed Products:**   Nonexclusive license for XY line of RCS branded items.

***Schedule C****:*

**Territory:**  US, its territories and possessions; and Canada

***Schedule D****:*

**Term:**  January 31, 2007 through December 31, 2010

**Renewal Term:**  N/A

***Schedule E****:*

**Royalty Rate:**  8% of Net Sales

***Schedule F****:*

Minimum

Royalty during the Term:

Advance Payment (due upon signature of Deal Memo): $5,000

Advance Payment-US: $5,000

Advance Payment-Canada: N/A

Minimum Guarantee: $25,000

Minimum Guarantee-US: $22,000(includes advance; balance to be paid as follows: $5,000 due on or before August 1, 2007; $5,000 due on or before February 1, 2008; $7,000 due on or before August 1, 2008)

Minimum Guarantee-Canada: $3,000 (balance to be paid as follows: $3,000 due on or before December 31, 2007)

No cross-collateralization permitted between Canada and other Territories.

U.S. and Canadian royalties must be reported separately.

Minimum Royalty during the Renewal Term:

Advance Payment (due on first day): N/A

Minimum Guarantee (due by end of the Renewal Term): N/A

No cross-collateralization permitted between Canada and other Territories.

U.S. and Canadian royalties must be reported separately.

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REALLY COOL STUFF INC.

Merchandise License Agreement

SCHEDULE PAGE

Schedule G:

Notice:

For Merchandising:

Licensor will advise Licensee of the correct copyright and trademark notices during the art approval stage.

Schedule H:

Marketing Date:

September 2007

Ship Date:

November 2007

Schedule I:

Currency:

US DOLLARS

Schedule J:

Agent's Name and Address:

X Licensing, Inc.

[...]

New York, NY 10019

Schedule K:

Number of Samples of Each Licensed Product: 15 of each

Schedule L:

Sell-Off Period: ¬

90 Days

Schedule M:

Channels of Distribution:

Mass Retailers Outlets

Contract #5344

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A

Manufacturer's Agreement

The Licensor:

Real Cool Stuff Inc

The Licensee:

Beyond Brothers, Inc.

Contract No.:

5344

Expiration Date:

License agreement and this Manufacturer's Agreement (unless sooner terminated or extended) will expire on:

December 31, 2010

The Licensed Products:

Line of RCS branded items.

The Property:

Real Cool Stuff Inc.

Name and address

of Manufacturer:

Territory of Manufacture:

Territory of Shipment:

US, its territories and possessions; and Canada

In order to induce Licensor to consent to the manufacture of the Licensed Products by the undersigned for the Licensee by ensuring that the Licensed Products are consistent with the values, mission and purpose of Licensor and consistent with the protection of the good will in the Property, the undersigned agrees that (unless otherwise authorized by the Licensor, under a similar manufacturer's agreement for another Licensee):

1)

It will not manufacture the Licensed Products to the order of anyone but the Licensee, will invoice only the Licensee and will not ship to anyone other than the Licensee or Licensee's customers.

2)

It will not subcontract production of the Licensed Products or components which contain the Property without the prior written consent of the Licensor.

3)

It will not without the prior written consent of the Licensor manufacture merchandise utilizing any of the copyrighted material and/or trademarks owned by the Licensor other than the Licensed Products.

4)

It will permit the authorized representative of the Licensor to inspect its activities and premises, books of account and invoices relevant to the manufacture and supply of the Licensed Products.

5)

It will not publish or cause the publication of pictures of the Licensed Products in any publication or promotional material, nor advertise the fact that it is permitted to manufacture the Licensed Products.

6)

It will not take any action anticipated to harm or adversely affect Licensor’s rights or related goodwill in the Property, nor will it challenge the validity of or Licensor’s ownership of the Property, either during the term of this Manufacturer’s Agreement or thereafter.

7)

It will not use any name or mark, other than those included in the Property as permitted hereunder, which is identical to or confusingly similar to any name or mark included in the Property in the manufacture, distribution, sale and/or advertisement or any goods or services.

8)

It will not register or use in any country any name or mark identical to or confusingly similar to any name or mark included in the Property.

9)

Upon expiration or termination of the License Agreement, or upon notification by the Licensor, the undersigned manufacturer will immediately cease manufacturing the Licensed Products and deliver to the Licensor or its authorized representative evidence that the Property has been removed from any molds, plates or other devices used to produce the Licensed Products, or in the event removal is not practical or effective, that such molds or plates have been destroyed.

SIGNATURE BLOCK

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EXHIBIT B

COPYRIGHT ASSIGNMENT

FOR:

REALLY COOL STUFF INC. MERCHANDISE & PROMOTIONAL ITEMS

This agreement is between Really Cool Stuff Inc, [...] NJ 10016 (“Licensor”) and the company listed below (“Company”).

At the request of Licensor), [ New York, NY 10018], Company has designed or may design artwork and other materials (hereinafter the “Work(s)”) for one or more of the following items: licensed products, merchandise and promotional items that are owned, licensed to and/or otherwise the property of Licensor.

Company, for good and valuable consideration, the receipt of which is hereby acknowledged, confirms that all copyrights in and to the Works, on a worldwide basis, are the property of Licensor, and does hereby sell, assign and transfer to Licensor all right, title and interest in and to all such copyrights, including all copyrights obtained from Company’s contractors and including any rights of renewal and rights to apply for and secure registrations of such copyrights. At Licensor’s request and expense, Company will fully cooperate with Licensor and will sign any documents reasonably requested by Licensor which may be necessary to seek, maintain and enforce Licensor’ copyrights in the Works. In the event Company utilizes any independent contractors (“Contractor(s)”) to work on the Works, such Contractor(s) shall be required to sign documents confirming that Contractors’ assignment is a work made for hire and that all of Contractors’ right, title and interest in and to the Works is owned by Company.

For each Work listed above, this Assignment shall be effective as of the day such Work was completed.

**LicA#4**

LICENSING AGREEMENT

**Exhibit 10(i)**

**LICENSING AGREEMENT**

THIS AGREEMENT is dated for reference July 27, 2009,  
   
AMONG:

**NEW MOUNTAIN LTD.**, a corporation incorporated pursuant to the laws of the British Virgin Islands registered under BVI Company Number [...] having an address of PO Box [...], Panama City, Panama;

          (the “Licensor”)

AND:

**MERKUR CORPORATION**, a company incorporated pursuant to the laws of the State of Nevada, with an address of [...], Florida 33133 as a wholly owned subsidiary of the Parent (defined below);

          (the “Licensee”)

AND:

    ALL **TECH, INC.**, a company incorporated pursuant to the laws of the State of Nevada, with an address of [...], Florida 33133;

          (the “Parent”)

WHEREAS:

A.     Except as provided the Licensor holds all rights, title and interest to a certain invention entitled “NMT Technology” as further described in Schedule "A" attached hereto (the “Technology”);

B.     The Licensor wishes to enter into a formal licensing agreement with Licensee on the terms set forth below;

**THIS AGREEMENT WITNESSES THAT** in consideration of US$10.00 (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

1 .1     Construction and Interpretation. In this Agreement, unless inconsistent with or excluded by the context:

          (a)     any heading, index, table of contents or marginal note used in this Agreement is for convenience only and will not limit or affect the interpretation or construction of this Agreement;

(b)     singular words will include the plural and plural words will include the singular;

***Page******1***

***Licensing Agreement***

***Exhibit 10(i)***

(c)     a reference to a person will include a company or other corporation and a reference to a company or other corporation will include a person;

(d)     a word importing a particular gender will include each other gender; and

     (e)     a reference to a party to this Agreement includes that party's heirs, executors, administrators, successors and permitted assigns.

1.2     Definitions. In this Agreement, unless inconsistent with or excluded by the context:

(a)     “Affiliate” means, with respect to any entity, any other entity which directly or indirectly controls or is controlled by or is under direct or indirect common control with such first mentioned entity;

     (b)     “Agreement” means this Agreement and all schedules to this Agreement and all specifications referred to in this Agreement;

     (c)     “Improvements” means all improvements to the Original Invention developed within or by the Licensee;

(d)     “Intellectual Property” includes the Technology and any intellectual property relating to the Technology, including any patent, patent application, copyright, industrial design, trademark, any rights to patent, copyright, industrial design or trademark in any country, engineering designs, concepts, models, trade secrets, know how and show how, and includes any new technology or the products as may hereafter be developed or acquired by the Licensee or any of its subsidiaries;

(e)     “License” means an exclusive, non-transferable, license (with a limited right of sublicense) to allow the Licensee to make, have made, use, lease, sell and import Licensed Products in the Territory;

(f)     “Licensed Products” means products which, in the absence of the License, would infringe the Licensor’s intellectual property rights in the Technology;

(g)     “Original Invention” means a certain invention entitled “NMT Technology” as further described in Schedule "A" attached hereto;

(h)      “Technology” means certain technology known as “NMT Technology” and includes the Original Invention, any improvements thereof and any devices which embody the NMT Technology and any improvements thereof;

     (i)     “Territory” means the United States, Canada and Mexico; and

(j)     “Trade-Mark” means and trade-mark or trade-name as may be adopted for use on the Licensed Products from time to time.

1.3     Variation of Agreement. Any variation or modification or waiver of the terms or conditions of this Agreement will be in writing and will be duly executed by the Licensor, Licensee and Parent respectively.

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***Licensing Agreement***

***Exhibit 10(i)***

1.4     Severance. Each word, phrase, sentence, paragraph and section of this Agreement is severable and if a court in any jurisdiction determines that any such provision is unenforceable, illegal or void in that jurisdiction the court may sever that provision which becomes inoperative and such severance will not affect the operation of any other provisions of this Agreement nor the operation of that provision in any other jurisdiction.

1.5     Waiver. The failure of either party hereto at any time to enforce any provision of this Agreement will not affect its rights thereafter to require complete performance by the other party, nor will the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself. In order for any waiver to be effective, it must be in writing and signed by an authorized officer of the party.

1.6     Laws. This Agreement will be governed by, and construed in accordance with, the laws of the State of Florida, and both parties agree to submit to the exclusive jurisdiction of the courts of the State of Florida.

**ARTICLE 2  
LICENSE**

2.1     Grant of License:

     (a)     The Licensor hereby grants to the Licensee an exclusive, non-transferable, license for use in the Territory, with a limited right of sublicense as set forth in Section 2.1(e) below to allow the Licensee to use the Intellectual Property to make, have made, use, lease, sell and import Licensed Products, which, in the absence of the License, would infringe the Licensor’s intellectual property;

(b)     Except for the rights granted pursuant to the License, the Licensor shall retain all rights, title and interest to the Technology;

(c)     The Licensee shall be responsible for all of the testing and improvements to the Technology;

(d)     The Licensor shall retain all rights to the Improvements, but such Improvements shall also be a part of the License;

     (e)     The Licensee shall have the right to offer limited royalty-bearing sublicenses to third parties where such third parties are in a position to commercialize the Technology in ways that the Licensee cannot accomplish in a competitive manner. The Licensee shall pay the Licensor twenty five percent (25%) of all royalties and fees received from such third parties. If Licensee receives any non-cash consideration as part of the sublicense consideration (including equity in sublicensee or other entities), Licensor shall have the option to take its portion of the sublicense consideration in kind or in cash based on the fair market value of the non-cash consideration as of the date of receipt by Licensee wherein the fair market value as determined by Licensee’s independent accounting advisors shall equal the cash consideration an unaffiliated, unrelated buyer would pay in an arm’s length sale of a substantially identical item sold in the same quantity, under the same terms, and at the same time and place. Such right to sublicense is subject to the following conditions:

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***Licensing Agreement***

***Exhibit 10(i)***

(i)     In each sublicense agreement, the sublicensee will be subject to the terms and conditions of the license granted to Licensee under this Agreement, and the sublicensee will be prohibited from granting further sublicenses, without first obtaining approval from Licensor; provided, however, that in the event that such further sublicense is approved, any fee or other consideration paid to sublicensee in consideration of such sub-sublicense will be treated as sublicense consideration as if the sub-sublicensee were a sublicensee. Nevertheless, Licensee may set royalty or other payments at its discretion for its sublicensees, as long as the applicable royalties or other payments of its sublicensees are not more favorable to the sublicensee than the corresponding terms of this Agreement.

(ii)     Licensee will forward to Licensor, within thirty (30) days following its execution, a fully executed, complete, and accurate copy written in the English language of each sublicense agreement granted under this Agreement. Licensor’s receipt of such sublicense agreement will not constitute a waiver of any of Licensor’s rights or Licensee’s obligations under the Agreement.

(iii)     Notwithstanding any such sublicense agreement, Licensee will remain primarily liable to Licensor for all of the Licensee’s duties and obligations contained in the Agreement, and any act or omission of a sublicensee that would be a breach of the Agreement if performed by Licensee will be deemed to be a breach by Licensee of the Agreement. Each sublicense agreement will contain a right of termination by Licensee in the event that the sublicensee breaches the payment obligations affecting Licensor or any other material terms and conditions of the sublicense agreement that would constitute a breach of the terms and conditions of the Agreement if such acts were performed by Licensee. In the event of such sublicensee breach, and if after a reasonable opportunity to cure as provided in any such sublicense agreement, such sublicensee fails to cure such sublicensee breach, then the Licensee will terminate the sublicense agreement unless Licensor agrees in writing that such sublicense agreement need not be terminated.

(iv)     Upon termination of the Agreement for any reason, all sublicense agreements will, at Licensor’s option, be (i) assigned to and assumed by Licensor, or (ii) terminated.

     (f)     The Licensee shall pay the Licensor a royalty of 1% of all gross sales of Licensed Products by the Licensee, except as otherwise modified in writing.

2.2     Exclusive Rights. The rights of the Licensee to the License in accordance with Section 2.1 will be sole and exclusive, and the Licensor will not directly or indirectly compete with the Licensee, nor the license, authorize or permit any third party to compete with the Licensee with respect to the manufacture, use, lease, sale, export and import of the Licensed Products.

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***Licensing Agreement***

***Exhibit 10(i)***

2.3     Assignment of Rights. The Licensor and the Licensee acknowledge that the respective rights and obligations pursuant to this Agreement are personal to the parties and that the Licensee, except in the event of the acquisition of the Licensee, by any means, or the sale or merger of substantially all of the Licensee’s assets to or with a third party, will not assign this Agreement or assign or delegate any or all rights, duties, or obligations under this Agreement without the prior consent in writing of the Licensor, which consent the Licensor may not withhold unreasonably. If the Licensor consents to such assignment or delegation, the Licensee will remain jointly and severally liable with the assignee or delegate for the obligations of the Licensor under this Agreement. Subject to the limitations hereinbefore expressed, this Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns.

2.4     Reorganization of Rights. The Licensor may choose to reorganize its worldwide licensing strategy, including delegation of certain commercialization rights to a separate entity, with the prior written consent of the Licensee, which may not be unreasonably withheld, provided that the full beneficial terms to the Licensee(s) embodied in the Agreement shall not be diminished due to such actions.

2.5     Effect of Assignment. Unless otherwise agreed upon between the parties, no assignment of this Agreement, the benefit of this Agreement or any rights, licenses or authorities pursuant to this Agreement will relieve the assigning party from any liability under this Agreement, whether absolute, contingent, due or accruing, which exists as of the date of assignment.

2.6     No Sublicense. Except pursuant to Section 2.1(e), the Licensee will not sublicense the benefit of this Agreement or any rights, licenses or authorities pursuant to this Agreement and any attempted violation of this section, whether voluntarily or by operation of law, will be void and of no force and effect.

2.7     Confidential Information. The Licensee acknowledges that its entire knowledge of the Technology and the business of the Licensor, including, without limitation, the contents of any Documents (defined as all drawings, specifications, blueprints, programs and other material in electronic form or otherwise relating in any manner to the Intellectual Property or the Technology) and periodic updates or revisions, in effect from time to time and the designs, plans, prototypes, specifications, standards and operating procedures for the Technology, will be derived from information disclosed to the Licensee by the Licensor in confidence and that the Documents and such other information are confidential information and/or trade secrets of the Licensor (all of which is herein collectively called the "Licensor Confidential Information") except where such information is in the public domain or is information describing generally accepted business, engineering or manufacturing practices. Accordingly, the Licensee agrees that it will maintain the absolute confidentiality of the Intellectual Property, the Documents and such other information, both during and after the term of this Agreement, disclosing same to other employees of the Licensee only to the extent necessary for compliance with this Agreement.

All Licensor Confidential Information obtained by the Licensee shall be considered confidential and will not be disclosed by the Licensee to any person without the prior written consent of the Licensor. The Licensor will provide reasonable confidentiality agreements in the form attached hereto as Schedule C to be signed by the Licensee and all employees or sub-contractors of the Licensee to whom any Licensor Confidential Information will be disclosed, and the Licensee will provide or obtain signatures of such confidentiality agreements as the case may be.

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***Licensing Agreement***

***Exhibit 10(i)***

During the course of its relationship with the Licensor, the Licensee or its subsidiaries or associates or their employees, agents or consultants may disclose certain proprietary or confidential information to the Licensor or its subsidiaries or associates or their employees, agents or consultants. The proprietary or confidential information may be oral or written, may be of a technical or commercial nature, may take the form of plans, drawings, processes, formulae, schedules, reports, projections, analyses, programs, prints, recordings, lists or other compilations of information, and may relate to the Licensee, its vendors, employees, stockholders or customers. All of such proprietary information and confidential information is herein collectively called the “Licensee Confidential Information”.

Any Licensee Confidential Information obtained by the Licensor will be considered confidential and will not be disclosed by the Licensor to any person without the prior written consent of the Licensee. The Licensee agrees that the Licensor Confidential Information, and all rights to the Licensor Confidential Information, which has been or will be disclosed to the Licensee, as well any improvement or technology using, relating to or incorporating the Licensor Confidential Information shall remain the exclusive property of the Licensor, and shall be held in trust for the benefit of the Licensor. The Licensee agrees that it will not, directly or indirectly, deal with, use, or exploit the Licensor Confidential Information without the Licensor's prior written consent. With regard to any improvement or new technology using, relating to or incorporating the Licensor Confidential Information, the Licensee agrees to assign to the Licensor all right, title and interest in such improvements or technology, any copyright, trademark, industrial design, patent applications and copyrights, trademarks, industrial designs, patents granted thereto, the sole right to file such applications and the Licensee agrees to assist the Licensor in obtaining reissues, divisions, renewals or extensions of any such applications and to do any act required to aid the Licensor in obtaining and enforcing proper intellectual property protection.

     The foregoing restrictions do not apply to information which:

(a)     at the time of disclosure was in the public domain as evidenced by a printed publication or otherwise;

(b)     after disclosure becomes part of the public domain by publication or otherwise, other than by action of the disclosing party;

(c)     was in the possession of the disclosing party at the time of disclosure by the disclosing party and was not acquired, directly or indirectly, from the non-disclosing party; or

(d)     the disclosing party rightfully receives from an independent third party who did not receive such information, directly or indirectly, from the other party with limitation or restriction on its use.

     The obligations contained in this Article will continue notwithstanding the termination of this Agreement or any confidentiality agreements.

The products or proceeds of the services performed by the Licensee under this Agreement including, but not limited to, documents, written materials, programs, documentation, designs, discs and tapes shall be and remain the property of the Licensor and the Licensee shall be able to use such written materials, programs, documentation, designs, discs and tapes for the purposes of carrying out its obligations under this Agreement while the Agreement is in effect.

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***Licensing Agreement***

***Exhibit 10(i)***

     The Licensee will, however, notify the Licensor immediately of any alleged, possible, or suspected infringement, passing off, or challenge to the use of any of the Intellectual Property or claim by any person to any rights in any similar trade marks or names of which the Licensee is or becomes aware. The Licensor agrees to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of the Licensee, acting reasonably, be necessary or advisable to protect and maintain the interests of the Licensor in any such litigation or proceedings or to otherwise protect and maintain the interest of the Licensor in the Intellectual Property.

Licensee will have the right, but not the obligation, to prosecute infringement of any of the intellectual property related to the Technology at its own expense. Licensee will not settle or compromise any such suit in a manner that imposes any obligations or restrictions on Licensor or grants any rights to any intellectual property of the Technology, without Licensor’s prior written consent. At the time of filing any infringement enforcement action against a third party, Licensor and Licensee will determine how any damages awarded will be distributed between Licensor and Licensee; provided, however, that in no event will Licensor’s distribution be less than an amount that would have been due to Licensor as sublicense fees as if the litigation recovery had been sublicense consideration. In such a situation Licensee will recoup 100% of its entire litigation expenses first before any calculation is made with regard to the division of damages awarded. In the event that Licensee is not successful in winning a litigation case, Licensee may deduct from future royalty and sublicense fees fifty percent of such litigation costs.

2.8     No Agency or Joint Venture. Nothing in this Agreement constitutes or deems the parties to be partners or joint venturers in relation to the distribution or marketing of the Products, nor to create the relationship of principal and agent or master and servant between the parties, or any other form of legal association which would impose liability upon one party for any act or failure to act by the other party.

2.9     Term. The term (the "Term") of this Agreement and of the rights, authorities and licenses granted to the Licensee pursuant to this Agreement for (i) the Technology, (ii) any improvements of the Technology, or (iii) any devices which embody the Technology or such improvements shall commence upon execution of this Agreement and continue until the expiry of protections afforded the Technology, provided that the Licensee is not in breach or default of any of the terms or conditions contained in this Agreement.

2.10     Renewal. Subject to written mutual agreement between the Licensor and the Licensee, this Agreement may be renewed.

**ARTICLE 3**

RESEARCH, DEVELOPMENT AND COMMERCIALIZATION FUNDING REQUIREMENTS

3.1     The License shall become effective on signing and continue until the end of the Term if the Licensee has funded, notwithstanding terms set forth in section 12.1, a minimum of US$10,000,000 for "qualifying research, development and commercialization expenses" in accordance with the following schedule:

     (a)     a minimum of US$1,000,000 during the period commencing from the date of execution of this Agreement by all parties (the "Execution Date") and ending on the first anniversary of the Execution Date (the "First Anniversary");

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(b)     a minimum of US$3,000,000 during the period commencing immediately after the First Anniversary and ending on the second anniversary of the Execution Date (the "Second Anniversary"); and

     (c)     a minimum of US$6,000,000 during period commencing immediately after the Second Anniversary and ending on the third anniversary of the Execution Date,

It is understood and agreed that any funding in excess of the minimum funding requirement for a particular period shall be automatically credited against the minimum funding requirement for the following funding period. For greater certainty, "qualifying research, development and commercialization expenses" shall be those expenses that have been pre-approved by the parties hereof as contributing to the research, development and commercialization of the Technology, improvements and devices embodying the Technology and improvements thereof as mutually agreed upon by the parties to this Agreement, including without limitation, those expenditures comprising the first year US$1,000,000 expenditures attached as Schedule "B".

Research and development funding may be extended under terms and conditions mutually agreed between the parties.

**ARTICLE 4**

LICENSEE’S COMMERCIALIZATION OBLIGATIONS

4.1     The Licensee shall perform as follows:

          (a)     The Licensee shall fund payments immediately as they become due for:

(i)    reasonable relocation and resettlement costs of a scientific advisor ("Scientific Advisor") and other necessary personnel agreed upon between the two parties, to the testing and development locale including the acquisition and transport of prototype materials and required documents or plans;

(ii)    development costs for a demonstration prototype including the use of suitable laboratory and fabrication facilities and the purchase of necessary materials and consumables;

(iii)    legal expenses to a patent attorney firm, mutually agreed upon among the parties, who will provide necessary assistance in due diligence for the patentability of the technology;  
   
(iv)    a program of tests to be conducted by the Scientific Advisor and Project Manager, to be completed by August 15, 2009, for the purpose of providing proof of concept of the Technology and appropriate documents are produced (including a report by the NRC Institute of Fuel Cell Innovation or other equivalent third party) which describe and evidence the proof of concept, to the satisfaction of the Licensee (it is understood and agreed that the above mentioned August 15th date may be extended by the Licensee due to unforeseen delays) and within seven (7) days subsequent to testing results be deemed satisfactory by the Licensee;

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(v)         the immediate ramp-up and uninterrupted continuation of the research and development for the Technology after the report mentioned in Section 4.1(iv) is produced; and

(vi)     fund the ongoing research, development and commercialization of the Technology and the research, development and commercialization of devices using the Technology;

          All of the above expenditures shall be credited to the funding requirements set out in Article 3 and are to be considered immediately available upon need irrespective of terms set forth in Section 12.1.

     (b)     Provide assistance to the Licensor with the procurement of patent protection, including cooperating in registered user application of such other applications or filings as are required to effect necessary patent protection with respect to the Technology. Licensee shall pay patent costs and expenses related to United States and foreign filings, including patent filing, translation, search, prosecution and maintenance costs and fees. Licensee will be billed and will pay directly to patent counsel all documented costs and fees and other charges incident to the preparation, prosecution, and maintenance of any patents, copyrights or trademarks related to the Technology within thirty (30) days after receipt of invoice. Licensee at its option may register this Agreement with any patent office having jurisdiction. Licensor will work closely with Licensee to develop a suitable strategy for the prosecution and maintenance of all patents, industrial design, trademarks and copyrights. It is intended that Licensee may interact directly with the selected patent counsel in all phases of patent prosecution, such as preparation, office action responses, filing strategies for continuation or divisional applications, and other related activities. Licensor will provide copies of all documents prepared by the selected patent counsel to Licensee for review and comment prior to filing, to the extent practicable under the circumstances. Licensor will maintain final authority in all decisions regarding the prosecution and maintenance of any patent, industrial design, trademark or copyright applications. All patent applications and patents will be in the name of Licensor and owned by Licensor.

     (c)     Licensee will use diligent and commercially reasonable efforts to actively commercialize the Technology. “Actively commercialize” means having a commercially effective, reasonably funded ongoing and active research, development, manufacturing, marketing and/or sales program directed toward obtaining regulatory approval, production and/or sales of products embodying the Technology in applicable markets.

     (d)     All payments to Licensor will be made in United States dollars by check payable to the name of Licensor and sent to:

      Group Ltd

     PO Box 0830-01906 Calle B Marbella

     Edif. Sol Marina 11B

Panama City, Panama

All payments shall be subject to applicable withholding taxes, if any.

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     (e)     Licensee will maintain, and cause its sublicensees to maintain, complete and accurate books and records that enable all royalties payable under the Agreement to be verified. The records for each calendar quarter will be maintained for three (3) years after the submission of each quarterly activity report of Licensor. Each quarterly activity report shall be delivered to Licensor within forty-five (45) days after March 31, June 30, September 30, and December 31, beginning immediately after January 1, 2010 and detail the gross sales revenues for the fiscal quarters ending on the foregoing dates, which report shall be certified by the chief financial officer or similar officer of Licensee even if no payments are due Licensor, giving the particulars of the business conducted by Licensee its sublicensee. In addition, Licensor shall have the right, on an annual basis to request and receive technical information from Licensee sufficient to evidence whether and to what extent Licensee is practicing the claims of the Licensed Patents. Licensor shall have the right to make an enquiry in regard of such reports within 30 days following the receipt of such report and upon the expiry of 30 calendar days from the receipt of such report or 10 calendar days from the receipt of the explanation of any enquiry, such report or explanation shall be deemed to be acceptable and final.

          (f)     Upon prior notice to Licensee and its sublicensees, and at Licensor’s expense, Licensor or its representatives or its appointed accountants will have access to such books and records relating to gross sales as necessary to conduct a review or audit of gross sales and verify all royalty reports submitted and royalty payments. Such access will be available to Licensor upon not less than ten (10) days’ written notice to Licensee and its sublicensees, not more than once each calendar year of the Term, during normal business hours, and once a year for three years after the expiration or termination of the Agreement. If an audit of Licensee’s records indicates that Licensee has underpaid royalties by more than (i) three percent (3%), or (ii) five thousand dollars ($5,000), whichever is greater, for the records so audited, Licensee will pay the reasonable costs and expenses incurred by Licensor and its representatives and accountants, if any, in connection with the review or audit, and Licensee will immediately remit such royalties and any accrued interest to Licensor. Further, whenever Licensee and its sublicensees has its books and records audited by an independent certified public accountant, Licensee and its sublicensees will, within thirty (30) days of the conclusion of such audit, provide Licensor with a written statement, certified by said auditor, setting forth the calculation of royalties due to Licensor over the time period audited as determined from the books and records of the Licensee.

**ARTICLE 5**

PARENT’S FINANCING OBLIGATIONS

5.1     The Parent will raise a minimum of US$10,000,000 in financing to be used by Licensee towards the research, development and commercialization of the Technology and devices utilizing the Technology over the next three years as outlined in Article 3.

5.2     The Parent will issue the following amount of shares of the Parent to the Licensor based on the amount of financing that the Parent has raised, in accordance with the following:

     (a)     initially, that amount of common shares equal to 5% of the issued and outstanding common shares of the Parent, (the "Initial Tranche"); and

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     (b)      that after the issuance of the Initial Tranche and until the Parent has cumulatively raised US$50,000,000 in equity financings, Licensor shall not hold less than two and one half percent (2.5%) of the issued and outstanding number of shares of the Parent (the "Threshold Percentage") and in the event that Licensor's percentage holdings constitute less than the Threshold Percentage on the completion of the cumulative US$50,000,000 equity financing, Parent shall issue that number of additional shares to raise such holdings to the Threshold Percentage.

**ARTICLE 6**

SERVICE CONTRACTS

6.1     On or before July 31, 2009 the Parties shall use commercially reasonable efforts to negotiate and enter into an agreement based on industry standard terms for a senior technology employee/consultant to retain the services of the Scientific Advisor for a minimum term of thirty (30) months for US$8,000 per month (the “Base Pay”) pursuant to the terms and conditions set forth in that agreement, in which the Scientific Advisor shall assist the Parties in completing the current prototypes and commercialization of the Technology.

**ARTICLE 7**

PROTECTION OF THE LICENSOR’S INTELLECTUAL PROPERTY

7.1     The Licensee hereby acknowledges the Licensor’s right, title and interest in the Intellectual Property relating to the Technology.

7.2     The Licensee hereby acknowledges that all right, title, interest and goodwill relating to the Intellectual Property ensure to the Licensor.

7.3     The Licensee hereby acknowledges that any rights subsequently acquired with respect to the Licensor’s Intellectual Property or similar property is assigned to the Licensor.

7.4     The Licensee undertakes not to contest the validity of the Licensor’s rights in the Intellectual Property.

7.5     The Licensee agrees to take no actions which might impair or interfere with the Licensor’s rights in the Intellectual Property.

7.6     The Licensee agrees not to seek, independently of the Licensor, any trade mark, copyright, patent, or industrial design registrations anywhere in connection with the Intellectual Property or similar property.

7.7     The Licensee agrees not to adopt or use any property similar to the Intellectual Property during the Term of this Agreement and thereafter.

7.8     The Licensee shall not associate or commingle the Intellectual Property with other intellectual property without the Licensor’s prior consent.

7.9     The Licensee agrees not to use the Intellectual Property in an unauthorized manner and, in particular, not to use it in the Licensee’s name or as a name or part of a name of any other corporate legal entity.

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7.10     The Licensee acknowledges that the grant of the License is subject to the terms of this Agreement, and a breach of this Agreement constitutes an infringement of the Licensor’s Intellectual Property.

7.11     The Licensee agrees to affix notices indicating the Licensor's ownership of the Licensor's Intellectual Property on licensed products and all packaging, advertising, promotional and other materials bearing the Licensor's Intellectual Property in such form as is requested by the Licensor.

7.12     The Licensee hereby acknowledges the uniqueness of the Intellectual Property, and the difficulty of assessing damages from the unauthorized use of the Intellectual Property and the propriety of injunctive relief.

7.13     The Licensor represents and warrants to the Licensee that it is the sole owner of the Intellectual Property and the Technology, that such Intellectual Property and Technology do not infringe on the intellectual property of any other person, and that all registrations with respect thereof are in good standing, valid and enforceable, and with support from the Licensor, the Licensee will, at its sole expense, take all reasonable steps to secure and protect the Intellectual Property and the Technology, including without limitation the defense of any claims against the Licensee in relation to the Intellectual Property and the Technology, in accordance with agreement.

7.14     The Licensee and the Licensor shall cooperatively use their commercially reasonable efforts to achieve procurement of trade mark, copyright and industrial design protection with respect to the Intellectual Property, as applicable, including cooperating in registered user application of such other applications or filings as are required to effect necessary trade mark, copyright, patent and industrial design protection at the Licensee’s expense.

7.15     Licensee and Licensor shall immediately notify each other of all unauthorized uses, infringements, imitations and any other claims against the interests of the Licensor and Licensee and assist each other in the enforcement of trade-mark, copyright, patent and industrial design protection relating to the Intellectual Property.

7.16     Each of Licensor and Licensee shall have the right, but not the obligation, to decide whether to take action against infringements and imitations or defend against any action with respect to the Intellectual Property, and the Licensee shall cooperate in any such action or defense.

7.17     The Licensee shall not take any action against infringements and imitations of the Intellectual Property without the prior written consent of the Licensor.

7.18     The Licensor represents and warrants that it has the right to grant the License to the Licensee in accordance with the terms of this Agreement.

7.19     The Licensor represents and warrants that entering into this Agreement does not violate any rights or obligations existing between the Licensor and any other entity.

7.20     The Licensee and the Licensor shall be required to use industry standard non-disclosure agreements in the form attached as Schedule C when dealing with third parties in order to safeguard and protect in Intellectual Property.

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***Licensing Agreement***

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**ARTICLE 8  
LICENSOR'S OBLIGATIONS**

8.1     Licensor's Indemnity. The Licensor will indemnify and save the Licensee harmless from and against any and all reasonably foreseeable claims, causes of action, damages, awards, actions, suits, proceedings, demands, assessments, judgments, as well as any and all costs and legal and other expenses incidental to the foregoing, arising out of:

     (a)     any act, default or breach on the part of the Licensor or its officers, employees, servants, agents and representatives under the terms of this Agreement; and

     (b)     any claims of intellectual property infringement arising out of the commercialization of the Technology to the extent that the potential for such specific claims were actually known by the Licensor or should have been known and were not disclosed to the Licensee; or to the extent expressly waived by the Licensee in writing if such claims were disclosed to the Licensee.

8.2      Compliance with Laws. The Licensee will at all times during the Term fully comply with all laws, bylaws, regulations of any competent authority that affect or are likely to affect the due performance and observance of the Licensee's obligations in this Agreement in the sale, distribution and use of the Licensed Products.

**ARTICLE 9  
INTELLECTUAL PROPERTY**

9.1     Ownership of Intellectual Property. Based on the Licensor's representation and warranty provided in Section 10.1 as well as any future technology patents being granted, the Licensee acknowledges that the Licensor is the sole and beneficial proprietor of the Intellectual Property.

9.2     Use of Name. Use of name or other proprietary trade dress of the Licensor or any of its subsidiaries by the Licensee shall be subject to the prior written approval of the Licensor or any of its subsidiaries.

9.3     No Copies. Except in furtherance of the research, development and commercialization of the Technology, the Licensee shall not copy, reverse engineer, decompile, disassemble, reconstruct, decrypt, modify, update, enhance, supplement, translate or adapt the Licensed Products and shall take all reasonable precautions so as no to allow other parties to do so.

9.4     Improvements. Any improvements to any Licensed Product or future products, regardless of the source, are the property of the Licensor or any of its subsidiaries unless otherwise agreed in writing, and shall be communicated promptly to the Licensor or any of its subsidiaries and will be licensed to the Licensee for the Term of this Agreement as set out in Section 2.9 hereof.

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***Licensing Agreement***

***Exhibit 10(i)***

**ARTICLE 10  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

10.1     The Licensor represents and warrants to the Licensee that it is the sole owner of the Intellectual Property, that such Intellectual Property does not infringe on the Intellectual Property of any other person and at Licensee's expense, Licensee together with the cooperation of Licensor shall take all reasonable steps to secure and protect the Intellectual Property and the Technology, including without limitation the defense of any claims against the Licensee in relation to the Intellectual Property and the Technology.

10.2     To the knowledge of the Licensor, there are no claims of any nature or description related to the Intellectual Property and all registrations with respect to the Intellectual Property are in good standing and are valid and enforceable.

10.3     The Licensor agrees to use its best efforts to obtain all required patent and industrial design protection for the Intellectual Property not previously obtained.

10.4     The Licensor will agree to maintain its intellectual property rights in the Technology free and clear of all liens and encumbrances and that no lien, encumbrance, mortgage or debt instrument of any kind, nature or description shall be incurred without the prior written consent of the Licensee;

10.5     To the extent it shall not adversely affect the attorney-client relationship, the Licensor shall ensure that any retention arrangement with any patent agent shall provide that the Licensee shall at all times be copied on any correspondence with any patent office and that the Licensee shall have free and unfettered access to the working files of such patent agent and may make such enquiries with the patent agent as is necessary for the maintenance of its continuous disclosure record with its shareholders and the making of any decision by the Licensee for any payments hereunder;

10.6     The Licensor represents and warrants that it has the right to grant the License pursuant to the terms of this Agreement and that entering into this Agreement does not violate any rights or existing obligations between the Licensor and any other entity.

10.7     The Licensor represents and warrants that it is a corporation in good standing under the laws of British Virgin Islands and has full authority to enter into this Agreement without any breach of any its governing documents or any applicable law.

10.8     The Licensee represents and warrants that it is a corporation in good standing under the laws of the State of Nevada and has full authority to enter into this Agreement without any breach of any its governing documents or any applicable law.

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***Licensing Agreement***

***Exhibit 10(i)***

**ARTICLE 11  
FORCE MAJEURE**

11.1     Definition of Force Majeure. For the purpose of this Agreement, force majeure means any act, event or cause, except in relation to obligations to make payments under this Agreement, beyond the reasonable control of the party affected by that force majeure including, without limitation, any act of God or any public enemy, fire, flood, explosion, landslide, epidemic, breakdown of or damage to plant, equipment or facilities, inability to obtain or unavailability of or damage to materials, ingredients or supplies, strikes, labor disputes, war, sabotage, riot, insurrection, civil commotion, national emergency and martial law, expropriation, restraint, prohibition, embargo, decree or order of any government, governmental authority or court.

11.2     Notice of Force Majeure. A party (in this Agreement called the "Affected Party") will inform the other party in writing within seven days of becoming affected by any force majeure that has or is likely to have any substantial detrimental effect on the ability of the Affected Party to perform any or all of the terms and conditions contained in this Agreement and will give particulars of the force majeure and the likely duration of the force majeure and of any likely or resulting disability or effect of that force majeure.

11.3     Time for Performance. The time for performance of the obligations of an Affected Party will be extended for the period of the force majeure if appropriate.

**ARTICLE 12  
TERMINATION**

12.1     Termination on Default. If any of the Parties are in breach or default of the terms or conditions contained in this Agreement and do not rectify or remedy that breach or default within 90 days from the date of receipt of notice by the other party requiring that default or breach to be remedied, then the other party may give to the party in default a notice in writing terminating this Agreement but without in any way limiting or affecting the rights or liabilities of the parties or either of them that have accrued to the date of termination.

12.2     Termination by Licensee. The Licensee may, at its option, terminate this Agreement at anytime by doing the following:

     (a) by ceasing to make, have made, use and sell and/or import any Licensed Products;

     (b) by giving sixty (60) days prior written notice to the Licensor of such cessation and of the Licensee’s intent to terminate, and upon receipt of such notice, the Licensor may immediately begin negotiations with other potential licensees and all other obligations of the Licensee under this Agreement will continue to be in effect until the date of termination; and

     (c) tendering payment of all accrued royalties and other payments due to the Licensor as of the date of the notice of termination.

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***Licensing Agreement***

***Exhibit 10(i)***

12.3      Partial Termination by the Licensor. Notwithstanding Section 12.1, if the Licensee is in breach or default of the terms or conditions contained in this Agreement and does not rectify or remedy that breach or default within 90 days from the date of receipt of notice by the Licensor requiring that default or breach to be remedied, then the Licensor, may alter the License granted by this Agreement with regards to its exclusivity, its territorial application and restrictions on its application.

12.4     Termination in Other Events. Without in any way limiting any other provision of this Agreement, either the Licensor or the Licensee may terminate this Agreement by notice in writing to the other if an order is made by a court or other competent authority for the winding up or dissolution of the Licensee.

12.5 Survival. Upon the termination of this Agreement:

(a) Licensee will immediately cease use of the Intellectual Property; provided however, after the effective date of termination, Licensee may sell all Licensed Products and parts thereof that it has on hand at the effective date of termination; provided, however, that Licensee’s royalty obligations will continue until all Licensed Products have been sold;

|  |  |  |
| --- | --- | --- |
|  | (b) | nothing in the Agreement will be construed to release either party from any obligation that matured prior to the effective date of termination; and |

|  |  |  |
| --- | --- | --- |
|  | (c) | the provisions of Articles 7, 8, 9 and 10 shall survive any termination or expiration of the Agreement. |

**ARTICLE 13  
GENERAL**

13.1     Notices. All notices or other communications required or permitted to be given under this Agreement must be in writing and delivered by e-mail, courier or facsimile to the address for each party as specified above or in the case of delivery by facsimile, as follows:

     If to the Licensor:

          NMT Group Ltd.

          [...], Panama  
            
             Attention:     Francis Helmfurth  
            
             Facsimile:       
             E-mail:

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***Licensing Agreement***

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     If to the Licensee:

          MERKUR Corporation

          [...], Florida 33133

          Attention:     Fern Theodorakis

          Facsimile:

          E-mail:

If to the Parent:

All Tech, Inc.

         [...} Florida 33133

          Attention:     Fern Theodorakis

          Facsimile:

          E-mail:

     Any notice to Licensee must be accompanied by contemporaneous delivery of a copy to:

          Thornton and Associates Barristers & Solicitors

Attention: Harry Thornton

     Facsimile:

     E-mail:

     Any party may designate a substitute address for the purpose of this section by giving written notice in accordance with this section. Any notice delivered in this fashion will be deemed to have been given when it is actually received.

13.2     Time of Essence. Time is of the essence of this Agreement.

13.3     Further Assurances. Each of the parties hereby covenants and agrees that at any time and from time to time it will, upon the request of the other party, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.

13.4     Each party recognizes that the employees of the other party, and such employees' loyalty and service to such party, constitute a valuable asset of such party. Accordingly, each party agrees not to make any offer of employment to, nor enter into a consulting relation with, any person who was employed by the other party within three years after the cessation of such person's employment by the other party.

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***Licensing Agreement***

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13.5     Subject to the limitations hereinbefore expressed, this Agreement will enure to the benefit of and be binding upon the parties and their respective successors and assigns.

13.6     There are no oral conditions, representations, warranties, undertakings or agreements between the Licensor and the Licensee. No modifications to this Agreement will be binding unless executed in writing by the parties. No waiver of any provision of this Agreement will be construed as a waiver of any other provision hereof nor shall such a waiver be construed as a continuing waiver. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. This Agreement will be governed by the laws of the State of Florida. Unless otherwise stated, all dollar amounts referred herein shall be in the lawful currency of the United States. If any clause or provision of this Agreement is declared invalid or unenforceable, the remainder of this Agreement will remain in full force and effect. Headings used in this Agreement are for reference purposes only and will not be deemed to be a part of this Agreement. This Agreement will not be construed as creating a partnership, joint venture or agency relationship between the parties or any other form of legal association which would impose liability upon one party for any act or failure to act by the other party.

IN WITNESS WHEREOF the following parties have executed this Agreement:

**NEW MOUNTAIN LTD. (BVI Company Number 1)**

    /s/ Francis Helmfurth

    Per: Francis Helmfurth, Director  
 

**MERKUR CORPORATION**

   /s/ Fern Theodorakis

   Per: Fern Theodorakis, Director

**SIMPLE TECH, INC.**

/s/ Fern Theodorakis

Per: Fern Theodorakis, Director

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***Licensing Agreement***

**SCHEDULE “A”**

**THE NMT TECHNOLOGY:**

The Technology comprising the invention entitled the "NMT Technology" is described as: a novel [...] process consisting of specific materials and proprietary material combinations, and including a fundamental theoretical model. This [...] process is currently utilized in a great many industrial processes and applications including fuel cells.

NMT Technology includes materials and devices for a novel [...]

**FUNDAMENTAL INTELLECTUAL PROPERTY ASSETS:**

**Milestone accomplished:** Low-cost manufacturing techniques and common materials are used for all components, allowing for quick commercialization and variable product scalability.

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***Licensing Agreement– Schedule A***

***Exhibit 10(i)***

**ADDITIONAL APPLICATIONS:**

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***Licensing Agreement– Schedule A***

**SCHEDULE "B"**

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**SCHEDULE “C”**  
   
**NON-DISCLOSURE AGREEMENT**

**PARTIES:**      NMT Group Limited (“**Developer**”)

*Registered Address:*

[...] Tortola, BVI

*Administrative Address:*

PO Box [...]

Panama

-and-

*[Name]* (‘**Recipient**’)

*[Address]*

**DATE:**                      (‘**Effective Date**’)

In consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties), the Parties agree as follows:

**1. DEFINITION OF CONFIDENTIAL INFORMATION**

Confidential Information means any information disclosed by Developer to Recipient relating directly or indirectly to NMT-Technology in all its non-public information forms which is identified by Developer, either orally or in writing, as confidential, either at the time of disclosure or, if disclosed orally, confirmed in writing within forty five (45) days following the original disclosure.

**2. EXCENMTIONS TO CONFIDENTIAL INFORMATION**

This Agreement does not apply to information that:

i.      was available to the public at the time of disclosure, or subsequently became available to the public without fault of Recipient;

ii.      was known to Recipient at the time of disclosure or was independently developed by Recipient, provided there is adequate documentation to confirm such prior knowledge or independent development;

iii.      was received by Recipient from a third party and Recipient was not aware that the third party had a duty of confidentiality to Discloser in respect of the information;

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***Licensing Agreement– Schedule C***

***Exhibit 10(i)***

iv.     is used or disclosed by Recipient with Developer’s prior written approval; or

v.     is required to be disclosed by law, provided that Recipient gives Developer sufficient prior written notice of any such disclosure to allow Developer to contest the disclosure.

**3. DESIGNATED REPRESENTATIVES**

Each party designates a representative for coordinating receipt, release and delivery of Confidential Information, which for the Developer will be Francis Helmfurth or Merle Pearl and for Recipient: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, or another individual(s) as the party may designate in writing to the other party.

**4. USE OF CONFIDENTIAL INFORMATION**

Recipient may only use the Confidential Information for the purpose of scientific and/or technical due diligence on NMT Technology in anticipation of a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ the two Parties (‘**Permitted Purpose**’).  
   
Recipient must not use the Confidential Information for any other purpose without the prior written approval of Developer.

**5. NON-DISCLOSURE**

Recipient must keep the Confidential Information in confidence. Recipient may only disclose the Confidential Information to its employees, directors, officers, agents and consultants who have a need-to-know the Confidential Information for the Permitted Purpose, provided that they are advised of the confidential nature of the Confidential Information and are under an obligation to maintain its confidentiality. Persons initially identified by the Recipient as authorized sub-recipients of the Confidential Information covered by this Agreement are identified in **Appendix A**. Recipient must not otherwise disclose Confidential Information to any person or third party without the prior written approval of Developer.

**6. STANDARD OF CARE**

Recipient must use at least the same standard of care in protecting the confidentiality of the Confidential Information as it uses in protecting its own information of a similar nature and, in any event, no less than a reasonable standard of care. Recipient must notify Developer promptly upon discovery that any Confidential Information has been accessed or otherwise acquired by or disclosed to an unauthorized person.

**7. RETURN OF CONFIDENTIAL INFORMATION**

If requested in writing by Developer, Recipient must cease using, return to Developer and/or destroy all Confidential Information and any copies of Confidential Information in its possession or control. Recipient may retain one archival copy of such Confidential Information for the sole purpose of establishing the extent of the disclosure of such Confidential Information, provided that such information is not used by Recipient for any other purpose and is subject to the confidentiality requirements set out in this Agreement.

***Page 23***

***Licensing Agreement– Schedule C***

***Exhibit 10(i)***

**8. NO LICENCE OR OTHER RIGHTS**

All Confidential Information remains the property of Developer and no license or any other rights to the Confidential Information is granted to Recipient under this Agreement. This Agreement does not obligate Developer to make any disclosure of Confidential Information to the Recipient or require the parties to enter into any business relationship or further agreement.

**9. LIMITED WARRANTY & LIABILITY**

Developer warrants that it has the right to disclose the Confidential Information to Recipient. Developer makes no other warranties in respect of the Confidential Information and provides all information “AS IS” without any express or implied warranty of any kind, including any warranty as to merchantability, fitness for a particular purpose, accuracy, completeness or violation of third party intellectual property rights. In no event will Developer be liable for any special, incidental or consequential damages of any kind whatsoever resulting from the disclosure, use or receipt of the Confidential Information.

**10. TERM**

This Agreement and Recipient’s obligation to keep Confidential Information confidential expires five (5) years after the Effective Date and/or the maximum allowable term under the prevailing law.

**11. GENERAL PROVISIONS**

11.1      **Notices -**All notices given under this Agreement must be in writing and delivered by courier or registered mail, return receipt requested, or facsimile, to the address of the party set out on page one of this Agreement. All notices to Developer must be addressed to **Francis Helmfurth** and all notices to Recipient must be addressed to **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**. Notices will be deemed to have been received on the date of delivery, if delivered by courier, on the fifth business day following receipt, if delivered by registered mail or on the first business day following the electronic confirmation of the successful transmission of the facsimile, if sent by facsimile.

11.2      **Remedies -** Recipient agrees that damages may not be an adequate remedy for any breach or threatened breach of the Recipient’s obligations under this Agreement. Accordingly, in addition to any and all other available remedies, Developer will be entitled to seek a temporary or permanent injunction or any other form of equitable relief to enforce the obligations contained in this Agreement.

11.3      **No waiver –** Failure of a party to enforce its rights on one occasion will not result in a waiver of those rights on any other occasion.

11.4      **Assignment -**Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

11.5      **Regulatory compliance –** Each party must comply with all applicable laws, regulations and rules in its jurisdiction, including but not limited to those relating to the export of information and data.

***Page 24***

***Licensing Agreement– Schedule C***

***Exhibit 10(i)***

11.6      **Entire Agreement –** This Agreement represents the entire agreement between the parties with regard to the Confidential Information and supersedes any previous understandings, commitments or agreements, whether written or oral. No amendment or modification of this Agreement will be effective unless made in writing and signed by authorized representatives of both parties.

11.7      **Severability –** If any provision of this Agreement is wholly or partially unenforceable for any reason, all other provisions will continue in full force and effect.

11.8      **Binding Effect -** This Agreement is binding upon and will ensure to the benefits of the parties and their respective successors and permitted assigns.

11.9      **Execution -** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. If delivered by facsimile, the party must also send promptly and without delay an executed original by courier to the other party. This Agreement may also be created as an electronic document and executed by electronic signature.

11.10      **Governing Law -** This Agreement will be governed and construed in accordance with the laws of the State of Florida and the laws of the United States and the parties attorn to the exclusive jurisdiction of the courts of the State of Florida.

The parties have duly executed this Agreement by their duly authorized representatives as of the Effective Date.

DEVELOPER                               RECIPIENT

Francis Helmfurth                                                *[Recipient’s Name]*  
Director                                                        *[Title]*

*[Date]*                                         *[Date]*

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***Licensing Agreement– Schedule C***

**LicA#5**

SOFTWARE LICENSE AGREEMENT, DATED NOVEMBER 15, 2021, BETWEEN OMNISOFT S.A. AND SIEGEN GROUP, INC

**Exhibit 10.1**

**Software License Agreement**

**THIS SOFTWARE LICENSE AGREEMENT** (the “Agreement”) dated this 15th day of November 2021 (the “Execution Date”)

**BETWEEN:**

OMNISOFT S.A.

VAT number: [..] 5 / Tax Authority: FAE Piraeus  
(the “Vendor”)

**OF THE FIRST PART**

-AND-

SIEGEN GROUP, INC.

a Nevada corporation

EIN (Employer Identification Number): [...]  
(the “Licensee”)

**OF THE SECOND PART**

**BACKGROUND:**

The Vendor wishes to license computer software to the Licensee and the Licensee desires to purchase the software license under the terms and conditions stated below.

**IN CONSIDERATION OF** the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

License

I. Under this Agreement the Vendor grants to the Licensee an exclusive and non-transferable license (the “License”) to use Omnisoft artificial intelligence software managing shipping crews (the “Software”).

2. “Software” includes the executable computer programs and any related printed, electronic, and online documentation and any other files that may accompany the product.

3. Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with the Vendor. Intellectual property rights include the look and feel of the Software. This Agreement constitutes a license for use only and is not in any way a transfer of ownership rights to the Software.

4. The Software may be loaded onto no more than one computer. A single copy may be made for backup purposes only.

5. The rights and obligations of this Agreement are personal rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. The Licensee may not make available the Software for use by one or more third parties.

6. The License is exclusive to the Licensee. The Vendor hereby agrees that the Licensee shall be the sole holder of the License to utilize or resell the Software for its clients.

7. The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.

8. Failure to comply with any of the terms under the License section will be considered a material breach of this Agreement.

License Fee

9. The purchase price shall be 7,000,000 shares of restricted common stock of the Licensee.

Limitation of Liability

10. The Software is provided by the Vendor and accepted by the Licensee “as is”. Liability of the Vendor will be limited to a maximum of the original purchase price of the Software. The Vendor will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Licensee arising out of the use or failure to use the Software.

11. The Vendor makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements of the Licensee.

Page 2 of 6

12. The Vendor does not warrant that use of the Software will be uninterrupted or error-free. The Licensee accepts that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

Warrants and Representations

13. The Vendor warrants and represents that it is the copyright holder of the Software. The Vendor warrants and represents that granting the license to use this Software is not in violation of any other agreement, copyright or applicable statute.

Acceptance

14. All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee (“Acceptance”) upon execution of this Agreement.

User Support

15. Vendor shall provide any and all technical support to ensure the Software is fully operational and completely up to date. In the event that Vendor requires access for general maintenance of the Software or ancillary hardware, Licensee shall reasonably provide access to its systems and facilities such that Vendor can properly service the same.

Term

16. The term of this Agreement will begin on January 1, 2022 and is perpetual.

Termination

17. This Agreement will be terminated and the License forfeited where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement On termination of this Agreement for any reason, the Licensee will promptly destroy the Software or return the Software to the Vendor.

Force Majeure

18. The Vendor will be free of liability to the Licensee where the Vendor is prevented &om executing its obligations under this Agreement in whole or in part due to Force Majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Vendor has taken any and all appropriate action to mitigate such an event.

Page 3 of 6

Governing Law

19. The Parties to this Agreement submit to the jurisdiction of the courts of the State of Nevada for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of the State of Nevada.

Miscellaneous

20. This Agreement can only be modified in writing signed by both the Vendor and the Licensee.

21. This Agreement does not create or imply any relationship in agency or partnership between the Vendor and the Licensee.

22. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

23. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties’ intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

24. This Agreement contains the entire agreement between the parties. All understandings have been included in this Agreement. Representations which may have been made by any party to this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.

25. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Vendor’s successors and assigns.

Notices

26. All notices to the parties under this Agreement are to be provided at the following addresses, or at such addresses as may be later provided in writing:

[...], : [...]

[...] : [...]

Page 4 of 6

[THIS SPACE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE TO FOLLOW]

Page 5 of 6

[SIEGEN Group, Inc. - OMNISOFT SA.

Licensing Agreement- Signature Page]

IN WITNESS WHEREOF, Licensee has caused this Agreement to be executed by one of its duly authorized officers and Licensee has individually executed this Agreement, each intending to be legally bound, as of the date first above written.

SIEGEN GROUP, INC.

By: /s/ Stavros Melnikis November 15th, 2021

Stavros Melnikis Date

Title: Chief Executive Officer

OMNISOFT

SOFTWARE PRODUCTION

SINGLE MEMBER S.A.

By: /s/ Stavros Melnikis November 15th, 2021

Stavros Melnikis Date

Principal

Page 6 of 6

**LicA#7**

MASTER SERVICES AND LICENSING AGREEMENT

**Exhibit 10.20**

**MASTER SERVICES AND LICENSING AGREEMENT**

BETWEEN

**OMNIFLEX SOFTWARE CORP**., an Ontario corporation,

(hereinafter referred to as “**Omni**”)

and

**Optofix, INC**., a Delaware corporation,

(hereinafter referred to as “**Optofix**”)

**RECITALS**

WHEREAS, Omni develops and distributes software applications for use in diagnostic imaging;

AND WHEREAS, Optofix has developed a set of products and technologies that enable various MRI-guided procedures and therapeutic interventions (the “**Optofix Technology**”);

AND WHEREAS, Optofix and Omni wish to establish a legal relationship under which Omni will develop software to support the Optofix technology;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto have decided to enter into this Master Services and Licensing agreement (this “**Agreement**”), dated and effective from the 20th day of July, 2007 (the “**Effective Date**”), under the terms and conditions set forth below;

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| **1.** | **STANDARD DEFINITIONS** |

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| **1.1** | **Definitions** |

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|  | (a) | “**Agreement**” means this Agreement, including the Schedules to this Agreement, and any Statements of Work made hereunder, as it or they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and to any particular Section or other portion of this Agreement. |

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|  | (b) | “**Business Day**” means Monday to Friday except any statutory holiday observed in the Province of Ontario and “**Business Hour**” means each hour from 9:00 am to 5:00 pm E.S.T. during a Business Day. |

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|  | (c) | “**Omni Software**” means software, in object code form, used to develop the Solution that is owned by or in possession of Omni prior to the Effective Date or developed or acquired by Omni during the Term independent of this Agreement or that is developed pursuant to this Agreement and determined to be owned by Omni in accordance with Section 5.2. |

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|  | (d) | “**Change Request**” means a written request for changes to any Custom Engineering Services. |

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|  | (e) | “**Confidential Information**” has the meaning attributed to it in Section 11.1. |

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|  | (f) | “**Custom Engineering Services**” means the custom engineering services offered by Omni to Optofix in accordance with Section 2. |

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|  | (g) | “**Documentation**” means the documentation which facilitates the use of the Omni Software and that is provided to Optofix under the terms of this Agreement. |

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|  | (h) | “**Effective Date**” has the meaning attributed to it in the Recitals. |

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|  | (i) | “**End User**” means any person or organization that is granted rights to a Solution for use in processing its own data in the normal course of its business activities. |

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|  | (j) | “**Engineering Team**” means the team of custom engineering resources assigned by Omni to Optofix in accordance with the terms of this Agreement. |

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|  | (k) | “**Initial Term**” has the meaning attributed to it in Section 6.1. |

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|  | (l) | “**Off-shore Engineer**” means an engineer located outside North America. |

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|  | (m) | “**On-shore Engineer**” means an engineer located in North America. |

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|  | (n) | “**Parties**” means Omni and Optofix and “**Party**” means either of them. |

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|  | (o) | “**Professional Services**” means the professional support services offered by Omni to Optofix in accordance with Schedule B. |

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|  | (p) | “**Project(s)**” means the specific Custom Engineering Services projects undertaken by Omni at Optofix’s request from time to time. |

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|  | (q) | “**Renewal Term**” has the meaning attributed to it in Section 6.1. |

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|  | (r) | “**Solution**” means a customized viewer software solution, Incorporating the Omni Software, which supports the Optofix Technology. |

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|  | (s) | “**Statement of Work**” or “**SOW**” means any work order made between the Parties which references and incorporates the terms of this Agreement, and sets out the details of a particular Project including, without limitation, any applicable (i) Solution requirements; (ii) methodologies; (iii) project responsibilities; (iii) delivery milestones; (iv) support; and (v) costs. |

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|  | (t) | “**Optofix Technology**” has the meaning attributed to it in the Recitals. |

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|  | (u) | “**Term**” means the period specified in Section 6 of this Agreement. |

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| **2.** | **BUSINESS TERMS** |

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| **2.1** | **Custom Engineering Services** |

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|  | **2.1.1** | **General** |

Optofix shall engage Omni in various Custom Engineering Services Projects throughout the Term. Each Project shall be defined by a Statement of Work signed by both Parties and numbered sequentially. Statement of Work No.1, covering the initial Project of defining the functional requirements for development of the Solution, is attached hereto as Schedule A. The development of such Solution shall be based on the results of Statement of Work No.1 and shall be covered under a separate SOW.

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|  | **2.1.2** | **Engineering Team** |

The Engineering Team shall consist of a combination of On-shore Engineers and Off-shore Engineers. The composition of On-shore Engineers and Off-shore Engineers for any particular Project shall be specified in the applicable SOW.

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|  | **2.1.3** | **Project Management** |

For each Project, each Party shall assign a project manager who shall be responsible for their respective Party’s deliverables as defined by the Statement of Work. It is acknowledged and agreed that Omni’s ability to meet Project milestone dates and deliverable requirements may, in whole or in part, be dependant upon Optofix’s timely response to Omni’s reasonable requests for co-operation made from time to time.

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|  | **2.1.4** | **Change Requests** |

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|  | (a) | Proposed changes to any Custom Engineering Services may be initiated by Optofix by giving a Change Request to Omni. Once a change is initiated by Optofix, Omni shall add a description of the following to the applicable Change Request: (i) the proposed changes to the Solution; (ii) any associated changes to the fees or estimated fees, and any changes to the dates set out in the applicable SOW; and (iii) any other applicable terms and conditions. Optofix acknowledges that time required by Omni to respond to Change Requests may cause delays in achieving milestones. |

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|  | (b) | Omni may initiate a change to any Custom Engineering Services by giving Optofix a Change Request that includes a description of: (i) the proposed changes to the Custom Engineering Services; (ii) any associated changes to the fees or estimated fees, and any changes to the dates set out in the applicable SOW; and (iii) any other applicable terms and conditions. |

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|  | (c) | Once any Change Request is signed by both Parties, it becomes a “**Change Order**”. The changes set out in any Change Order shall constitute amendments to this Agreement and any applicable SOWs. Subject to subsection (d) below, if any Change Request is not signed by both Parties within 10 days of its submission by either Party, it is deemed to be withdrawn. Subject to the provisions of this Agreement, the Parties shall continue to be bound by the terms and conditions of any SOW made hereunder without regard to the provisions of any Change Request until such time as a Change Order is executed by both Parties. |

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|  | (d) | If a Change Request is delivered by Omni and indicates that the change(s) are related to unforeseeable deficiencies in the original specifications, or errors on the part of the Optofix, and the Change Request is rejected by Optofix, Omni may, in its sole discretion, either: |

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|  | (i) | immediately terminate the applicable SOW; or |

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|  | (ii) | complete the delivery of the SOW, provided that Optofix shall be deemed to have waived its rights to all warranties and support otherwise applicable to any part of the Custom Engineering Services directly affected by the specified changes. |

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|  | **2.1.5** | **Ongoing Management** |

All disputes which may arise with respect to any matter related to any Custom Engineering Services shall, to the extent possible, be resolved by the project managers for each Party, as soon as practicable and in any event within 10 Business Days of when it arises. If the project managers fail to resolve the dispute within 10 Business Days of when it arises, then their respective supervisors or other senior executives designated by the Parties shall work to resolve

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the dispute, as soon as practicable and in any event within 10 Business Days of when it was referred to them. Each Party shall ensure that its representative for such discussions has the necessary authority to resolve any dispute on behalf of that Party.

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|  | **2.1.6** | **Fees and Payment** |

Optofix shall pay Omni for Custom Engineering Services according to an [\*\*\*]. Optofix shall also reimburse Omni for all pre-approved travel and living expenses incurred by Omni that are necessary to enable Omni to perform the Custom Engineering Services. Unless otherwise specified in the applicable SOW, Omni shall invoice Optofix on a monthly basis for Custom Engineering Services.

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|  | **2.1.7** | [\*\*\*] |

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| **2.**2 | **Licensing Terms and Conditions** |

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|  | **2.2.1** | **License Terms** |

Omni grants to Optofix a non-exclusive, worldwide license during the Term to use, make copies of, distribute, market and sell licenses to the Omni Software to End Users for use as an integrated component of the Solution and under Optofix’s trademarks and service marks, and to use the Documentation in support of the foregoing grant of rights.

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|  | **2.2.2** | **Restrictions With Respect to Omni Software** |

The rights to the Omni Software granted by Omni to Optofix herein are subject to the following restrictions:

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|  | (a) | Optofix shall not modify, adapt, alter, translate, copy or otherwise use the Omni Software or Documentation except as expressly permitted in this Agreement; |

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|  | (b) | Optofix shall not attempt to reverse engineer, decompile, disassemble or otherwise render the Omni Software into human readable form in order to gain access to the source code in any way, or to produce any work derived from the Omni Software; |

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|  | (c) | the Solution may only be distributed subject to the terms and conditions of an End User agreement as specified in Section 2.1.3, and, except as otherwise expressly permitted in this Agreement, Optofix shall not transfer the rights granted to it under this Agreement; |

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|  | (d) | Optofix shall take all necessary measures to ensure that persons under its direction and control abide by the terms and conditions of this Agreement; |

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|  | (e) | Optofix shall only represent the performance of the Omni Software as stated in the most current Documentation provided to Optofix by Omni from time to time; and |

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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|  | (f) | Optofix shall obtain any governmental approvals required to discharge Optofix’s obligations in this Agreement. In addition, Optofix shall obtain any required qualifications as soon as practicable under the applicable governmental requirements. Omni agrees to use reasonable efforts to assist Optofix in obtaining such approvals or qualification and to institute such design changes as may be required for such qualification. |

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|  | **2.2.3** | **End User Agreements** |

Optofix shall enter into an agreement with each End User, and shall include provisions in such agreement that are at a minimum as protective to Omni as the following:

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|  | (a) | each license to the Solution shall be valid only for a single workstation identified by a serial number. The license may be transferred to another identified workstation upon prior written consent of Omni; |

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|  | (b) | End Users may use the Omni Software only as integrated component of the Solution and strictly for their own internal business purposes, and may not sell, rent, lease, license, time share or otherwise transfer or provide access to the Omni Software to any third parties; |

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|  | (c) | End Users, may not reproduce, modify, adapt, alter, translate, reverse engineer, decompile, disassemble or otherwise render the Omni Software into human readable form in order to gain access to the Omni Software source code in any way, or to produce any work derived from the Omni Software or translate or create other versions of the Omni Software; |

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|  | (d) | End Users shall not modify or remove any copyright or other proprietary rights notices in or on the Omni Software or Documentation; and |

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| --- | --- | --- |
|  | (e) | Omni shall have no liability to the End User for any express or implied warranties or any indirect, incidental, special or consequential damages. |

Optofix’s failure to enforce the terms of the End User agreement shall constitute a breach of this Agreement

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|  | **2.2.4** | **License Fees and Minimum Commitment** |

Optofix shall pay to Omni a run-time license fee of [\*\*\*] for each Solution distributed by Optofix, provided that the [\*\*\*] shall be at no charge. Optofix agrees to purchase a minimum of [\*\*\*] licenses during the second year of this Agreement (in addition to the [\*\*\*] granted at no charge) and [\*\*\*] during each of the last 3 years of the initial Term for an annual commitment during the second year of $175,000 and an annual commitment during each of the last 3 years of $525,000 (each, an “**Annual Minimum Commitment**”). Within 30 days following the end of each of the last 4 years of the initial Term, Omni will invoice Optofix for the difference, if any, between the actual license fees paid and the Annual Minimum Commitment for that year.

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| **2.3** | **Professional Services** |

Optofix may purchase Professional Services for the fees set forth in Schedule B.

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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| **2.4** | **Training** |

Omni shall provide technical and applications training to Optofix which may require Optofix to send one or more persons to Toronto, Canada. All training programs offered by Omni are designed as “train-the-trainer” courses and are intended for deployment and application specialists as well as the first-line support staff.

Optofix shall submit training requests to Omni through the [...].com email address.

The fees for training are set out in Schedule B.

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| **3.** | **PAYMENT TERMS** |

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| **3.1** | **Taxes** |

Fees do not include applicable taxes or import duties. Optofix shall pay such taxes or duties either directly or when invoiced by Omni, or shall supply appropriate tax exemption certificates in a form satisfactory to Omni.

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| **3.2** | **Payment** |

Unless otherwise indicated, Omni invoices shall be due and payable to Omni within 15 days of receipt of invoice by Optofix. Any undisputed payment not paid within such 15-day period shall bear interest from the date payment is due until paid at the lesser of either a monthly compounded interest rate of 1.5% (19.56% per annum) or the highest interest rate allowed at law. If a dispute over an invoice is not resolved within 30 days of receipt of such invoice by Optofix, Omni may suspend all services and licensing rights provided for under this Agreement until such dispute is resolved to the mutual satisfaction of the Parties. Optofix agrees to reimburse Omni for all reasonable costs and expenses incurred by Omni in enforcing payment.

Payments are to be made by wire transfer or electronic payment through the Automated Clearing House (ACH) to Omni according to the terms specified herein, using all of the following banking information exactly as shown:

First Deposit to:

[\*\*\*]

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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[\*\*\*]

Alternatively, payment can be made by Cheque payable to Omni Software Corp.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Cheques shall be mailed or couriered to: |  | Omni Software Corp. |
|  | [ |  |
|  |  | Ontario, L4V 1S7, Canada |
|  |  | Attention: Finance Department |

|  |  |
| --- | --- |
| **3.3** | **Currency** |

All monetary amounts in this Agreement shall be in US dollars, unless expressly stated to the contrary.

|  |  |
| --- | --- |
| **4.** | **RECORDS AND AUDIT** |

Optofix shall maintain written records (“**Records**”) of all copies made by Optofix of the Omni Software, or any portions thereof, and of all sublicenses of the Omni Software and on written notice by Omni, Optofix shall provide a copy of the Records to Omni for inspection.

Omni shall have the right to direct a qualified agent to audit Optofix’s compliance with the terms of this Agreement. The audit shall occur during normal business hours and at Omni’s expanse, unless the audit reveals that Optofix is not in material compliance with this Agreement, in which case Optofix shall pay all expenses associated with the audit and shall immediately pay to Omni the fees for any unauthorized copies of the Omni Software based on Omni’s product transfer price list from the later of the date of the last audit or the Effective Date of this Agreement.

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| **5.** | **PROPRIETARY RIGHTS** |

|  |  |
| --- | --- |
| **5.1** | **Omni Software** |

The Omni Software owned by or in possession of Omni prior to the Effective Date or developed or acquired independent of this Agreement during the Term, and any enhancements or modifications thereto or derivatives thereof, shall be owned exclusively by Omni or its suppliers, as applicable, and except as expressly provided for in this Agreement, all rights, title and interest therein are reserved by Omni or its suppliers, as indicated by Omni.

|  |  |
| --- | --- |
| **5.2** | **Software Development** |

Omni acknowledges and agrees that any and all work product and intellectual property developed or created by Omni at the direction of Optofix and accepted by Omni or otherwise using Optofix’s Confidential Information or intellectual property, that is developed specifically for Optofix and has unique application to the Optofix Technology (“Optofix Work Product”), is the sole and exclusive property of Optofix and are “works made for hire” within the meaning of the United States Copyright Act of 1976, 17 U.S.C. $101 *et seq.*To the extent any Optofix Work Product does not constitute a “work made for hire” under the United States Copyright Act, Omni hereby irrevocably assigns, transfers and sets over absolutely to Optofix, and shall cause each of its employees to assign to Optofix, all right, title and interest (whether now in existence or hereafter arising) in and to any Optofix

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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Work Product and any intellectual property related thereto. For greater certainty, the Optofix Work Product shall not include any components of the Omni Software.

|  |  |
| --- | --- |
| **6.** | **TERM AND TERMINATION** |

|  |  |
| --- | --- |
| **6.1** | **Term of the Agreement** |

The initial term of this Agreement is for 5 years commencing on the Effective Date (the “**Initial Term**”). Thereafter, this Agreement shall automatically renew for up to 3 successive periods of 12 months (each, a “**Renewal Term**”), unless Optofix gives written notice to Omni of its intention not renew a minimum of 30 days prior to the expiry of the Initial Term or the then current Renewal Term, as applicable, provided that Omni may amend the Custom Engineering Services fees and/or Professional Services fees during any Renewal Term with a minimum of 30 days prior written notice to Optofix. The Initial Term and any Renewal Terms shall collectively comprise the **“Term**.

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| --- | --- |
| **6.2** | **Termination** |

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| --- | --- | --- |
|  | **6.2.1** | **Termination for Cause** |

Notwithstanding the foregoing provisions of Section 6.1, this Agreement and any SOW made hereunder may be terminated immediately by either Party if:

|  |  |  |
| --- | --- | --- |
|  | (a) | the other Party ceases to carry on business in the normal course, becomes or is declared insolvent or bankrupt, is subject to any proceeding relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes a general assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations; or |

|  |  |  |
| --- | --- | --- |
|  | (b) | the other Party breaches any material obligation under this Agreement and such breach has continued uncured for a period of 20 days after receiving written notice of the breach. |

|  |  |  |
| --- | --- | --- |
|  | **6.2.2** | **Procedure on Termination** |

Upon expiration or termination of this Agreement for any reason:

|  |  |  |
| --- | --- | --- |
|  | (a) | Optofix shall promptly cease representing, quoting, selling, sublicensing or otherwise using the Omni Software (including as part of the Solutions); |

|  |  |  |
| --- | --- | --- |
|  | (b) | Optofix shall promptly return to Omni all copies of the Omni Software. Documentation or data originally provided by Omni and which are the property of Omni; |

|  |  |  |
| --- | --- | --- |
|  | (c) | Optofix shall pay all outstanding invoices or amounts owing to Omni which shall become immediately due and payable on notice of termination: and |

|  |  |  |
| --- | --- | --- |
|  | (d) | Omni shall deliver any specifications, designs, technical materials and other instructions developed or provided by Optofix to Omni, which the parties acknowledge and agree are exclusively owned by Optofix. |

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Termination and the foregoing remedies shall be in addition to, and not in lieu of, any other remedies that either Party may have at law or in equity and shall not relieve either Party of liability for any breach of contract occurring prior to the effective date of termination.

|  |  |  |
| --- | --- | --- |
|  | **6.2.3** | **Non- Termination of End User Licenses** |

Notwithstanding the termination or expiry of this Agreement, all End User licenses granted by Optofix prior to such termination or expiry shall continue to be in full force and effect, subject to their terms.

|  |  |
| --- | --- |
| **7.** | **BRANDING** |

Optofix shall market the Solutions using its own trademarks, logos, symbols, designs and other designations or brands. Notwithstanding the foregoing, Optofix shall not alter, remove or obscure any Omni copyright, trade-mark or other proprietary rights notices which are incorporated in or on the Omni Software or Documentation.

|  |  |
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| **8.** | **INDEMNITIES** |

|  |  |
| --- | --- |
| **8.1** | **Intellectual Property Rights Indemnities** |

Omni shall defend, indemnity and hold harmless Optofix, and its directors, officers, employees, contractors, agents and suppliers, from any claims, losses, damages, penalties, judgments and liabilities, including all reasonable related costs and expenses, arising in connection with any action or claim that the Omni Software infringes any Canadian or United States patent or any other intellectual property and/or proprietary right of a third party, provided that (i) Optofix cooperates with Omni’s reasonable requests for assistance in the defence; and (ii) Omni controls the defence, negotiation and settlement of any such claim; provided, that Omni shall not settle or compromise any claim that would adversely affect the rights of Optofix without the prior written consent of Optofix, such consent not to be unreasonably withheld.

|  |  |
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| **8.2** | **Optofix Remedies** |

In addition to any and all remedies provided under Section 8.1 above, it Optofix cannot use the Omni Software because a court of final appeal has held that its use constitutes an infringement of a third party’s intellectual property rights, Omni shall, in its sole discretion and as Optofix’s sole recourse, provide Optofix with one of the following remedies:

|  |  |  |
| --- | --- | --- |
|  | (a) | without impairing Omni Software functionality or performance in any material adverse way, (i) modify the infringing portion of the Omni Software so that it is non-infringing or (ii) replace the Omni Software with equally suitable, non -infringing components; or |

|  |  |  |
| --- | --- | --- |
|  | (b) | procure for Optofix the right to continue to use the infringing Omni Software. |

|  |  |
| --- | --- |
| **8.3** | **Exclusion** |

Omni shall have no liability to Optofix with respect to any claim of intellectual property rights infringement caused by (i) Optofix’s modifications to the Omni Software or combination of the Omni Software with non-Omni products; (ii) Optofix’s continued use of the infringing Omni Software after having been notified of the alleged infringement; (iii) Surgi-

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Vision’s failure to use modifications to the Omni Software supplied by Omni that would have avoided the infringement; or (iv) modifications made to the Omni Software by any person or entity other than Omni or by Omni at the Optofix’s directions or specifications.

|  |  |
| --- | --- |
| **8.4** | **Distribution of Solutions** |

Optofix agrees to defend, indemnify and hold harmless Omni and its affiliates, and each of their respective directors, officers, employees, contractors, agents and suppliers, from any claims, liabilities or damages, and related costs and expenses, arising out of or related to Optofix’s use or distribution of the Omni Software that is in breach of the terms and conditions of this Agreement or any claim that the Optofix Technology infringes any Canadian or United States patent or any other intellectual property and/or proprietary right of a third party, provided that (i) Omni cooperates with Surg-Vision’s reasonable requests for assistance in the defence; and (ii) Optofix controls the defence, negotiation and settlement of any such claim; provided, that Optofix shall not settle or compromise any claim that would adversely affect the rights of Omni without the prior written consent of Omni. such consent not to be unreasonably withheld.

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| **8.5** | **Notice** |

Each Party shall promptly provide the other with written notice of any claim or information that might lead to a claim for indemnity under this Section 8. Failure by the Party seeking indemnity to notify the indemnifying Party of such claim or information, which results in the indemnifying Party being materially prejudiced, shall relieve the Indemnifying Party of its liability under this indemnity provision.

|  |  |
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| **9.** | **NON- SOLICITATION** |

Until this Agreement is terminated, and for a period of 1 year following, neither Party shall hire, employ, retain or solicit any person who is an employee, officer, director of full-time independent contractor of the other Party and who, but for this Agreement, would otherwise be unknown to that Party. The Parties acknowledge that in view of the recruitment difficulties, costs of training staff in the computer industry and the highly sensitive nature of Intellectual property rights of both Parties, this restriction is reasonable.

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| --- | --- |
| **10.** | **LEGAL RISK MANAGEMENT** |

|  |  |
| --- | --- |
| **10.1** | **Advisory Device** |

**IN CIRCUMSTANCES WHERE THE OMNIFLEX SOFTWARE SHIPPED TO OPTOFIX HAS NOT BEEN MADE COMMERCIALLY GENERALLY AVAILABLE (“PRE-GMA”) (FOR EXAMPLE, EVALUATION SOFTWARE PRODUCTS), OPTOFIXACKNOWLEDGES AND AGREES THAT SUCH PRE-GMA OMNIFLEX SOFTWARE HAS NOT BEEN TESTED OR APPROVED FOR COMMERCIAL OR OPERATIONAL RELEASE OTHER THAN FOR CLINICAL EVALUATION (WHERE APPLICABLE) IN A CONTROLLED ENVIRONMENT AND THAT IT IS TO BE USED FOR EVALUATION PURPOSES ONLY WITH THE HIGHEST POSSIBLE STANDARD OF CARE.**

**OPTOFIX ACKNOWLEDGES THAT THE OMNIFLEX SOFTWARE AND THE SOLUTION ARE ADVISORY DEVICES AND NOT DESIGNED TO SUBSTITUTE FOR THE PRIMARY DEFENCES AGAINST DEATH OR INJURY DURING SURGICAL, MEDICAL LIFE SUPPORT OR OTHER POTENTIALLY HAZARDOUS APPLICATIONS WHICH SHALL CONTINUE TO BE**

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**THE SKILL, KNOWLEDGE AND EXPERIENCE OF THE USERS OF THE OMNIFLEX SOFTWARE AND SOLUTION.**

|  |  |
| --- | --- |
| **10.2** | **Notice to End-Users** |

**OPTOFIX AGREES THAT IT SHALL NOT USE, MARKET, DISTRIBUTE OR RESELL THE OMNIFLEX SOFTWARE OR SOLUTION AS A SUBSTITUTE FOR THE DEFENCES IDENTIFIED ABOVE IN THIS SECTION 10 OR WITH UNAPPROVED DICOM CONNECTIONS. Optofix SHALL PROVIDE END USERS WITH A PROMINENT NOTICE, IN THEIR LOCAL LANGUAGE, TO THAT EFFECT.**

|  |  |
| --- | --- |
| **10.3** | **Legal Risk Management** |

**EACH OF THE PARTIES AGREES THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION ARE FAIR AND REASONABLE IN THE COMMERCIAL CIRCUMSTANCES OF THIS AGREEMENT AND THAT IT WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR THE OTHER PARTY’S AGREEMENT TO LIMIT ITS LIABILITY IN THE MANNER, AND TO THE EXTENT, PROVIDED FOR HEREIN. SAVE AND EXCEPT FOR CLAIMS ARISING FROM BREACH OF RESTRICTIONS ON USE AND DISTRIBUTION OF THE OMNIFLEX SOFTWARE, BREACH OF THE PAYMENT OBLIGATIONS, BREACH OF THE CONFIDENTIALITY OBLIGATIONS OR CLAIMS FOR WHICH AN INDEMNITY HAS BEEN PROVIDED UNDER THIS AGREEMENT, GROSS NEGLIGENCE, FRAUD, OR WILLFUL OR INTENTIONAL MISCONDUCT, THE PARTIES AGREE THAT EACH OF THE PARTIES’ AND THEIR RESPECTIVE SUPPLIERS’ LIABILITY TO THE OTHER FOR ANY AND ALL DIRECT, COMPENSATORY LOSS OR DAMAGES, UNDER ANY THEORY OF LAW OR EQUITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE INTENDED FULFILLMENT OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE STRICTLY LIMITED IN THE AGGREGATE TO $1,000,000. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OR INJURIES TO EARNINGS, PROFITS OR GOODWILL, OR FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY PERSON OR ENTITY WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL APPLY EVEN IN THE EVENT OF A BREACH OF CONDITION, A BREACH OF AN ESSENTIAL OR FUNDAMENTAL TERM. OR AN ESSENTIAL OR FUNDAMENTAL BREACH OF THIS AGREEMENT.**

|  |  |
| --- | --- |
| **10.4** | **Exclusion** |

**THE OBLIGATIONS OF OMNIFLEX EXPRESSLY STATED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS EXPRESS OR IMPLIED. WITHOUT LIMITATION, TO THE FULLEST EXTENT ALLOWABLE BY LAW, THIS EXCLUSION OF ALL OTHER WARRANTIES AND CONDITIONS EXTENDS TO IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. OMNIFLEX MAKES NO GUARANTEES REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR THAT USE OF THE OMNIFLEX SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.**

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| **11.** | **CONFIDENTIALITY** |

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| **11.1** | **Definition** |

In this Section. **“Confidential Information”** means all information that the disclosing Party designates as confidential or which ought to be considered as confidential from its nature or from the circumstances surrounding its disclosure, including without limitation all regulatory, commercial, financial, administrative and technological information of either Party and any information concerning this Agreement, but does not Include information which:

|  |  |  |
| --- | --- | --- |
|  | (a) | is known to the receiving Party before receipt from the other Party, as substantiated by cogent and reliable evidence; |

|  |  |  |
| --- | --- | --- |
|  | (b) | is disclosed to the receiving Party in good faith by a third party who had a right to make such disclosure; |

|  |  |  |
| --- | --- | --- |
|  | (c) | is made public by the originating Party, or is established to be a part of the public domain otherwise than as a consequence of a breach by the receiving Party of Its obligations hereunder; or |

|  |  |  |
| --- | --- | --- |
|  | (d) | can be substantiated, based on cogent and reliable evidence, to have been independently developed by the receiving Party. |

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| --- | --- |
| **11.2** | **Limited Use** |

All Confidential Information of each Party shall be used by the other Party strictly and only for the purposes in this Agreement.

|  |  |
| --- | --- |
| **11.3** | **Reasonable Care** |

Each Party shall hold all Confidential Information of the other Party in confidence strictly for. and on behalf of the other Party and treat the Confidential Information of the other Party as it does its own valuable and sensitive information of a similar nature and, in any event, with not less than a reasonable degree of care.

|  |  |
| --- | --- |
| **11.4** | **Obligations of the Parties** |

Each Party shall have an obligation to prevent the other Party’s Confidential Information in its possession or control from being misappropriated, or wrongfully communicated by any employee, consultant or other person under the obliged Party’s control. If the receiving Party is required by a court or government authority to disclose Confidential Information, the receiving Party shall provide the disclosing Party with prompt notice, including the circumstances of such requirement, so that the disclosing Party may seek an appropriate protective order, and shall reasonably cooperate with the disclosing Party in an action by the disclosing Party to obtain an appropriate protective order. Upon termination of this Agreement, the Parties shall promptly return or destroy the other Party’s Confidential Information.

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| **12.** | **GENERAL** |

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| --- | --- |
| **12.1** | **Governing Law** |

The construction, validity and performance of this Agreement shall be governed by the laws of the State of New York without reference to conflict of laws principles.

|  |  |
| --- | --- |
| **12.2** | **Sale of Goods Act** |

This Agreement shall not be governed by either the provisions of the International Sale of Goods Act or the United Nation’s Convention for Contracts on the International Sale of Goods, regardless of that Convention’s legal or statutory adoption by any jurisdiction.

|  |  |
| --- | --- |
| **12.3** | **Assignment** |

Neither party may assign or otherwise transfer rights or obligations under this Agreement whether in whole or in part, except with the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement in its entirety in the event of a merger, change of control, corporate reorganization, or a sale of all or substantially all of the assets of such party.

|  |  |
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| **12.4** | **Notices** |

Any notices provided for under this Agreement shall be deemed received when delivered in person, on the first Business Day following electronic transmission by facsimile or five (5) days after being mailed by registered mail or reputable courier service:

**To Omni:**

Omni Software Corp.

[...] CANADA

Attention: VP Sales

**To Optofix:**

Optofix, Inc.

[...] Maryland

21218l USA

Attention: Karl F Lager

|  |  |
| --- | --- |
| **12.5** | **Public Notices** |

The Parties agree to issue a press release publicizing this Agreement subject to mutual agreement, to be evidenced in writing, on appropriate content and timing of said release. Subject to the foregoing, neither Party will use the other Party’s name in any publicity, publication,

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announcement, marketing or press release or otherwise make use of its association with the other Party or this Agreement, without the other Party’s written consent.

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| **12.6** | **Case Study** |

Upon Optofix’s prior written consent in each Instance, Omni may devise a case-study of any Custom Engineering Services Projects, and may use such case-study for marketing of its engineering services to third parties.

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| --- | --- |
| **12.7** | **Entire Agreement** |

This Agreement, including the Schedules listed below and any Statements of Work made hereunder, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings, collateral, oral, or otherwise. No modification of this Agreement shall be binding upon the Parties to this Agreement unless in writing and executed by an authorized signing officer for each of the Parties.

In the event of conflict or inconsistency between the provisions of this Agreement and any of the Schedules or Statements of Work made hereunder, or any other document incorporated by reference herein, the terms of this Agreement shall prevail, unless in the case of any Statement of Work, the Parties expressly state that any terms contained therein are to prevail over any inconsistent terms contained in the provisions of this Agreement.

The Schedules to this Agreement Are:

Schedule A: Statement of Work No. 1

Schedule B: Professional Services

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| **12.8** | **Amendments** |

Any amendment or modification of any provision of this Agreement must be in writing, dated and signed by a duty authorized representative of each Party hereto.

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| --- | --- |
| **12.9** | **Successors and Assigns** |

All successors, receivers, managers, trustees and permitted assigns of the Parties shall be bound by the rights and liabilities set out in this Agreement.

|  |  |
| --- | --- |
| **12.10** | **Force Majeure** |

Neither Party shall be liable for any failure or delay in its performance under this Agreement due to causes of *force majeure*, including without limitation, tires, floods, storms, earthquakes, civil disturbances, or labour matters, provided that Optofix shall continue to be obligated to pay any fees that have accrued up until the event of *force majeure.*If a party is so delayed or prevented from performing its obligations under this Agreement for a period of thirty (30) consecutive days, the other party shall have the immediate right to terminate this Agreement at the end of such thirty (30) consecutive-day period, without any right of cure on the party so delayed.

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|  |  |
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| **12.11** | **Amicable Resolution** |

All controversies or claims arising out or relating to this Agreement, or any breath thereof, shall be finally settled amicably, if possible, by negotiation between the Parties.

|  |  |
| --- | --- |
| **12.12** | **No Waiver** |

No failure on the part of any Party to this Agreement to exercise, and no delay in exercising any right, power or single or partial exercise of any right, power or remedy by any Party shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

|  |  |
| --- | --- |
| **12.13** | **Counterparts and Delivery** |

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Delivery of this Agreement by fax shall constitute valid and effective delivery.

|  |  |
| --- | --- |
| **12.14** | **Severability** |

If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, that provision shall bo deemed to be severed from the Agreement, and the remaining provisions shall not be affected.

|  |  |
| --- | --- |
| **12.15** | **Legal Relationship** |

The Parties to this Agreement are independent contractors and separate entities. No other legal relationship is intended or implied. Except as specifically specified in this Agreement, neither Party shall be responsible for acts of the other Party or its agents or employees and neither Party shall assume or create any obligation in the name of or on behalf of the other Party.

|  |  |
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| **12.16** | **Export Control** |

Optofix agrees to comply with the export laws and regulations of Canada and the United States of America in exercising the rights granted to it under this Agreement in respect of the Omni Software.

|  |  |
| --- | --- |
| **12.17** | **Survival** |

Sections 1, 3, 4, 5, 6.2.2, 6.2.3, 8, 9, 10, 11 and 12 shall survive termination of this Agreement.

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**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement by their duly authorized representatives.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Optofix INC:** |  | **OMNIFLEX SOFTWARE CORP:** |
|  |  | |
| /s/ Karl F Lager |  | /s/ Mary Fields |
|  |  | |
| Signature |  | Signature |
|  |  | |
| KARL F LAGER |  | MARY FIELDS |
|  |  | |
| Name |  | Name |
|  |  | |
| Pres / CEO |  | U.P. CUSTOMER OPERATIONS |
|  |  | |
| Title |  | Title |
|  |  | |
| July 20, 2007 |  | July 20, 2007 |
|  |  | |
| Date |  | Date |

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**SCHEDULE A**

**STATEMENT OF WORK NO.1**

This Statement of Work is entered into pursuant to and forms part of the Master Services and Licensing Agreement between Omni Software Corp. and Optofix Inc. effective July 20, 2007 (the “Agreement”). Capitalized terms used in this Statement of Work and not otherwise defined herein shall have the meanings assigned to them in the Agreement. In the event of conflict or inconsistency between the terms of this Statement of Work and the Agreement, the terms of this Statement of Work shall prevail.

**Introduction**

This Statement of Work No. 1 describes the objectives and deliverables of the initial development phase (Phase 1) for the Solution.

**Goals**

The objective of Phase 1 is to investigate Optofix’s needs and requirements, and to develop a detailed specification and project plan for the ensuing project phases pursuant to the following planning guidelines:

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| --- | --- | --- |
|  | 1. | A development phase, including alpha and beta periods, for the first version extending from the end of this Phase 1 to March 31st 2008. |

|  |  |  |
| --- | --- | --- |
|  | *2.* | A rapid prototyping phase extending from 1st April 2008 to June 30th 2008 for the purposes of responding to feedback and making follow-on software releases. |

|  |  |  |
| --- | --- | --- |
|  | 3. | To investigate and plan using the preliminary list of requirements given below: |

[\*\*\*]

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**Activities**

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Consultation. Discuss and consult with Optofix to understand Optofix’s business goals; Optofix’s interventional procedure, interventional devices and hardware, clinical workflow, imaging integration needs, and end-user needs, Omni staff may visit Optofix’s offices or collaborating clinical sites as mutually agreed and as may be helpful to these goals, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Prototypes. During Phase 1 Omni staff may develop mock-ups, prototypes, or demonstrators as they determine may best help achieve the goals of the phase. |

**Deliverables**

The purpose of Phase 1 is to develop a detailed specification and project plan:

[\*\*\*]

**Duration**

Phase 1 is expected to be completed within 2 months of the Effective Date of the Agreement,

**AGREED:**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Optofix INC:** |  | **OMNIFLEX SOFTWARE CORP;** |
|  |  | |
| /s/ Karl F Lager |  | /s/ Mary Fields |
|  |  | |
| Signature |  | Signature |
|  |  | |
| KARL F LAGER |  | MARY FIELDS |
|  |  | |
| Name |  | Name |
|  |  | |
| Pres / CEO |  | V.P. CUSTOMER OPERATIONS |
|  |  | |
| Title |  | Title |
|  |  | |
| July 20, 2007 |  | July 20, 2007 |
|  |  | |
| Date |  | Date |

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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**SCHEDULE B**

**PROFESSIONAL SERVICES SCOPE AND FEE SCHEDULE**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
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|  | | | | | | | | |
| **Professional Services** | | | | | | | | |
|  |  | |  | |  | |  | |
| Consulting |  | Presales |  | Implementation |  | Connectivity & integration |  | Training |
| Technical  - Site Survey    Assessment  - Develop    Architecture Design  - Reengineering    Technical Workflow  - Cost/benefits    analysis |  | Sales  - Demo  - Sales support  - Reference Site Setup  - Demo Licenses |  | Project Management  - Implementation Plan  - Training Plan  - Acceptance Criteria |  | Connectivity  - Scanner DICOM V &    V  - Printer V &V  - Acceptance Plan &    Testing  - Networking  - Node setup &    configuration |  | Techincal  - Installation &  Continuation  - Troubleshooting |
| Clinical  - Needs Analysis  - Reengineering    Clinical Workflow  - HIPPA requirements  - Cost/benefits    analysis |  |  |  | Installation & Configuration  - On site Technical  - On site Applications  - Pre-staging site |  | Integration  - HIS/RIS - PAC’s    interface  - 3rd Party Application    Integration  - System Engineering    Services |  | Application  - Instruction &  Configuration  - Viewing Protocols  Advanced 2D  Functionality  - Clinical Packages 3D  Ortho |
|  |  |  |  | Scalability  - Product upgrades  - System upgrades  - Hardware upgrades |  |  |  | Sales  - Applications  - Production  Positioning  Refresher Web  - Technical updates &  upgrades  - Application updates  & upgrades  -Sale updates |
| Pricing  - [\*\*\*] per day  - Travel days included as part of daily rate    Default Hourly Rates -9x5 EST  - [\*\*\*] per hour    Default overtime Rates  **-**[\*\*\*] per hour  **-**5:00 PM to 8:00 AM; Weekends & Holidays | | | | | | |  | Pricing  [\*\*\*] per day  Travel days included in  day rate  Capacity/Facility  Max 6 person(s) attend  once  Omni’s Training  facility    See notice for more  information |
| Notice:    - A Cancellation Surcharge of [\*\*\*] will be applied to any support request cancelled without (7) Business Days notice. In addition any un-recoverable expenses arising due to the cancellation will be the responsibility of Optofix.    - Travel, accommodation & extraordinary expenses are the responsibility of Optofix unless otherwise agreed to by Omni. | | | | | | | | |

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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**SCHEDULE C**

**STATEMENT OF WORK NO. 2**

2009-02573

*SOW for CED solution for Optofix*

MERGETM

Healthcare

**STATEMENT OF WORK NO.2**

This Statement of Work No.2 is entered into pursuant to and forms part of the Master Services and Licensing Agreement between Omni Software Corp. d/b/a Join OEM and Optofix Inc. effective July 20, 2007 (the “Agreement”). Capitalized terms used in this Statement of Work and not otherwise defined herein shall have the meanings assigned to them in the Agreement. In the event of conflict or inconsistency between the terms of this Statement of Work and the Agreement, the terms of this Statement of Work shall prevail.

**1 Project Scope**

**1.1 *Background and Requirements***

Join has recently built an MRi based deep brain navigation package for Optofix that is marketed under the ClearPoint trade mark. The ClearPoint solution is used for planning and placement of electrodes into deep brain structures.

In an effort to expand the offerings in this sector, Optofix is exploring new areas of deep brain surgical navigation, drug delivery applications in particular. This statement of work presents the details associated with the development activities needed to deliver such a solution.

[\*\*\*]

This document is prepared to outline the scope of work, deliverables and schedules for the development work needed to create a tool that could aid in the navigation and tracking component associated with this procedure.

**1.2 *Solution and Scope of Work***

The solution is expected to contain multiple phases:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Prototype phase –[\*\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Enhanced phase – [\*\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Wide market solution – [\*\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Improvements – [\*\*\*] |

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

[\*\*\*]

**1.3*Implementation model***

The solution will be licensed using a node locked licensing model similar to the current ClearPoint solution where installations will require a MAC address specific license file that can be generated on demand.

The solution presented in this SOW is scoped out to be developed using a team of:

|  |  |  |
| --- | --- | --- |
|  | i. | One full time Join OEM engineer, |

|  |  |  |
| --- | --- | --- |
|  | ii. | One part time Join OEM segmentation expert - on demand, |

|  |  |  |
| --- | --- | --- |
|  | iii. | One full time architect, |

|  |  |  |
| --- | --- | --- |
|  | iv. | One full time test resource for the test and validation phase |

|  |  |  |
| --- | --- | --- |
|  | v. | 10% part time project manager. |

|  |  |  |
| --- | --- | --- |
|  | vi. | 5% part time system administrator responsible for release activities |

The solution includes complete development, documentation and engineering validation activities. Product validation activities (Alpha and Beta) are not included in this scope because of the unknowns associated with the timing and potential regulatory requirements associated with the market launch of this product.

**2 Deliverables**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Deliverable** |  | **Description** |

[\*\*\*]

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**3 Assumptions**

[\*\*\*]

**4 Delivery schedule**

***4.1 Delivery Schedule for Prototype Solution***

Project Duration: [\*\*\*]

Delivery Schedule:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Timeline** |  | **Deliverable** |

[\*\*\*]

**4.2 *Delivery Schedule for additional solutions***

Project Duration: [\*\*\*]

Delivery Schedule:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Timeline** |  | **Deliverable** |

[\*\*\*]

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**5 Summary**

**5.1 *Standard Solution:***

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | estimated effort: [\*\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | estimated project duration: [\*\*\*] |

**5.2*Additional Solutions:***

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | estimated additional effort: [\*\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | estimated project duration: [\*\*\*] |

Note:

The estimate is based on correctness of the assumptions made above, if these are not correct, the price and/or delivery dates might be affected

**6 Fees and Pricing Summary**

**6.1*Consulting Engineering Fees***

The project is proposed to be executed on a time and materials basis at [\*\*\*] to be invoiced on a monthly basis.

**6.2*Payment Schedule***

Monthly billing of the actual time spent on the project.

**6.3*Run-Time License fees***

Quotes for run-time licenses associated with the resulting application will need to be negotiated before the product will be market launched.

**6.4*Professional Services***

Additional services required by Optofix for installation, training and onsite technical support shall be provided in accordance with the Agreement at a rate of [\*\*\*] not including travel and accommodation. Professional Services will be billed within the same calendar quarter as they are provided.

**AGREED:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Optofix INC.:** |  |  |  | **OMNIFLEX SOFTWARE CORP. D/B/A**  **JOIN OEM:** |
|  |  | |  | |
| /s/ Walt Wotman |  |  |  | /s/ Charlotte Wallace |
| Signature |  |  |  | Signature |
|  |  | |  | |
| Walt Wotman |  |  |  | Charlotte Wallace |
| Name |  |  |  | Name |
|  |  | |  | |
| COO |  |  |  | CEO |
| Title |  |  |  | Title |
|  |  | |  | |
| 11-13-09 |  |  |  | 11-16-09 |
| Date |  |  |  | Date |

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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*Statement of Work to Master Services and License Agreement*

**FIRST AMENDMENT TO THE MASTER SERVICES AND LICENSING AGREEMENT**

THIS FIRST AMENDMENT TO THE MASTER SERVICES AND LICENSING AGREEMENT (the “**Amendment**”) is entered into and effective as of January 18, 2011 by and between Omni Software Corp. d/b/a Join OEM, an Ontario corporation (“**Join OEM**”) and Optofix, Inc. f/k/a Optofix, Inc., a Delaware corporation (“**Optofix**”). Capitalized terms used herein but not defined shall have the meanings given to such terms in the Agreement (as hereinafter defined).

WHEREAS Join OEM and Optofix are parties to that certain Master Services and Licensing Agreement effective July 20, 2007 (the “**Agreement**”), and

WHEREAS Join OEM and Optofix now wish to amend certain terms of the Agreement,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Party Names. All references throughout the Agreement to “Omni Software Corp.” are replaced with “Omni Software Corp. d/b/a Join OEM” and all references to “Omni” are replaced with “Join OEM”. All references throughout the Agreement to “Optofix” are replaced with “Optofix”.

2. Amendment to Section 1.1. Section 1.1 (Definitions) is amended by

(a) deleting sub-section (k) (“Initial Term”) and replacing it with “(k) Reserved”; and

(b) deleting sub-section (q) (“Renewal Term”) and replacing it with “(q) Reserved”.

3. Amendment to Section 2.2.4. Section 2.2.4 (License Fees and Minimum Commitment) is deleted and replaced with the following:

“**2.2.4 License Fees and Minimum Commitment**

Optofix shall pay to Join OEM a run-time license fee of [\*\*\*] for each Solution distributed by Optofix, provided that the [\*\*\*] shall be at no charge. Optofix agrees to purchase a minimum of [\*\*\*] during the second year of the Initial Term (in addition to the [\*\*\*] granted at no charge) and [\*\*\*] during the third year of the Initial Term. Within 30 days following the last day of each of the second and third years of the Initial Term, Join OEM shall invoice Optofix for the difference, if any, between the actual license fees paid by Optofix and the annual minimum commitment for that year. Optofix further agrees to purchase a minimum of [\*\*\*] on the first business day of each calendar quarter during 2012 (the “**2012 Commitment**”), 2013 (the “**2013 Commitment**”) and 2014 (the “**2014 Commitment**”), provided, however, that (i) if Optofix experiences a change of control prior to January 1, 2012, instead of the 2012 Commitment, the 2013 Commitment and the 2014 Commitment, Optofix shall purchase a minimum of [\*\*\*] on the first business day of January for each of 2012, 2013 and 2014; (ii) if Optofix experiences a change of control during 2012, instead of the 2013 Commitment and 2014 Commitment, Optofix shall purchase a minimum of [\*\*\*] on the first business day of January for each of 2013 and 2014; and (iii) if Optofix experiences a change of control during 2013, instead of the 2014 Commitment, Optofix shall purchase a minimum of [\*\*\*] on the first business day of January for 2014 . For

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JOIN OEM

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

*Statement of Work to Master Services and License Agreement*

the purposes of this Section, “change of control” shall mean (a) any acquisition by way of a merger, consolidation, stock purchase, tender offer, reorganization or any other transaction or series of related transactions in which the holders of Optofix’s outstanding voting power immediately prior to such transaction or series of related transactions do not, immediately after such transaction or series of related transactions, own a majority of the outstanding voting power of the successor entity immediately upon completion of such transaction or series of related transactions, or (b) Optofix sells all or substantially all of its assets and holders of Optofix’s outstanding voting power immediately prior to such transaction do not, immediately after such transaction, own a majority of the outstanding voting power of the purchasing entity immediately upon completion of such transaction.”

4. Amendment to Section 6.1. Section 6.1 (Term of the Agreement) is deleted and replaced with the following:

“**6.1 Term of the Agreement**

This Agreement shall commence on the Effective Date and, subject to early termination pursuant to Section 6.2, shall continue in force through July 20, 2015 (the “**Term**”).”

5. General. This Amendment forms part of and is subject to the terms and conditions of the Agreement; however, the terms of this Amendment shall prevail to the extent of any conflict or inconsistency between the terms of this Amendment and the Agreement. Except as specifically amended pursuant to the foregoing, the Agreement shall continue in full force and effect in accordance with the terms in existence as of the date of this Amendment. After the date of this Amendment, any reference to the Agreement shall mean the Agreement as amended by this Amendment. This Amendment, together with the Agreement and the agreements referred to therein and herein, contains the entire agreement of the parties with respect to the matters herein, and may not be amended or modified except by an instrument executed in writing by all parties hereto. The parties may execute this Amendment in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Amendment.

[Signature lines are on the following page.]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| Confidential |  | 2 |  | Join OEM |

*Statement of Work to Master Services and License Agreement*

IN WITNESS WHEREOF the parties hereto have executed this Amendment by their duly authorized representatives effective as of the first date set forth above:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **SURGIVISION, INC.:** |  |  |  | **OMNIFLEX SOFTWARE CORP. d/b/a**  **JOIN OEM:** |
|  |  | |  | |
| /s/ Matts Jensen |  |  |  | /s/ Hal Minnows |
| Signature |  |  |  | Signature |
|  |  | |  | |
| Matts Jensen |  |  |  | Hal Minnows |
| Name |  |  |  | Name |
|  |  | |  | |
| Chief Financial Officer |  |  |  | CFO |
| Title |  |  |  | Title |
|  |  | |  | |
| 1/17/2011 |  |  |  | JAN 18 2011 |
| Date |  |  |  | Date |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| Confidential |  | 3 |  | Join OEM |

*Statement of Work to Master Services and License Agreement*

**STATEMENT OF WORK NO. 3**

This Statement of Work No. 3, effective September 27, 2010, (the “Statement of Work” or “SOW”) is entered into pursuant to and forms part of the Master Services Agreement between Omni Software Corp. d/b/a JOIN OEM (“Join OEM”) and Optofix Inc. (Optofix) effective July 20, 2007 (the “Agreement”). Capitalized terms used in this Statement of Work and not otherwise defined herein shall have the meanings assigned to them in the Agreement. In the event of conflict or inconsistency between the terms of this Statement of Work and the Agreement, the terms of this Statement of Work shall prevail.

|  |  |  |  |  |
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|  |  | *Confidential* |  | Page 1 of 7 |

*Statement of Work to Master Services and License Agreement*

**Optofix - ClearPoint solution**

**Statement of Work to Master Services and**

**License Agreement**

1.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Document Number:** |  | 2010-00808 |
|  |  | |
| **Revision:** |  | 2.0 |
|  |  | |
| **Revision Type:** |  | Major |
|  |  | |
| **Document Status:** |  | Approved |
|  |  | |
| **Date:** |  | September 27, 2010 |
|  |  | |
| **Author:** |  | Peter Manson |

*Note: When printed, this is an uncontrolled copy, unless accompanied by approval signatures.*

**CONFIDENTIALITY**

This document is prepared for the purpose of discussion only with Optofix Inc. (“Optofix”).

The information contained in this document is proprietary to Join Healthcare Inc. (“Join”) and shall be treated as confidential. It is presented to Optofix for evaluation purposes only. It should thus be distributed internally to Optofix members on a need-to-know basis only under strict confidentiality. It should not be copied and/or distributed otherwise to any other persons or companies without the express written consent of Join Healthcare.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  |  | *Confidential* |  | Page 2 of 7 |

*Statement of Work to Master Services and License Agreement*

**1 Scope**

**1.1*Background***

Optofix identified Join as an Outsourced Development Supplier for the development of Optofix Software. Join built an MRi based navigation software package for Optofix that is marketed under the ClearPoint trade mark. The ClearPoint solution is used for planning and navigation of specialized hardware to deep brain structures.

The product recently received its FDA approval for its 510(k) application and is expected to proceed to market launch. The purpose of the current document is to formulate and describe a support services package for Optofix where the Join team will provide ongoing support during the product launch and onward life cycle.

This document is prepared to outline the:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | activity profile and scope of work, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | implementation model, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | schedule and deliverables, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | support cost |

**1.2*Activity Profile***

Launch of a new product is usually marked by a lot of unknowns. Some of the risks associated with this phase are mitigated by Join providing support in the following areas:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Online and phone support offered to Optofix staff during regular business hours (9am-5pm EST) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Provide occasional after hours phone support at Join’s own discretion |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Investigation of field reports submitted by Optofix staff (Complaint Analysis) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Development and release of minor enhancement requests (Life Cycle Support) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Investigation, correction, software validation and release of solutions to software defects found in the system (Life Cycle Support) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Consulting activities pertaining to the product line |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Author updates to the User Guide as per Optofix’s instructions and approval |

As Join is the Optofix Outsourced Development Supplier for software there are interaction requirements between the companies Quality Management systems (QMS). The following points along with sections 1.3.1, 1.3.2 and 1.3.3 are the minimum points that support the QMS interactions:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Assistance during audits with development related artifacts and methodology references |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Maintain and distribute any updates to relevant project documentation |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Join Healthcare will maintain the artifacts (Quality System Documents/Design History Documents) associated with the ClearPoint solution in line with Join’s Quality Management System as it is applied to the work being done for Optofix and its interpretation of Optofix’s needs in order to comply with1: |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Food & Drug Administration, Quality System Regulation (QSR) 21 CFR 820. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Medical Device Directive (MDD) 93/42/EEC, dated 14 June 1993. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | ISO 13485:2003, Medical devices – Quality management systems. |

|  |  |
| --- | --- |
| 1 | With the understanding that Optofix has the regulatory responsibilities for all of these |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
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*Statement of Work to Master Services and License Agreement*

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Join Healthcare will maintain their Quality Managements System documents pertaining to Optofix for as long as there is an active SOW pertaining to the ClearPoint product at which point all controlled project documentation will be migrated over to Optofix. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Notify Optofix if for whatever reason it can no longer maintain project documentation associated with the ClearPoint product and forward all controlled project documentation to Optofix |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Allow a Quality Management System audit by Optofix and/or their 3rd party (Notified Body or Regulatory Agency), with reasonable notice, focused on the ClearPoint product |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Provide documents related to the ClearPoint system within reasonable time from the request, in the event Optofix is audited by a regulatory agency or third party. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Join will not modify Final Released software and will notify Optofix of any proposed changes to the software for review and approval by Optofix. |

Given the unpredictability associated with a product launch, it is difficult to specify the exact details for the scope of work. For the purposes of this SOW, the scope of work is limited to second line phone support and consulting as well as development work to address minor enhancements and defect resolutions and their associated quality controlled releases.

Minor enhancements are defined as being those that do not require major rework of the core architectural components or add fundamentally new workflow items. Requests for processing major enhancements or other development projects shall be addressed either by (i) amending this SOW to add resources, adjust fees or otherwise as agreed to by the parties, or (ii) by entering into a separate SOW(s) under the Master Services and Licensing Agreement.

**1.3*Implementation Model***

Proposed implementation model is to have a dedicated team of:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | One full time developer, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Part time, test resource |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Part time, project manager |

This team will support the regularly scheduled maintenance/support activities. Proposal is to have these resources execute work for the duration of the SOW operating under the same T&M conditions as they were during the development SOW.

Regularly scheduled support activity planning meetings will be responsible for setting the scope and priorities of the work for next leg. Frequency of these planning meetings will be agreed upon with Optofix staff and will allow for the flexibility the Optofix business needs. Deliverables and operating models will be described in a Project Development Plan for which Optofix will be an approver.

1.3.1 Documents that pertain to the software product requirements, changes to product requirements or improvements and verification / validation testing will be jointly approved by the team at Join and Project Leader of Optofix.

|  |  |
| --- | --- |
| 1.3.2 | Documents that are required to be submitted to Optofix for review and approval. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Statement of Work |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Project Development Plan (PDP) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Requirements Description (SRD) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
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*Statement of Work to Master Services and License Agreement*

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Change Request Orders |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Test Scripts pertaining to field testing2 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Validation Reports pertaining to field testing |

1.3.3 Final approved documents that will be required to be submitted to Optofix upon Join Healthcare internal Approval.

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Requirements Description (SRD) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Design Description (SDD) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Software Users Manual |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Hazard Analysis (SHA) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Test Plan (Verification/Validation Plan) (STP) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Validation Test Procedure (SVTP) |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Test Scripts |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | System Validation Reports (SVR) |

**1.4*Schedules and Deliverables***

The activity profile presented in the current SOW is proposed to be executed for a fixed duration of 1 year from the date the SOW takes effect. One month before the end, a planning meeting will be held between Optofix and Join management to evaluate any further needs for the product.

Deliverables associated with the current SOW will be reflective of the ongoing activities planned with Optofix and could include reports, support emails, consulting trips and even quality controlled software releases.

**2 Team composition**

The present SOW represents the first phase of a support activity associated with the ClearPoint product. It is believed that the product would be best served if the team that developed the solution at Join was assigned to the support activities listed within. As a result this is the proposed team composition:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | [\*\*\*] - Software Developer |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Unnamed Test Developer |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Unnamed Project Manager |

In the event one of the named team members becomes unavailable due to illness, termination of employment or otherwise, Join will use commercially reasonable efforts to replace such individual as soon as practicable with an individual of equal or substantially similar skill sets and qualifications. Join will endeavor to provide Optofix with a minimum of two weeks’ notice prior to any change in the composition of the team.

|  |  |
| --- | --- |
| 2 | System testing and validation reports internal to Join development do not need to be approved by Optofix |

|  |  |
| --- | --- |
| [\*\*\*] | Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
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*Statement of Work to Master Services and License Agreement*

**3 Assumptions**

The following assumptions were made in formulating this SOW:

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|  | (1) | The activity list presented in section 1.2 is based on the current understanding of the problem space and it is expected to be changed on an ongoing basis. It is presented in this format because it reflects a mutual understanding of the starting point in this support project. |

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|  | (2) | Every activity associated with this project not clearly listed in the feature sheet but commonly agreed upon during status meetings will also contribute to the implied scope of the project work (e.g. time spent on gathering input or information from any involved party (Optofix/UCSF/NIH), evaluation of data necessary to carry out the approved work items, meetings held to discuss project matters, etc.) |

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|  | (3) | While the project will be executed at the regular hourly rate, any Optofix approved travel and accommodation expenses incurred by Join staff will be Optofix responsibility |

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|  | (4) | Given the operating model, monthly reporting will only reflect total time spent on project by all resources involved in its execution. |

**4 Fees and Pricing Summary**

**4.1*Engineering Fees***

The project will be executed on a T&M basis, to be invoiced on a monthly basis in arrears.

Additional resources above the resources listed in Section 2 on a time and material basis of [\*\*\*], to be invoiced on a monthly basis.

**4.2*Payment Schedule***

Monthly billing will reflect the fees associated with any actual time spent on the project by pre-approved resources by Optofix, if applicable.

**4.3*Professional Services***

Additional services provided by Join staff, other than those listed in this contract and required by Optofix for installation, training and onsite technical support shall be provided in accordance with the Agreement at a rate of [\*\*\*] not including travel and accommodation. Professional Services will be billed within the same calendar quarter as they are provided.

**5 Validity**

This quote is valid for 30 days from the date of issue after which it will become null and void and have to be re-quoted.

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| [\*\*\*] | Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment. |

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*Statement of Work to Master Services and License Agreement*

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| **Approvals:**    **Optofix Inc.** |  |  |  | **Omni Software Corp. d/b/a Join OEM** |
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| /s/ Kilian McMurphy |  |  |  | /s/ Paula Canberry |
| Signature |  |  |  | Signature |
|  |  | |  | |
| Michael M. Moore |  |  |  | Paula Canberry |
| Name |  |  |  | Name |
|  |  | |  | |
| Vice President, Operations |  |  |  | OPTOFIX Global Indirect Sales |
| Title |  |  |  | Title |
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| 9/29/10 |  |  |  | 29-SEP-2010 |
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|  |  | *Confidential* |  | Page 7 of 7 |

**LicA#8**

EX-10.15 2 ex10-15.htm

Exhibit 10.15

**AMENDED AND RESTATED LICENSING AGREEMENT**

          This agreement, by and between ALPHA AUTOMOTIVE, INC., a Nevada corporation (“Alpha” or “Licensee”), with offices at [...], Arizona 85260, and CATALYST , LLC, a Kansas limited liability company (“Catalyst ” or “Licensor”), having a principal place of business at [...], Kansas, 67042 (hereinafter collectively referred to individually, as “Party, and collectively, as the “Parties”) is entered into on April 5, 2013 (“Effective Date”)(“Amended and Restated Licensing Agreement” or “Agreement”).

**RECITALS:**

WHEREAS, Enviroclean, LLC, dba Alpha Automotive, LLC, an Arizona limited liability company (“Enviroclean”) and Catalyst entered into that certain Licensing Agreement, on or about February 1, 2012 (“Licensing Agreement”)(**Exhibit A**);

WHEREAS, Enviroclean dba Alpha Automotive, LLC, an Arizona limited liability company entered into an Exchange Agreement with Oxford Resources, Inc., a Nevada corporation (“Oxford” or “OXCO”, now known as “Alpha Automotive, Inc.”) and ABCD Stock Holding, LLC (“ABCD”), an Arizona limited liability company, to effectuate a reverse merger (“Exchange Agreement”)(“Transaction”).

WHEREAS, Alpha, Oxford and ABCD completed the Transaction on or about November 11, 2012, creating Alpha Automotive, Inc. (“Alpha” or “Licensee”) a publicly traded Nevada Corporation (Trading Symbol: PLBC). For the purposes of this Agreement, Enviroclean, Alpha Automotive, LLC and Alpha individually and collectively refer to “Alpha”, pursuant to the Transaction and Exchange Agreement.

WHEREAS, the Parties now desire to amend and restate the Licensing Agreement to reflect mutually agreed upon changes to the terms and conditions thereof, including, but not limited to certain releases, as set forth herein, limitations on disclosures of confidential information and information regarding competitors (**Exhibit D**) and to set forth additional rights and responsibilities of the Parties, as set forth herein;

WHEREAS, Catalyst represents that it has developed and patented “belt driven technology” as more fully set forth in **Exhibit A** and **Exhibit B**, attached hereto and incorporated herein by reference;

WHEREAS, Alpha desires to obtain from Catalyst , and Catalyst desires to grant to Alpha, certain licensing rights and privileges as set forth in detail herein:

WHEREAS, Alpha desires to grant Catalyst , a non-exclusive, worldwide, unrestricted, perpetual license of its technologies of the Catalyst belt driven technology in accordance with and subject to the terms and conditions contained in this Agreement;

WHEREAS, By way of a separate stock purchase agreement, Alpha desires to allow Catalyst to purchase restricted shares of common stock in Alpha, subject to all applicable restrictions, terms

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and conditions, as set the forth in the Securities and Exchange Act of 1933 and 1934, and pursuant to Alpha’s standard policies, company charter, bylaws, and corporate governance and organizational documents (in a form substantially similar to **Exhibit C**)**;**

WHEREAS, the Parties desire that this Amended and Restated Licensing Agreement replace and supersede the Licensing Agreement in its entirety and the Licensing Agreement and all other agreements by and between the Parties shall no longer have any force or effect;

NOW, THEREFORE, for the mutual covenants and promises contained herein and for good and valuable consideration, the sufficiency of which the Parties hereto acknowledge, the Parties agree as follows:

**AGREEMENT:**

1. Definitions.

          As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 “Affiliates” shall mean any corporation or other legal entity which controls, or is controlled by the respective Party. For purposes of this Agreement, ownership, directly or indirectly, of twenty-five percent (25%) or more equity interest of or by a Party shall mean an affiliate relationship exists between such entities.

1.2 “Catalyst Patents” shall mean:  
(a) any U.S. patents or patent applications listed in **Exhibit A, or Exhibit B** attached hereto and incorporated herein by reference, including any continuations, continuations-in-part, divisionals, reissues, re-examinations, extensions or additions thereof, and any improvements thereto;

(b) any foreign patent applications and any patents corresponding to the United States Patent Office (“USPTO”) patent applications and patents, and;

(c) any other patent applications filed and any patents granted and any continuations and divisions of such applications and patents. Neither Party has any performance requirements nor obligations required to continue to develop new technology or patents.

1.3 “MM Exclusive Licensed Field” shall mean the original equipment, service parts and after market passenger automobile, light truck, fleet, heavy truck industries and any other automotive sector (with the exception of the Cruiser Market).

1.4 “Catalyst Technology” shall mean the components that incorporate proprietary and unique technology created, developed or acquired by Catalyst that increase the performance and or economy of an engine through the addition of a battery, electric motor, motor control system, and belt harnessing method to the engine crank-shaft.

1.5 “Alpha Drive” shall mean an Alpha product that is a collection of technologies, systems and components to generally increase performance and/or reduce overall operating costs of a vehicle

1.6 “Alpha Technology,” including, “MM Technology” (Alpha’s predecessor in interest) shall mean the patents or patent applications, intellectual property, know-how, algorithms, or other knowledge it has, develops or acquires to manufacture and produce its products including but not limited to “Alpha Drive,” product as defined below. For the avoidance of doubt, these technologies

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may include additional technologies, fitments, and strategies than have not been contemplated by the Parties, but are still to be considered Alpha Technology so long as it is designed to reduce fuel consumption on a vehicle.

1.7 “Cruiser Market” shall mean all vehicles that have been marketed under the brand Cruiser or Cruisaider prior to the execution of this Agreement. For the avoidance of doubt, this includes the H1, H2 and H3 in any of their forms as well as any Cruiser used for military purposes.

1.8 “License Period” shall mean beginning on the Effective Date [of the Licensing Agreement or the Amended and Restated Licensing Agreement] and continue in perpetuity until the last to expire of any patent rights within the Catalyst Patents.

1.9 “Licensed Products” shall mean any and all components the manufacture, use, sale, offer for sale or import of which, in the absence of this Agreement, would infringe or contribute to the infringement of Catalyst Patents, and that Alpha or its Affiliates have elected to integrate into their products, components or technology.

1.10 “Military Market” shall mean any and all tactical vehicles marketed to and sold to any of the branches of the military.

1.11 “New Developments” shall mean any new, updated, upgraded, added-on, advancements, improvements, or the like indirectly or directly related to the Licensed Products or Catalyst Technology which Catalyst or its affiliates or successors develops, creates, contributes to or owns in regard to the Licensed Products or Catalyst Technology.

1.12 “Non-exclusive Licensed Field” shall mean all fields of industry except the Cruiser Market.

1.13 “System Cost” shall be the actual cost, per unit sold, of the components and materials, any per-unit capitalized NRE (paid to a non-affiliated company or supplier), actual manufacture freight, actual assembly costs, actual QA costs, actual 3rd party licensing or per unit warranty programs. For the avoidance of doubt, these costs will not include costs from any Affiliates, marketing expenses, general overhead, research and development, sales commissions or salaries. Any additional costs to be included in this definition must be agreed to by both Parties in writing.

**2. Grant of License and Distribution Rights**

2.1 Grant of License. Catalyst hereby grants to Alpha, along with the right to grant sublicenses, a worldwide, irrevocable, exclusive, license during the Term of this Agreement, with the right to grant sublicenses, under the Catalyst Patents and Catalyst Technology during the License Period to make, have made, use, sell, have sold, offer for sale and import Licensed Products and any other products that incorporate Catalyst Technology throughout the world (“License”) and Alpha accepts such grant of the License. For the avoidance of doubt, Alpha shall have the non-exclusive right under the Catalyst Patents and Catalyst Technology to grant sublicenses, to the extent of the Alpha Exclusive Licensed Field.

2.2 The license granted in clause 2.1 of this Agreement is not subject to any reserved license in Catalyst to make, use, sell, offer for sale and import Licensed Products within the Alpha Exclusive License Field

2.3 Catalyst will execute any confirmation of this Agreement and any other documentation

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necessary to perfect or provide notice of Alpha’s rights under this Agreement in the United States Patent and Trademark Office (“USPTO”) as well as cooperate with any other reasonable requirements brought forth from similar international requirements related to patent and other intellectual property matters. Catalyst will pay all costs and expenses associated therewith.

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2.4 Catalyst will promptly inform, but in no event later than three (10) business days, Alpha of the grant of each patent licensed under this Agreement, and of the filing of each application for such a patent, and will promptly furnish copies of such patents and other related information to Alpha.

2.5 Pursuant to a separate agreement Alpha shall allow Catalyst to purchase One Million Eight Hundred and Fifty Thousand (1,850,000) restricted shares of Alpha common stock as additional consideration for the licensing rights and transactions contemplated in this Agreement (“Acquisition of Alpha Shares”). Such Acquisition of Alpha Shares shall be governed by the terms and conditions of a separate agreement similar to **Exhibit C** attached hereto, and shall in no way violate or contradict the ’33 and ’34 Securities Act, any state “Blue Sky” laws, or any other Alpha or other entity agreements relating to Alpha’s or any other entity’s issuance of shares, governance or organization, including, but not limited to charter documents, bylaws, voting rights, registration rights, or any of the privileges or protections provided for or contemplated thereby.

2.6. Alpha shall have the right to grant sublicenses with respect to any rights conferred upon Alpha pursuant to this Agreement, provided, however, that any such sublicense, and sublicensee shall be subject in all respects to the restrictions, exceptions and termination provisions contained in this Agreement. Alpha agrees to use reasonable efforts to notify Catalyst of sublicensors of the Licensed Products.

2.7 Catalyst covenants and agrees that its development, marketing, sales or distribution of any current or future technology or products and securing the corresponding intellectual property, patent and related rights, protections and agreements, shall not in any way at any time interfere with, utilize or infringe upon any portion of the Licensed Products, patents or intellectual property referenced or contemplated by this Agreement or any related agreements or transactions.

**3. Alpha License Fee Payments**

3.1 In consideration of the Licenses granted to Alpha by Catalyst , Alpha shall deliver to Catalyst a promissory note made to the order of Catalyst for the award of One Million Eight Hundred Fifty Thousand (1,850,000) shares of Alpha restricted stock, subject to all applicable state and federal laws, including, but not limited to the Securities and Exchange Act of 1933 and 1934 and all Alpha company restrictions as set forth in Alpha’s corporate charter, bylaws and any corporate governance or related documents.

3.2 Alpha shall pay no royalty to Catalyst for any Licensed Products sold to Catalyst at wholesale price or for any other product offerings that does not integrate Catalyst Technology. This Agreement in no way obligates Alpha to integrate any technology, patent or invention into Alpha’s products, components or technology. For the avoidance of doubt, any Catalyst Technology that Alpha elects not to integrate into Alpha’s components or products, Catalyst will have the right to license such technology to another party. Catalyst will have the option to submit to Alpha for consideration the use of Catalyst Technology and Alpha will have the thirty (30) days to respond. In the event that Alpha does not respond within the thirty (30) days, the option as described within will be considered declined by Alpha and Catalyst will have the right to license such technology to another party.

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3.3 Catalyst shall grant to Alpha a right of first refusal to license or acquire any new, updated, upgraded, added-on, advancements, improvements, or the like indirectly or directly related to the Licensed Products or Catalyst Technology which Catalyst or its Affiliates or successors develops, creates, contributes to or owns in regard to the Licensed Products or Catalyst Technology (“New Developments”) (“Right of First Refusal”). Such Right of First Refusal shall be presented by Catalyst to Alpha in writing within seven (7) days of Catalyst knowledge of such New Development(s) and Alpha shall have ninety (90) days to respond in writing to Catalyst of its exercise of Alpha’s Right of First Refusal (“Right of First Refusal Period”). In the event Alpha exercises its Right of First Refusal, Catalyst shall grant to Alpha a nonexclusive, royalty free, perpetual license to such New Developments. The Parties agree to negotiate in good faith regarding terms and conditions, including possible revenue share, in the event that Catalyst offers Alpha, under the Right of First Refusal, a license for development that occurs outside the defined New Development(s). Prior to and during the Right of First Refusal Period, Catalyst shall protect the New Development(s) with the highest level of confidentiality, including, but not limited to a prohibition on Catalyst sharing any aspect of the New Development(s) with any other individual or entity for any reason. A breach of this provision shall be considered a material breach of this Agreement and a material breach of any applicable nondisclosure, confidentiality and noncompete agreements that may now or ever exist between the Parties.

3.4 Catalyst hereby agrees and acknowledges that Alpha has not previously and is not now infringing on any Catalyst Technology, Catalyst Patents, any New Developments, the Licensed Product, Alpha Technology or any other patent or intellectual property and/or any related rights or privileges. Catalyst further covenants and warrants that neither Catalyst , nor any entity or individual at Catalyst ’ direction shall take any action, legal or otherwise, that is adverse to Alpha or any of its Affiliates or otherwise related parties, in regard to Catalyst Technology, Catalyst Patents, any New Developments, the Licensed Product, Alpha Technology or any other patent or intellectual property and/or any related rights or privileges.

3.5 The remittance of any monies payable pursuant to this Agreement shall be made in United States Dollars.

**4. Alpha Commission Payments to Catalyst**

4.1 Alpha shall pay a commission to Catalyst upon each sale of an Alpha product or service whereby Catalyst establishes with commercially reasonable documentation that Catalyst was the procuring cause and/or lead referral to effectuate such sale, and Alpha accepts such documentation in Alpha’s sole and unilateral discretion. Such Catalyst ’ sales shall in no way interfere with any of Alpha’s past, present or future sales, marketing or business development efforts. Any commissions paid to Catalyst shall be agreed to in advance of such sale in a writing executed by Catalyst and Alpha. Any such agreement by Alpha to pay to Catalyst any commissions contemplated hereunder shall be at Alpha’s sole and unilateral discretion.

**5. Assignability**

5.1 The licenses granted under this Agreement shall be binding upon any successor of either Party in ownership or control of the related patents and technology. Alpha may assign this Agreement to any successor or other party at its option subject to the written approval of Catalyst , the

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approval of which shall not be unreasonably withheld and will only be withheld if such a assignment will, or is likely to, materially breach this Agreement. An acquisition of Alpha or substantially all of the assets of Alpha by another entity will not require Catalyst approval. Alpha will have a thirty (30) day right of first refusal to match with reasonably similar terms and purchase Catalyst if they receive a bona fide offer from a party capable of completing such a transaction.

**6. Product Marking**

6 .1 Each Party shall place in a conspicuous location on any product or component containing Catalyst Technology or MM Technology a distinguishing mark agreeable to both Parties and the number or numbers of any patents applicable thereto.

6.2 The marking of product in clause 6.1 shall not be required if the product performance is compromised thereby, the marking-cannot reasonably be placed on any product due to the product size, increase in production cost, or in all instances where either Parties customers request in writing that any products do not include any markings.

6.3 Each Party shall notify the other in writing when any components are not marked pursuant to clause 6.2.

6.4 Shall not use any Alpha or AlphaDrive trademarks, trade names or service marks without the prior written consent of Alpha

**7. Publicity**

7.1 Except as required herein, neither Party shall use the other Party’s trade names or trademarks without prior written consent.

7.2 Catalyst will not issue any press release or communicate (individually or collectively, the “Communication(s)”) externally or publicly its relationship with Alpha or disclose any information regarding Catalyst Technologies without prior review and written approval from Alpha, in Alpha’s sole discretion. Alpha will have up to thirty (30) days to review and provide such written approval, if any, to Catalyst . The Communication(s) will be considered automatically approved if Alpha does not respond within the time limit provided herein. Catalyst acknowledges and understands that Alpha is a publicly traded company, and thus, is subject to certain restrictions on public statements, as set forth in federal and state securities laws, and Catalyst agrees to abide by same.

**8. Confidentiality and Noncompetition**

8.1 All of the terms of this Agreement, including the existence of the Agreement, are confidential, and Catalyst shall not disclose any such terms and conditions to anyone else without first obtaining the prior written consent from Alpha, provided that either Party may disclose the terms and conditions of this Agreement in response to the legal requirement of a governmental agency or a court of competent jurisdiction if such disclosure is first submitted to the other Party and such Party is provided a meaningful opportunity and amount of time to respond.

8.2 Both Parties will protect confidential materials received from the other under this Agreement and containing Catalyst Technology or MM Technology against disclosure to others with the same degree of care each Party protects its own materials of a similar nature and will endeavor to

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instruct their own employees most likely to have access to such materials that such materials are to be so protected. Both Parties acknowledges that each Party often discloses its own materials for its own commercial purposes to customers, vendors and consultants, and accordingly will not assert any claim with respect to disclosure or use of any materials, or any MM Technology or Catalyst Technology, disclosed to the other Party. The foregoing expresses Alpha’s entire obligation with respect to Catalyst Technology, and supersedes any obligation that might otherwise be implied by or inferred from any legends placed on materials containing Catalyst Technology. Catalyst covenants and agrees to execute and be bound by the terms and conditions set forth in the Nondisclosure Confidentiality, Noncompete and Noncircumvent Agreement, attached hereto and incorporated herein by reference as **Exhibit E.**

8.3 Both parties will protect materials received from the other under this Agreement against disclosure to others with the same degree of care each Party protects its own materials of a similar nature and will endeavor to instruct the other Parties employees most likely to have access to such materials that such materials are to be so protected. The foregoing expresses the entire obligation of the Parties with respect to such materials, and supersedes any obligation that might otherwise be implied by or inferred from any legends placed on materials.

**9. Warranty; Indemnification**

9.1 Catalyst warrants it has the right to convey the licenses and other rights and privileges granted by this Agreement or contemplated thereby, that may be necessary in order to effectuate the transactions referenced herein.

9.2 Catalyst warrants that, as of the Effective Date of this Agreement, it has no knowledge of any potential claim from a third party charging infringement of a patent or other intellectual property of any third party from the use of any Cleanfutures Patents, Catalyst Technology, or any activity of Catalyst .

9.3 Catalyst warrants that it has obtained an agreement with Jonathan Goodwin where he has assigned his intellectual property and other assignments necessary to allow Catalyst to perform under this Agreement, and to permit Alpha to use the Catalyst Patents and Catalyst Technology as contemplated under this Agreement.

9.4 Catalyst agrees to defend at its expense and hold harmless Alpha from all loss or damage by reason of any and all actions or proceedings charging infringement, whether rightfully or wrongfully brought, of any patent by reason of manufacture, use, sale, offer for sale, or import of any Licensed Product, or other product or component by Alpha incorporating the Catalyst Patents, and/or Catalyst Technology or any other transaction as contemplated under this Agreement. Alpha agrees to notify Catalyst in writing of all such actions or proceedings and, at the expense of Cleanfutures and to assist Catalyst in the defense of the action or proceeding. If the manufacture, use, offer for sale, sale or import of such Catalyst Technology is enjoined as a result of such action or proceeding, Catalyst will indemnify Alpha for any and all losses or damages sustained by reason of obeying such injunction. Alpha agrees that in the event of such actions or proceedings that Catalyst will have the option to seek mediation or arbitration for such matter(s), at the sole discretion of Alpha.

9.5 If a claim or claims of any patent licensed hereunder or Clean Futures Patent shall be held invalid, unenforceable, or cancelled by a court or administrative agency from whose decision no appeal is taken or no appeal or other proceeding for review can be taken (hereinafter a “final judgment”), or such patent must be modified to materially reduce the scope and protection

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provided by such patent and/or then such claim or claims shall, subsequent to the date of the final judgment, or date of patent modification, be treated as invalid, unenforceable, or cancelled and no royalties shall be due under clauses 3 or 5 of this Agreement for sales thereafter of products covered solely by such claims. For the avoidance of doubt: this section does not release either Party from their obligation to pay royalties under this Agreement.

9.6 If a claim or claims of any patent licensed hereunder shall be held noninfringed by a third party’s products in a final judgment of a court or administrative agency, then subsequent to the date of the final judgment, either Party shall have no obligation to pay royalties hereunder to the other Party on related products manufactured, used, sold, offered for sale or imported by the Party not holding the patent at issue which do not infringe such patent.

9.7 Catalyst warrants that, as of the Effective Date of this Agreement, it has no knowledge of any facts or circumstances that could give rise to any claim from a third party alleging ownership or misappropriation of any Catalyst Patent and/or Catalyst Technology.

9.8 Catalyst warrants that, as of the Effective Date of this Agreement, and within the MM Exclusive Licensed Field, it and its licensees have not granted any rights under Catalyst Technology and/or Catalyst Patents. In addition, Catalyst warrants that, as of the Effective Date of this Agreement, Catalyst is under no obligation with any third party prohibiting the disclosure of Catalyst Technology to Alpha.

9.9 Catalyst agrees that with respect to any patent which may later issue, it will not assert against Alpha, or its vendees, any claims for infringement based on the manufacture, use, sale, offer for sale or import of any apparatus made or sold by Alpha under the license granted in this Agreement and upon which royalty has been paid in accordance with the provisions of this Agreement.

9.10 Catalyst warrants that, during the License Period, all necessary actions, including but not limited to the execution of any necessary documents, will be taken to ensure the enforceability of all patent rights contemplated under this Agreement and any related agreements.

**10. Insurance**

10.1 Each Party shall at all times comply, through insurance or self-insurance, with all statutory workers’ compensation and employers’ liability requirements covering any and all employees with respect to activities performed under this Agreement.

**11. Term**

11.1 This Agreement shall continue in force for the License Period unless terminated by either Party pursuant to the terms and conditions of this Agreement.

11.2 If either Party shall at any time default in the payment of any monies due in accordance with this Agreement or in fulfilling any of the other obligations or conditions hereof, prior to terminating this Agreement, the other Party shall give written notice of such default specifying the reasons thereof. If such default is not cured by the noticed Party within six (6) months of such notice, the other Party shall then have the right in its own discretion to terminate this Agreement by giving written notice of termination. This Agreement shall terminate on the thirtieth (30th) day after the notice of termination is given. The noticed Party shall have the right to cure any such default up to termination.

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11.3 If either Party: (i) makes a general assignment for the benefit of creditors or becomes insolvent; (ii) files an insolvency petition in bankruptcy or the approximate equivalent under local law; (iii) petitions for or acquiesces in the appointment of any receiver, trustee or similar officer to liquidate or conserve its business or any substantial part of its assets or the approximate equivalent under local law; (iv) commences under the laws of any jurisdiction any proceeding involving its insolvency, bankruptcy, reorganization, adjustment of debt, dissolution, liquidation, or any other similar proceeding for the release of financially distressed debtors; or (v) becomes a party to any proceeding or action of the type described above in (iii) or (iv) and such proceeding or action remains undismissed or unstayed for a period of more than sixty {60) days, then the other Party may by written notice terminate the exclusive license with immediate effect.

**12. Licensed Product Quality**

12.1 The Parties agree to deliver components and all other products contemplated in this Agreement which conform to commercially reasonable standards at a level consistent with their industry.

**13. Notices.**

13.1 All notices given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally or sent by prepaid registered or certified mail, and electronic transmission, and all payments and statements shall be sent by first class mail, postage prepaid, to the following addresses:

**Alpha Automotive, Inc., [...], Arizona 85260**

**Clean Futures, LLC, [...], Kansas 67042**

The date of service shall be deemed to be the date on which such notice, payment, or statement was personally delivered, posted, and sent by telex or electronic transmission. Either Party may give written notice of a change of address and, after notice of such change has been received, any notice, payment, or statement thereafter shall be given to such Party as above provided at such changed address. Unless stated otherwise in this Agreement, each Party shall respond to the other Party within thirty (30) days of receiving notices under this Section 13.

**14. Covenant**

14.1 Catalyst , for the License Period, agrees to refrain from disclosing any Catalyst Technology to any company, partnership or other entity which is engaged in the manufacture, use or sale of products in the MM Exclusive Licensed Field. Catalyst has the option to request Alpha to review and approve Catalyst disclosing any Catalyst Technology to any such company, partnership or other entity as described within section 14.1 and Alpha will have thirty (30) days to provide a response. It will be considered approved if Alpha does not respond within the allotted time frame as described within 14.1.

**15. Construction**

15.1 This Agreement will be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws principles. The headings of the clauses in this

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Agreement are intended solely for convenience of reference and shall not be considered in construing this Agreement.

**16. Extraneous Writings**.

16.1 This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof; all prior agreements, drafts, representations, statements, negotiations, and undertakings are superseded hereby. No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both Parties.

**17. Arbitration**

17.1 Both Parties shall use their best efforts to resolve by mutual agreement any disputes, controversies, or differences which may arise from, under, out of, or in connection with this Agreement. If such disputes, controversies, or differences cannot be settled between the parties within sixty (60) days of the first written notice relative thereto, it shall be resolved by arbitration before three arbitrators acting under the Expedited Arbitration Rules in accordance with the most recent Rules of the American Arbitration Association. Such arbitration shall be held in Arizona and the award rendered in the arbitration shall be final and binding upon both Parties.

**18. Patent Prosecution**

18.1 Subject to the following paragraphs of this clause, each Party or their designated representative will prosecute applications corresponding to their respective patents and maintain foreign patents issuing thereon. Each Party shall retain the sole right to elect counsel for prosecution of the their patents. Such applications will be filed in all countries deemed necessary to protect the patents, prior to 1 -year form the filing date to protect the United States priority date.

18.2 Each Party agrees to bear the costs of filing, prosecution, and maintaining their respective patents in those countries covered in clause 19.1

**19. No Relationships**

19.1 This Agreement does not create any relationships between the Parties, other than as specifically set forth in this Agreement. Specifically, this Agreement does not create any partnership(s), joint venture, employee, agent, or legal representative of the other Party for any purpose whatsoever. Neither Party has granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party, or to bind the other Party in any manner. At all times, each Party, in fulfilling its obligations pursuant to this Agreement, shall be acting as an independent contractor.

**20. Waiver**

20.1 Waiver by Alpha or Catalyst of any single default or breach or succession of defaults or breaches by the other shall not be deemed a waiver of such breach or any other breach nor shall it deprive Alpha or Catalyst of any rights or remedies under this Agreement or at law or equity, or its ability to terminate this Agreement arising out of any subsequent default or breach.

**21. Applicable Law**

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21.1 Each Party acknowledges that they have certain duties and obligations under Federal laws, Including, but not limited to, Export Administration Regulations of the United States Department of Commerce, anti-trust laws of the United States, and the Environmental Protection Agency. Each Party will be solely responsible for any breach of such Federal laws by that Party, its Affiliates or sublicensees and will defend and hold the other Party harmless in the event of a suit or action involving the other Party occasioned by any such breach.

**IN WITNESS THEREOF,** the Parties have made this Agreement the day and year written above.

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| Executed on the date first written above by: | | | | |
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| **ALPHA AUTOMOTIVE, INC., a Nevada corporation** | | | | |
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| By: |  | | |  |
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|  |  |  |  |  |
| Name: | | | Alana Romanova |  |
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|  | |  |  |  |
| Title: | | COO, Managing Director | |  |
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|  | |  |  |  |
| Date: | | Apr 6, 2013 | |  |
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| **CATALYST , LLC, a Kansas limited liability company** | | | | |
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| By: |  | | |  |
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|  |  |  |  |  |
| Name: | | | Max Groder |  |
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|  | |  |  |  |
| Title: | | President | |  |
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| Date: | | 4/5/13 | |  |
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**EXHIBIT A**

**LIST OF APPLICABLE CATALYST , LLC’S USPTO PATENTS**

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**EXHIBIT B**

**LIST OF APPLICABLE CATALYST , LLC’S PATENTS AND CORRESPONDING  
IDENTIFYING INFORMATION**  
**(FOREIGN, NON – U.S.)**

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**EXHIBIT C**

**FORM OF STOCK PURCHASE AGREEMENT AND**  
**ACCOMPANYING PROMISSORY NOTE**  
**(AND/OR SIMILAR OR SUPPORTING DOCUMENTATION)**

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**EXHIBIT D**

**LIST OF COMPETITORS AND CHARACTERISTICS AND/OR BUSINESS OF  
COMPETITORS**

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**LicA#9**

EX-10.6

**Exhibit 10.6**

**Exclusive Intellectual Property Rights Licensing Agreement**

This Exclusive Intellectual Property Rights Licensing Agreement (the “Agreement”) is entered into in the Changping District of Beijing, China on February 26, 2018 by the following parties:

**Party A: Bao Future International Technology (Beijing) Co., Ltd. (“CMLOP”)**

Unified Social Credit Code: [...]

Address: [...room 205], Changping District, Beijing

**Party B: Beijing Bao Music Co., Ltd. (“Bao Music”)**

Unified Social Credit Code:

Address: [ Room 207,...], Changping District, Beijing

The foregoing Parties A and B shall be referred to in this Agreement individually as “Party” and collectively as the “Parties”.

**WHEREAS:**

1. Party A owns the intellectual property rights set out in Annex 1 (“Intellectual Property Rights”) and Party B need to use all of the Intellectual Property Rights in business and Party A is willing to license Party B to use such Intellectual Property Rights on the terms and conditions set out in this Agreement. In addition, Party B agree that Party A will use all Intellectual Property Rights held by  Party B in accordance with the terms and conditions set out in this Agreement.

2. Both Parties have signed the Exclusive Consulting Service Agreement on the date of this Agreement, and Power of Attorney, the Exclusive Option Agreement and the Equity Interest Pledge Agreement on the same day with Beijing TongfengConsulting Services Co., Ltd., Haifeng Culture Industry Investment Enterprise (Limited Partnership), LiangLV, Xioa LIU, Fanf PENG, Peixian . (The Agreement, the Exclusive Consulting Service Agreement, the Power of Attorney, the Exclusive Option Agreement and the Equity Interest Pledge Agreement are collectively referred to as the “Contractual Arrangements”).

Accordingly, after friendly negotiations, both parties have agreed on the following mutual licensing of intellectual property rights:

**Article 1 Scope, duration and cost of intellectual property licensing**

1. Party A and Party B mutually confirm that after Party B has assigned all the intellectual property rights within the scope of Annex I to Party A, Party A exclusively authorizes Party B to use the intellectual property rights within the scope of Annex I legally owned by Party A in a non-transferable manner, and such authorized use is limited to Party B’s own business. Both Party A and Party B mutually confirm that such part of the intellectual property rights that have not been completed for transfer shall be used by both Party A and Party B free of charge. Party B has no right to sell, lease, assign, sub-license or otherwise transfer or make available for use such intellectual property rights or part thereof to others.

2. Both Party A and Party B mutually confirm that, from the date of signing this Agreement, all intellectual property rights held by Party B which are not listed in Annex I shall be licensed by Party B to Party A for free use.

3. Both parties hereto further confirm that after Party B has transferred all the intellectual property rights within the scope of Annex I to Party A, Party A will license them to Party B free of charge.

4. This Agreement shall come into effect on the date of signature by the legal representatives or authorized representatives of both parties and shall remain in force for a period of ten years. Unless either party notifies the other party thirty days before the expiration date of this Agreement that this Agreement will not be renewed, this Agreement will be automatically renewed for five years upon the expiration date, and so on thereafter.

**Article 2 Undertaking**

1. Party A undertakes to provide the Intellectual Property Rights materials in accordance with this Agreement, and to provide Party B with necessary training and coaching.

2. Party B undertakes to: (1) promptly provide Party A with the materials and information necessary for Party A to complete the authorization under the Agreement, and other materials and information requested by Party B for the performance of the Agreement, and to ensure that the materials and information are true and accurate; (2) pay the relevant fees to Party A as agreed in Article 1 of the Agreement; (3) unless with Party A’s prior written consent, the intellectual property rights listed in Article 1 of the Agreement will not be transferred to Party B. Authorized license, Party B may not obtain from other third parties.

**Article 3 Confidentiality**

In the course of or for the purpose of performing this Agreement, any materials, information, documents or any other form of carriers provided by Party A to Party B in connection with intellectual property rights or by Party B to Party A in connection with Party B’s operation or business are their own confidential information, and Party B, as the recipient, shall take necessary confidentiality measures to keep such confidential information confidential and shall not disclose it to any third party. such information, and shall cause its officers, employees or others who may have access to such Confidential Information to comply with their obligations of confidentiality as set forth herein. The contents of this Agreement are part of the Confidential Information.

**Article 4 Applicable Law and Dispute Resolution**

1. The signing, validity, performance, interpretation and enforceability of this Agreement shall be governed by the laws of the People’s Republic of China.

2. Any dispute arising out of or in connection with this Agreement shall first be settled by amicable negotiation: if no settlement is reached within thirty days from the date of the dispute, either party shall have the right to initiate arbitration before the China International Economic and Trade Arbitration Commission (CIETAC), which shall be conducted by three arbitrators in accordance with the arbitration rules in force and applicable at the time the arbitration is requested. The arbitral award shall be final and binding on both parties to the arbitration. During the course of the arbitration, each party shall continue to perform all of its obligations under this Agreement, except for the matter or obligation in dispute submitted to arbitration.

3. If necessary, the arbitration institution shall have the authority, prior to making a final determination of the dispute between the parties, to grant CMLOP appropriate legal remedies, including (1) an award of such remedies against the shares or assets of Bao Music, (2) grant a remedial injunction (e.g., an order to keep Bao Music in operation or to compel the transfer of assets); (3) an award of the dissolution or liquidation of Bao Music.

4. Subject to the PRC laws, and under the condition that complying with the PRC laws, regulations and valid arbitration rules, a court of competent jurisdiction (i.e. the PRC, the Hong Kong Special Administrative Region of the PRC, the Cayman Islands, and the courts of the location of the principal assets of the parties) shall have the authority to grant interim relief (e.g. preservation of property, preservation of evidence) in support of the arbitration prior to the constitution of the arbitral tribunal or in appropriate circumstances, on its own motion. Or to rule, on the basis of an interlocutory decision of an arbitral institution, that the breaching party immediately ceases the breach or that the breaching party shall refrain from acts that may lead to a further increase in the damages suffered by the complying party.

**Article 5 Other**

1. Notices or other communications from either party to the other under this Agreement shall be given by facsimile or post. The legal address or domicile of the parties as set out in Annex II to this Agreement shall be that party’s mailing address, unless that party specifies in writing to the other party another address.

2. If any provision of this Agreement is held invalid under applicable law, the invalidity of such provision shall not affect the validity of the other provisions of this Agreement. The parties to this Agreement shall make such modifications to the invalid provision as may be necessary to make it effective and to best reflect the original intent of the parties.

3.Any amendment or supplement to this Agreement shall be made in written by the parties hereto.

4. Three copies of this Agreement shall be made in Chinese, one copy for each party, and the remaining copies shall be retained by Bao Music and shall be of equal legal effect.

(No text below this page, followed by a signature page)

**Annex I  List of Licensed Intellectual Property Rights**

1.              **Trademark**

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| **NO.** |  | **Trademark** |  | **Register** |  | **Register number** |  | **Category** |  | **Validity Period** |  | **Approved use of commodities/approved use of services** |
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| **NO.** |  | **Trademark** |  | **Register** |  | **Register number** |  | **Category** |  | **Validity Period** |  | **Approved use of commodities/approved use of services** |
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| **NO.** |  | **Trademark** | |  | **Register** | |  | **Register number** | |  | **Category** | |  | **Validity Period** | |  | **Approved use of commodities/approved use of services** |
| **NO.** |  | **Trademark** |  | **Register** | |  | **Register number** | |  | **Category** | |  | **Validity Period** | |  | **Approved use of commodities/approved use of services** | |

**2.**              **Domain Name**

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| **NO.** |  | **Domain Name** |  | **Category** |  | **Registration** |  | **Expiration** |

**Annex II Contact Information**

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|  |  | **NAME** |  | **Contactor** |  | **Address** |  | **Fax/Telephone** |  | **Email** |
| 1. |  |  |  |  |  |  |  |  |  |  |
| 2. |  |  |  |  |  |  |  |  |  |  |

**LicA#10**

LICENSE AGREEMENT

**Exhibit 10.32**

**LICENSE AGREEMENT**

This Agreement is made as of this 1st day of February, 2005, by and between Allpics Design, Inc., a California corporation (“Licensor”), whose address is [...], Los Angeles, California 90048-5100, and Forward Media, a California corporation (“Licensee”), whose address is [...], California 91411.

WHEREAS Licensor is in the business of designing and manufacturing key art, logos and other materials to promote and market motion picture and other projects.

WHEREAS Licensee is a production company engaged in the production of various motion pictures, including a motion picture presently-entitled “Adventours” (the “Picture”), and is desirous of using the key art, logos and other materials created by Licensor to promote and market the Picture.

WHEREAS the parties have agreed that Licensor will have the exclusive right to create promotional print materials for the Picture containing the key art, logos and other materials created by Licensor and/or containing other elements from the Picture.

WHEREAS the parties have agreed that Licensor will have the exclusive right to create, manufacture and distribute merchandise in connection with the Picture containing the key art, logos and other materials created by Licensor and/or containing other elements from the Picture.

WHEREAS the parties have agreed that Licensor will have the exclusive right to design and create the artwork for DVD and/or other home video versions of the Picture containing the key art, logos and other materials created by Licensor and/or containing other elements from the Picture.

NOW, THEREFORE, in consideration of the mutual promises herein contained, it is hereby agreed as follows:

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| **1.** | **LICENSED PROPERTY.** The licensed property shall be the Print Materials (as defined below), the Merchandise (as defined below) and the Home Video Artwork (as defined below) and such other materials containing the key art, logos and other materials created by Licensor for the Picture as mutually approved by the parties (the “Licensed Property”). |

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| **2.** | **GRANT OF RIGHTS.** Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee the right (the “Granted Rights”) throughout the world in perpetuity to use the Licensed Property in connection with the exploitation of the Picture or any part of version thereof (including the advertising and promotion of same). All rights in and to the Licensed Property, all copyrights, other trade and service marks, patents, and other properties of Licensor not specifically granted in this Agreement are reserved to Licensor. |

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| **3.** | **PRINT MATERIALS.** |

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|  | 3.1 | Exclusivity. As between Licensor and Licensee, Licensor shall have the sole and exclusive right to create and manufacture all print materials (e.g., posters, one-sheets, souvenir programs, etc.) containing the Licensed Property and/or otherwise relating to the promotion and marketing of the Picture (the “Print Materials”). |

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|  | 3.2 | Approvals. Licensor and Licensee shall mutually approve all Print Materials to be created by Licensor in connection with the Picture. |

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|  | 3.3 | Fulfillment/Price. At its discretion, Licensee shall order Print Materials from Licensor by written order form to Licensor setting forth the specific Print Materials to be created by Licensor and the quantity of Print Materials required by Licensor. Licensee shall purchase all Print Materials from Licensor for a fee equal to Licensor’s actual cost of creating, manufacturing and delivering such Promotional Materials (the “Print Material Fee”), which fee shall be payable to Licensor as follows: fifty percent (50%) upon order of the Print Materials by Licensee and fifty percent (50%) thirty (30) days after delivery of the Promotional Materials to Licensee. To the extent any part of the Print Materials Fee is not paid to Licensor when due, Licensor may, in addition to any other remedies available to Licensor, setoff the amount of such unpaid Print Materials fee against other amounts otherwise payable by Licensor to Licensee pursuant to this Agreement (including, without limitation, Licensee’s share of any “Gross Proceeds” (as defined below) otherwise payable to Licensee). Upon Licensee’s request, Licensor shall provide Licensee prior to order with a written estimate of the Print Material Fee and the time required by Licensor to manufacture and deliver the Print Materials to Licensee. Licensor will deliver the Print Materials to Licensee in a timely manner consistent with Licensor’s custom and practice on a schedule mutually approved by the parties. Licensor shall stock such Print Materials strictly on a “Just-In-Time” basis (i.e., Licensor shall not be required to acquire or maintain a stock of inventory of Print Materials and shall only be required to manufacture items as such items are ordered by Licensee). Licensee acknowledges and agrees that the Print Materials requested by Licensee hereunder shall be used only in connection with the promotion and marketing of the Picture and shall not in any instance be sold by Licensee to the public in the form of merchandise or otherwise. |

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| **4.** | **MERCHANDISE.** |

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|  | 4.1 | Exclusivity. As between Licensor and Licensee, Licensor shall have the sole and exclusive right to create, manufacture, sell, license and otherwise dispose of any and all merchandise and/or other items for sale to the public containing the Licensed Property and/or otherwise relating to the Picture (the “Merchandise”). Licensor agrees to provide Licensee with written notice of any licenses entered into between Licensor and any third party with respect to the creation, manufacture, sale or other disposition of any Merchandise. Licensee shall have fifteen (15) days from the receipt of such notice in which to express any issues or requests in connection with |

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|  | the granting said licenses, and Licensor shall consider such issues or requests in good faith; provided, however, that Licensor’s right to enter into any such license shall not be conditioned upon the approval of Licensee and Licensee’s rights shall be one of consultation only. |

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|  | 4.2 | Limited Edition Merchandise. Licensor shall provide to the Licensee the right to sell within an auction up to two hundred and fifty (250) posters produced by Licensor with original signatures of talent. In addition, Licensee shall have the right to sell within an auction up to two hundred and fifty (250) scripts which include the produced by Licensor “Adventours” logo and contain original signatures of talent, Licensee shall pay Licensor an amount equal to the list-price for such merchandise in the “On-Line Store” (as defined below), less a 20% discount. |

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|  | 4.3 | Approvals. Licensor and Licensee shall mutually approve all Merchandise to be created by Licensor in connection with the Picture. |

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|  | 4.4 | On-Line Store. Licensor shall, at its expense, establish a separate website (the “On-Line Store”) on which Licensor shall offer for sale Merchandise to the public. Licensor shall have the sole responsibility for the creation, operation and maintenance of the On-Line Store, including order fulfillment, billing, delivery, return and refund processing and customer service. Licensor agrees to launch the On-Line Store within sixty (60) days following the mutual approval of at least four (4) items of Merchandise to be sold on the On-Line Store, which the parties agree will be at least the following items: (a) one style of t-shirt; (b) one style of hat; (c) one style of director’s chair; and (d) one style of poster, Licensor shall stock such Merchandise strictly on a “Just-In-Time” basis (i.e., Licensor shall not be required to acquire or maintain a stock of inventory of Merchandise and shall only be required to manufacture items as such items are ordered). Licensor shall use good faith efforts to ship Merchandise no later than two (2) to four (4) weeks from Licensor’s receipt of any particular order of Merchandise unless Licensor is prevented from doing so by reason of events beyond Licensor’s reasonable control (including delays in procuring materials or delays in delivery of materials). The parties may mutually agree to add additional items of Merchandise to the On-Line Store at any time. |

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|  | 4.5 | Promotion. Licensee agrees to use reasonable efforts to promote the On-Line Store at its sole cost and expense in advertisements and promotions concerning the Picture. Licensee will also use reasonable efforts to prominently display pertinent information concerning the On-Line Store on the official website of the motion picture, the official website of Forward Media and of all websites for the Picture under the direction and/or control of Licensee and/or any of its assignees or designees. In addition, Licensee shall advise all individuals rendering services in connection with the Picture to make non-denogatory mention of the On-Line Store during all publicity and media interviews in connection with the Picture. Licensor shall not be required to conduct any promotion or advertising concerning the On-Line Store, nor bear any expense related to such promotion or advertising of the On-Line Store, unless Licensor is engaged in writing by Licensee to provide such |

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|  | services for an additional fee (which fee shall be deemed a cost to be recouped by Licensor under paragraph 5.1.1 herein). Notwithstanding the foregoing, nothing herein shall prohibit Licensor from promoting and/or advertising the On-Line Store at its sole cost and discretion (including, without limitation, entering into cross-promotion agreements with other Internet websites to promote the On-Line Store). |

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|  | 4.6 | Sales Taxes. Licensor shall be responsible for the filing and payment of all sales taxes in connection with the purchase and sale of Merchandise from the On-Line Store. Licensor shall be permitted to recoup such cases under paragraph 5.1.1 herein. |

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| **5.** | **MERCHANDISE PROCEEDS.** |

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|  | 5.1 | Allocation. “Gross Proceeds” (as defined below) from the exploitation of Merchandise by Licensor shall be applied in the following manner and in the order set forth below: |

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|  | 5.1.1 | First, Licensor shall recoup all of its costs and expenses in connection with the design, manufacture, distribution, shipping and handling, advertising, promotion and/or other exploitation of the Merchandise (including, without limitation, any samples and any costs and expenses incurred in connection with the development, design, maintenance, operation, promotion or advertising of the On-Line Store) and/or other materials prepared at Licensee’s request hereunder. Licensor shall not be permitted to charge as a cost under this paragraph the salaries of executive employees of Licensor or a “flat” general overhead fee. |

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|  | 5.1.2 | Second, 30% of the remaining Gross Proceeds derived from the exploitation or sale of Merchandise, excluding Gross Proceeds derived from (i) the sale of any DVD’s and/or other home video versions of the picture, (ii) the sale of Merchandise that does not contain the likeness of any on-screen talent, or (iii) the sale of Merchandise that does not contain the signature of any on-screen talent, shall be deposited into an escrow account for the payment of royalties, participations and other amounts to third parties providing services in connection with the Picture (“Participations”). Licensee shall be solely responsible for all other Participations in connection with the Picture, and Licensee shall pay all such Participations in accordance with Licensee’s agreement with the recipients of such Participations. |

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|  | 5.1.3 | Third, Fifty Percent (50%) of the remaining Gross Proceeds shall be paid to Licensor and Fifty Percent (50%) of the remaining Gross Proceeds shall be paid to Licensee. |

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|  | 5.2 | Gross Proceeds. “Gross Proceeds” shall mean all monies and /or other consideration received by Licensor in connection with the sale, license or other exploitation of the Merchandise hereunder, excluding any amounts that are |

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|  | refunded and/or otherwise returnable to third parties. Notwithstanding the foregoing, no receipts payable by Licensee \_\_\_ Licensor pursuant to Section 4.2. above shall be included within Gross Proceeds. Except as otherwise specifically set forth herein. Licensor shall not be entitled to participate in the proceeds from the distribution and/or other exploitation of the Picture itself unless the parties otherwise agree in writing. |

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| **6.** | **ACCOUNTING.** |

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|  | 6.1 | Accounting Periods. Gross Proceeds hereunder shall be computed by Licensor based upon the aggregate of Gross Proceeds derived from exploitation of Merchandise during accounting periods (herein “accounting periods”) as specified below. The first accounting period hereunder shall commence within sixty (60) days after the first sale of any item of Merchandise on the On-Line Store, Licensor shall render accountings on a quarterly basis. Licensor shall render an accounting statement to Licensee within forty-five (45) days after the end of each accounting period during which any Gross Proceeds are received by Licensor hereunder. In each quarter period, Licensor may retain from Licensee’s share of Gross Proceeds for that period up to fifteen percent (15%) of those proceeds as a reserve for returns of any Merchandise sold in each quarterly period, Which shall be liquidated in the next quarterly payment period following creation. |

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|  | 6.2 | Examination of Books and Records. If Licensee so requests in writing , and affording Licensor at least ten (10) business days notice, Licensor will permit Licensee’s designated certified accountant, or other designated representative of Licensee, to make an examination, at Licensee’s expense of such of its books and records as may be necessary to verify the accuracy of any statement submitted to Licensee by licensor hereunder, Which examination with respect to each statement must take place during reasonable business hours, at Licensor’s office only once during the one (1) year period subsequent to the delivery of such earnings statement. Licensor need not furnish Licensee with copies of any records inspected, but Licensee may copy said records or make extracts therefrom at its sale expense. In the event that such examination reveals an error of seven percent (7%) or more, Licensor will , in addition to making restriction for such error, pay Licensee the reasonable cost of such examination. |

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|  | 6.3 | Incontestability. Each statement rendered hereunder shall be binding upon Licensee and not subject to objection for any reason unless such objection is made in writing stating the basis thereof and delivered to Licensor within two (2) years from delivery of such statement. Unless notice is given to Licensor as provided in this section 6.3. each statement and other account rendered by Licensor shall be final , conclusive and binding upon Licensee and shall constitute an account stated. |

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| **7.** | **HOME VIDEO ARTWORK.** |

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|  | 7.1 | As between Licensor and Licensee, Licensor shall have the sole and exclusive right to design and create the artwork for all DVD and other home video packaging for the Picture (“Home Video Artwork”). |

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|  | 7.2 | Approvals. Licensor and Licensee shall mutually approve all Home Video Artwork to be created by Licensor in connection with the Picture. |

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|  | 7.3 | Other Materials. Licensor will also have the exclusive right to provide the following with regards to the promotion and sale of the DVD and/or other home video version of the Picture; adaptation of 1-sheet and/or new creative exploration for Home Entertainment packaging; Video Store Magazine Release Ads; Consumer Publication Ads; Ad Max (these include barcodes, logo images and other marketing materials that large retail stores request); sell sheet (used to promote “sells” of the DVD to store owners); screener (copy protected version of the DVD with release date information for viewing by store owners); header card (Costco only); longbox (Costco only); in-store POP standees; and in-store POP DVD merchandise display box. Printing of these materials will be at the sole cost of the Licensee. |

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|  | 7.4 | Pricing. As consideration for its services pursuant to this Section 7. Licensor shall be paid the sum of $0.50 per each DVD and/or other home video unit of the Picture sold or distributed anywhere in the world in perpetuity, other than those units sold through the On-Line Store. Licensee shall account for all sales on which such amount shall be paid, and Licensor shall have the right to audit such accountings, in the same time and manner as set forth in Section 6 with respect to the sale of Merchandise (except that in this case Licensee shall be the party providing the accountings, and Licensor shall be the party entitled to audit such accountings). |

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|  | 7.5 | Firm Opportunity. Licensor shall have the first opportunity to obtain the DVD and/or other home video version of the Picture for resale through the On-Line Store throughout the world in perpetuity via the Internet. Licensee shall sell such units to Licensor on terms to be negotiated in good faith between the parties, provided that the price per unit shall not exceed the wholesale price per unit offered to any other purchaser of such products. |

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| **8.** | **THIRD-PARTY RELEASES.** If and to the extent that Licensor at Licensee’s written request incorporates into the Licensed Property any video or audio footage from the Picture, the name, likeness and/or other characteristic of any actor from the Picture, and/or otherwise any other element from the Picture (including, without limitation, any dialogue from and/or the title of the Picture) (the “Picture Elements”), Licensee hereby grants to Licensor at no cost the right to use such Picture Elements in the Licensed Property throughout the world in perpetuity so that Licensor shall have full ownership of the Licensed Property. In connection with the preceding sentence, Licensee shall obtain at no cost to Licensor all |

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|  | appropriate releases required by Licensor from actors and/or other individuals appearing in or otherwise rendering services in connection with the Picture. |

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| **9.** | **APPROVALS.** All approvals exercised by the parties hereunder shall be exercised in writing and in a reasonable and timely manner. |

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| **10.** | **COPYRIGHT/TRADEMARK.** Licensee shall not at any time do nor knowingly permit to be done, anything which may impair Licensor’s copyright, trade names, trade marks, service marks or any other right, title or interest in or to the Licensed Property. Licensor shall be permitted to imprint on each item of Licensed Property and all advertising, promotional, packaging and wrapping material wherein the Licensed Property appears, appropriate copyright, trademark, service mark and patent notices. Licensee may assist Licensor, at Licensor’s expense, in the procurement, protection, and maintenance of Licensor’s rights to the Licensed Property. Licensor may, in its sole discretion, commence or prosecute and effect the disposition of any claims or suits relative to the imitation, infringement and/or unauthorized use of the Licensed Property either in its own name, or in the name of Licensee, or join Licensee as a party in the prosecution of such claims or suits. Licensee agrees to cooperate fully with licensor in connection with any such claims or suits and undertakes to furnish full assistance to Licensor in the conduct of all proceedings in regard thereto at the expense of Licensor. Licensee shall promptly notify Licensor in writing of any infringements of imitations or unauthorized uses by others of any of the Licensed Property of which Licensee becomes agree. Licensor shall in its sole discretion have the right to settle or effect compromises in respect thereof. Licensee shall not institute any suit or take any action on account of such infringements, imitations or unauthorized uses. |

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| **11.** | **REPRESENTATIONS AND WARRANTIES.** |

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|  | 11.1 | Licensee’s Representations and Warranties. Licensee warrants, represents and undertakes: that it is free to enter into and fully perform the rights and obligations set out in this Agreements; it shall faithfully observe the approval and consultation rights of Licensor as set forth herein; and that it owns or controls all rights in and to the picture and Picture Elements in order to permit Licensor to develop, produce, manufacture, exhibit, advertise and exploit the Print Materials, Merchandise. Home Video artwork and/or any other materials containing the Licensed Property in accordance with the terms hereof free and clear of any claims from any third party. |

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|  | 11.2 | Licensor’s Representations and Warranties. Licensor warrants, represents and undertakes that: it is free to enter into and fully perform the rights and obligations set out in this Agreement; and that it owns or controls all rights in and to the Licensed Property (except as to rights acquired from Licensee) in order to permit Licensee to exploit the Licensed Property in accordance with the terms hereof free and clear of any claims from any third party. |

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| **12.** | **INDEMNIFICATION.** |

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|  | 12.1 | Licensee’s Indemnification. Licensee shall indemnify and defend licensor against all claims, costs, proceedings, demands, losses, damages, expenses (including reasonable outside legal and other professional expenses) and/or liabilities whatsoever arising directly or indirectly as a result of any breach of any of the Licensee’s undertakings, warranties or obligations under this Agreement and/or as a result of the development, production, transmission, distribution and/or other exploitation of the Picture or any element thereof. |

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|  | 12.2 | Licensor’s Indemnification. Licensor shall indemnify and defend Licensee against all claims, costs, proceedings, demands, losses, damages, expenses (including reasonable outside legal and other professional expenses) and/or liabilities whatsoever arising directly or indirectly as a result of any breach of any of Licensor’s undertakings, warranties or obligations under this Agreement. |

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| **13.** | **INSURANCE.** |

Licensee shall maintain customary errors and omissions and general liability policies in full force and effect to Licensor’s reasonable satisfaction. Licensee shall provide certificates of insurance naming Licensor as an additional insured to such policies upon Licensor’s request. Licensor shall include Licensee as an additional insured on its standard errors and omissions and general liability policies and provide evidence of same upon Licensee’s request.

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| **14.** | **CONFIDENTIALITY.** |

Any information disclosed by one party to the other which relates to original elements, production processes, and the like, which are confidential and not known to the public or the entertainment community shall be deemed proprietary confidential information. Such information shall be treated as strictly confidential and shall not be disclosed to any third party except in connection with the development, production and exploitation of the Picture and/or any of the exploitation of the party’s rights hereunder. Licensee shall not disclose or make public any financial or other confidential information relating to this Agreement except as may be otherwise required by law.

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| **15.** | **ASSIGNMENT.** |

Licensee shall not have the right to assign this Agreement to any third party without Licensor’s prior written consent in each instance. Licensor shall have the right to assign this Agreement, either in whole or in part, to any third party, provided that Licensor agrees to provide written notice of any such assignment to Licensee.

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| **16.** | **MISCELLANEOUS.** |

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|  | 16.1 | Arbitration. Each party to this Agreement agrees that any controversy, claim, or dispute arising out of or relating to this Agreement, including, without limitation, the interpretation, performance, or breach of this Agreement (a “Dispute”), shall be, to the fullest extent allowed by law, submitted to binding arbitration (an “Arbitration”). The tribunal for any Arbitration shall be the Los Angeles office of JAMS, or its successor. Any Arbitration shall be governed by the JAMS Comprehensive Arbitration Rules And Procedures in effect at the time the Arbitration is initiated. If JAMS is no longer in existence and has no successor at the time a Dispute arises, then the parties to the Dispute shall endeavor in good faith to agree upon a tribunal for an Arbitration; if they are unable to do so, then any party to the Dispute may petition exclusively a state or federal court of competent jurisdiction in Los Angeles County to appoint an arbitral tribunal, Under either of those circumstances, the Arbitration shall be governed by the applicable arbitration rules and procedures of that tribunal in effect at the time the Arbitration is initiated, including any appellate procedure. Any Arbitration shall be conducted before a single neutral arbitrator (an “Arbitrator”) appointed in accordance with the governing arbitral rules (the “Rules”) in addition to any discovery permitted by the Rules, the Arbitrator may permit any deposition and document discovery that he or she deems reasonably necessary to the Arbitration. California substantive and evidentiary law, including the California Evidence Code, shall govern any Arbitration. The fees of the Arbitrator initially shall be split equally between the sides to an Arbitration, subject to the power of the Arbitrator to apportion those fees among the parties as he, she, or they deem just and appropriate. Each party to this Agreement agrees that, if any party institutes an Arbitration, or initiates any proceeding to compel arbitration, to appoint an arbitral tribunal, or to confirm, enforce, correct, or vacate an Award, or any other type of proceeding arising from or relating to this Agreement, then the finally prevailing party in the Arbitration or proceeding shall recover from the losing party all reasonable attorney fees, costs, and expenses incurred therein. |

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|  | 16.2 | No Partnership. Nothing herein contained shall constitute a partnership between or joint venture by the parties hereto, or constitute either party the agent of the other. Neither party shall hold itself out contrary to the terms of this paragraph, and neither party shall be or become liable by any representation, act or omission of the other contrary to the provisions hereof. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. Licensee shall not be considered a trustee, pledge holder, fiduciary or agent of Licensor by reason of anything done or any money collected by it. |

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|  | 16.3 | Notices. All notices and other communications to be given by either party hereunder shall be in writing and shall be delivered by hand, sent by facsimile (with confirmation), air express, or certified mail return receipt requested. Every notice shall be deemed received if hand-delivered, on the date of delivery; if by |

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|  | facsimile, on the next business day; if by air express or otherwise, on the date of delivery. All notices and communication hereunder shall be addressed as follows, unless the parties agree in writing otherwise: |

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| To Licensor: |  | Allpics Design, Inc.  [...]  Attention: Matthew Soros |
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| With a copy concurrently to: | | |
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|  |  | [...]\_l, LLP  [...], California 90212  Attention: ACarl Schultz |
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| To Licensee |  | Forward Media  [...], California 91411 |

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|  | 16.4 | Entire Agreement. This Agreement supersedes and cancels all prior negotiations and understandings in the promises between the parties, and contains all of the terms, conditions and promises of the parties hereto in the premises. No modification hereof shall be valid or binding unless in writing and executed by both parties hereto. No officer, employee or representative of Licensee or Licensor has any authority to make any representation or promise not contained in this Agreement, and neither Licensee nor Licensor have executed this Agreement in reliance on any such representation or promise. |

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|  | 16.5 | Violation of Law. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any material statute, law or ordinance contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provisions of this Agreement affected shall be curtailed and limited only to be the extent necessary to bring it within legal requirements. |

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|  | 16.6 | Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California, and the parties agree that it is executed and delivered in that state. |

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|  | 16.7 | Headings. The headings in this Agreement are for information only and do not form part of this Agreement. |

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|  | 16.8 | Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. |

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year above written.

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| **LICENSOR:** | | |  |  |  | **LICENSEE:** | | |
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| ALLPICS DESIGN, INC., | | |  |  |  | FORWARD MEDIA, | | |
| a California corporation | | |  |  |  | a California corporation | | |
|  |  | |  | |  | |  | |
| By: |  | /s/    MATTHEW SOROS |  |  |  | By: |  | /s/    DOROTHY BELCHER |
| Name: |  | **Matthew Soros** |  |  |  | Name: |  | **Dorothy Belcher** |
| Title: |  | **CFO** |  |  |  | Title: |  | **V.P.** |

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**LicA#11**

EXHIBIT 10.32

**Exhibit 10.32**

**\*\*\*Text Omitted and Filed Separately**

**with the Securities and Exchange Commission.**

**Confidential Treatment Requested**

**Under 17 C.F.R. Sections 200.80(b)(4)**

**and 240.24b-2.**

**LICENSING AGREEMENT**

**between**

**ABC Zurich**

[…], 8092 Zurich, Switzerland

(hereinafter referred to as “***Licensor***” or “***ABC***”)

**and**

**Hospital Help Inc.**

[…], CA 92008-7208, U.S.A.

(hereinafter referred to as “***Licensee***”)

Collectively called the “***Parties***” or individually the “***Party***”

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**PREAMBLE**

Licensor has developed certain Technology and owns certain Patents relating to oligonucleotides targeting miRNAs for the treatment of insulin resistance and type 2 diabetes. Licensor is desirous that such Technology and Patents be developed and exploited to the fullest possible extent so that their benefits can be enjoyed by the general public.

The Licensee wishes to acquire rights in the Technology for the development and commercialization in the Field of Use and in the Territory, all in accordance with the terms of this licensing agreement (Agreement).

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| **1.** | **DEFINITIONS** |

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| ***Affiliate*** | Shall mean any corporation or other business entity which controls, is controlled by or is under common control of Licensee. For purposes of this definition, an entity shall be regarded as in “control” of another entity if it owns or controls, directly or indirectly, at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors (or, in the case of an entity that is not a corporation, the corresponding managing authority). |

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| ***Blocking Inventions*** | Any patent or patent application controlled by Licensor necessary to practice the Technology. |

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| ***Effective Date*** | Shall be defined as the date of the last signature of the Parties on this Agreement. |

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| ***Field of Use*** | All fields of use covered by the Patents |

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| ***License*** | Shall be defined as the rights granted by the Licensor under the terms of this Agreement. |

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| ***License Fees*** | Shall mean the fees payable by the Licensee to the Licensor for the rights granted to Licensee under this Agreement. |

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| ***Licensed Products*** | Shall mean any products whose making, using, selling or other commercialization would infringe a Valid Claim of the Patents. |

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| ***Net Sales*** | Shall mean the total of the gross amounts received for sales of Licensed Products by or on behalf of Licensee, Affiliates |

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or Sub-licensees, less the sum of the following actual and customary deductions where applicable: cash, trade, or quantity discounts; value added, sales or use taxes, and custom duties; transportation charges; and credits to customers because of rejections, returns or rebates.

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| ***Patent(s)*** | Shall mean (1) patent (application): […\*\*\*…], any members of the patent family claiming priority of these original patent applications, including any patent application or granted patent, whether domestic or foreign, including all provisionals, and all divisionals, continuations, continuations-in-part, reissues, reexaminations, renewals, extensions, and supplementary protection certificates of any such patents and patent applications, and (ii) any patent issuing therefrom. |

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| ***Sub-license*** | Shall mean a sublicense granted by Licensee to a non-Affiliate third party, giving rights derived from the license granted to Licensee under Section 3 of this Agreement. |

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| ***Sub-licensee*** | Shall mean a non-Affiliate third party to whom Licensee grants a Sub-license. |

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| ***Technology*** | Shall be defined as the inventions claimed in the Patents. |

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| ***Territory*** | Shall be defined as the countries where (provisional) patent protection for the Patents is sought or granted. |

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| ***Valid Claim*** | Shall be defined as any (i) issued claim of a Patent not rejected by a final decision of a patent office or of a court of competent jurisdiction until the date of such final decision; or (ii) a claim of a pending patent application of the Patents that has not been abandoned, finally rejected or expired without the possibility of appeal or refiling, provided however, that (a) Valid Claim will exclude any such pending claim that does not have a reasonable bona fide basis for patentability (such reasonable bona fide basis to be determined by outside counsel selected by the parties the event that the parties disagree as to whether there is a reasonable bona fide basis for patentability for such a claim). |

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| **2.** | **OBJECT OF LICENSE** |

Licensor grants Licensee a License under the terms of this Agreement.

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| **3.** | **SCOPE OF LICENSE** |

Licensor grants Licensee an exclusive License in the Territory, under the Patents to research, develop, make, have made, use, sell, offer for sale, have sold, export and import Licensed Products in the Field of Use.

Licensor retains the right to use the Patents and consent to the use of the Patents by academic and research institutions for non-commercial purposes, free of charge. Licensor is further allowed to use the Patents for non-commercial collaborations with commercially oriented third parties. In case of any commercialization by said third party, this party has to negotiate an agreement with Licensor/Licensee or the Licensee directly, as the case may be. For purpose of clarification, non-commercial purposes does not include human clinical trials.

Licensee gets a free, non-exclusive license on Blocking Inventions held by Licensor if this is required to commercialize the Patents and only to the extent that no third party rights existing as of the Effective Date are in conflict with such a non-exclusive license.

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| **4.** | **RIGHT TO GRANT SUB-LICENSES** |

Licensee has the right to grant Sub-licenses within the scope of this Agreement under the following conditions.

Licensee shall:

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| **(i)** | to the extent possible, ensure that the terms of any Sub-license agreement include obligations equivalent to those contained in this Agreement; |

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| **(ii)** | provide Licensor with a copy of each Sub-license contract issued within 30 days of execution (which copy may be redacted to remove confidential information so long as such redactions will not prevent Licensor’s reasonable determination as to whether such Sub-license was entered into in accordance with this Agreement); |

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| **(iii)** | collect and guarantee payment from Sub-licensees according to Article 5. |

Any Sub-license entered into in accordance with the terms of this Agreement prior to the date of any termination of this Agreement that is not in breach of this Agreement as of the date of such termination shall survive any such termination of this Agreement if (i) the relevant Sub-licensee is not in breach of this Agreement; and (ii) the relevant Sub-licensee agrees in writing to make any

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payments required under this Agreement directly to Licensor and to comply with the terms of this Agreement (including for the avoidance of doubt the direct obligation vis-a-vis Licensor to provide reports in accordance with Section 7). Licensor shall however not be bound to take over any duties of Licensee towards the Sub-licensee, if he is not able to do so in his capacity as a public research institution.

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| **5.** | **LICENSE FEES** |

Licensee shall pay the following types of License Fees:

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| **(1)** | Upfront payment: CHF 20,000 |

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| **(2)** | Milestone payments: With respect to the 1st Licensed Product covered by a Valid Claim to achieve a milestone event set forth below, Licensee will pay the following amounts: |

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| Ù | Upon entrance into clinical trial phase I: […\*\*\*…] CHF |

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| Ù | Upon entrance into clinical trial phase II: […\*\*\*…] CHF |

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| Ù | Upon entrance into clinical trial phase III: […\*\*\*…] CHF |

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| Ù | Upon market approval: […\*\*\*…] CHF |

Milestone Payments will be due only once upon the 1st achievement of a milestone event by Licensee or any of its Affiliates or Sublicensees (e.g. if a second phase I trial is initiated for the 1st Licensed Product, no additional payment will be due).

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| **(3)** | Annual minimum payments: CHF 10,000 |

Such annual minimum payments are creditable against any other royalties due according to this Paragraph in the same calendar year.

Out-of-pocket patent costs paid by Licensee are creditable against the Annual minimum payments of the same calendar year.

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| **(4)** | Royalties: […\*\*\*…]% on Net Sales of Licensed Products covered by a Valid Claim of the Patent, and sold by either the Licensee, an Affiliate or a Sub-licensee. |

In the event that the Licensee is required to make payments to a 3rd party in respect of licenses to intellectual property necessary or useful to make, use,

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and/or sell Licensed Products, Royalties due to ABC hereunder will be subject to reduction by an amount equal to […\*\*\*…]% of the amounts paid to any such 3rd party, provided that in no event will such Royalties be reduced to less than a minimum Royalty of […\*\*\*…]%.

Royalties are owed on a country by country base where a Valid Claim of a License Patent, but for the license granted under this Agreement, would be infringed by the making, using or selling of a Licensed Product in such country.

In the event of substantial changes of Patent claims or invalidation of the whole Patent by a final decision of a patent office or of a court of competent jurisdiction, Parties agree to renegotiate the License Fees in good faith, taking into consideration the effect of the changes in view of the remaining possibility of Licensee to generate income from the Patents. Licensee shall not, however, be relieved from paying License Fees that are due until the date of such final decision.

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| **6.** | **CONDITIONS OF PAYMENT** |

Upfront payments are due within 30 days after the Effective Date.

License Fees will be reported by Licensee to Licensor according to Article 7 no later than the end of January for the preceding calendar year, the first time no later than end of March 2010. Payments will be made in Swiss Francs (CHF) within 30 days after invoicing by Licensor to the following account with the remark “***Licensing Agreement***” and referring to the invoice number and the ABC-internal Fonds number […\*\*\*…]:

[…\*\*\*…]

Late payments will bear 5% interest without further reminder.

All payments named in this Agreement are without VAT; VAT shall be added by Licensor to any invoice, if applicable.

Licensee shall bear any withholding taxes on such payments as required by law and provide to Licensor appropriate documentation of such tax payment. The Parties shall use reasonable efforts to: (i) avoid or minimize any such withholding; and (ii) take advantage of any double taxation treaty as may be available.

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| **7.** | **REPORTING AND BOOK INSPECTION** |

**7.1**    Licensee shall submit to Licensor annual progress reports covering Licensee’s and each Affiliate’s and Sub-licensee’s activities to develop and commercialize the Technology. Such

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reports shall be due on or before January 31 (starting with January 31, 2011) of each calendar year and shall include a summary of work completed; summary of work in progress; current schedule of anticipated events or Milestones; plans for marketing approval of Licensed Products; governmental approvals necessary for marketing; and summary of resources spent in the reporting period.

Royalty report: Licensee shall submit to Licensor yearly royalty and other License Fees reports on or before January 31 of each calendar year. Each royalty report shall cover Licensee’s and each Affiliate’s most recently completed calendar year and shall include the basis for calculation.

Report on Sub-licenses: Licensee shall submit to Licensor a list of all Sub-licensees including the Net Sales of each Sub-licensee separately on a yearly basis together with the royalty report of the previous paragraph.

If no sales of Licensed Products have been made during any reporting period, Licensee shall so report.

**7.2**    Licensee will grant Licensor access to all necessary books, which must be kept to allow for checking of the correctness of the report in accordance with the terms of this Agreement. Licensor is entitled itself or by a reputable auditing firm to audit the report.

Licensor carries the cost of such audit. The cost will be borne by Licensee if the audit shows an underpayment of Licensee by 5% or more.

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| **8.** | **DUTIES OF LICENSEE** |

**8.1**    Licensee is obliged to use diligent and reasonable efforts to develop and commercially exploit the Patents in connection with at least one Licensed Product to the maximum extent worldwide and throughout the Territory.

**8.2**    If Licensor determines that Licensee has not fulfilled its obligations under Section 8.1, Licensor shall furnish Licensee with written notice of the determination. Within sixty (60) days after receipt of the notice, Licensee shall either (a) fulfill the relevant obligation or (b) negotiate with Licensor a mutually acceptable development and commercialization plan, including a schedule of diligence events for the Licensed Product to cure such breach. In the event Licensor and Licensee are unable to reach a mutually acceptable resolution, the dispute shall be referred to senior executives of each Party, who shall meet at a mutually acceptable time and location within thirty (30) days after expiration of the specified sixty (60) day period and attempt to negotiate a settlement which may include development and commercialization plan, including a schedule of diligence events. In the event the designated senior executives are not able to resolve such dispute during such thirty (30) day period, then the affected party, upon written notice to the other party, may initiate arbitration pursuant to Section 14, wherein the arbitrator shall be permitted to consider a new development

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and commercialization plan, including a schedule of diligence events for the Licensed Product, and termination of the Agreement in resolving the dispute. The award of the arbitrator shall be the sole and exclusive remedy between the affected Parties regarding any such dispute and shall be final and binding upon the Parties.

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| **9.** | **CONFIDENTIALITY** |

The Licensee shall hold confidential any and all communicated data, documents and information transferred, even if they have not been explicitly defined as being secret or confidential. This confidentiality obligation also continues to be valid subsequent to an ordinary or extraordinary termination of this Agreement. The Licensee shall oblige its employees, its possible Sub-licensees and their employees, as well as persons and companies co-operating with the Licensee to comply with the same confidentiality obligation.

The above confidentiality obligation of the Licensee shall not apply to information which:

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| **(i)** | has been known to the general public prior to disclosure by the Licensor or becomes public domain thereafter; |

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| **(ii)** | came to the knowledge of the Licensee through a third party which obtained such information without breach of any agreement or contract and which was or is authorized to have such information or which obtained such information by an authorized party; |

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| **(iii)** | has been known by the Licensee prior to communication or disclosure by the Licensor. |

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| **10.** | **WARRANTY AND LIABILITY** |

**10.1**    The Licensor represents and warrants that it is the owner and can dispose of the Patents and that it has not granted any rights to third parties which are in contradiction to the rights granted in this Agreement. In addition thereto, Licensor does not give any representations or warranties in respect to the legal existence or the extent of the protection of the Patents.

Licensor has not performed any searches or investigations into the existence of any third party rights that may affect commercial use of the Patents. Licensor does not give any warranty that the exercise of any of the rights granted under this Agreement will not infringe any other intellectual property or other rights of any third party.

Each Party acknowledges that the Technology is at an early stage of development. Accordingly, efficacy and usefulness cannot be guaranteed and any results, materials, information or other items provided under this Agreement are provided “***as is***” and without any express or implied warranties, representations or undertakings. As examples, but without limiting the foregoing, no Party is giving any warranty to the other Party that any product derived from the

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Patents is of merchantable or satisfactory quality, is fit for any particular purpose, complies with any sample or description, or is viable, uncontaminated, safe or non-toxic.

**10.2**    The Licensor shall not be liable for indirect damages, including but not limited to damages resulting from the manufacturing, the sale and the distribution of Licensed Products by the Licensee or the Sub-licensees for which the Licensee or the Sub-licensees are held responsible by third parties. In the event of a statutory liability of the Licensor for third party damages, Licensee shall indemnify and hold the Licensor harmless against any and all claims of third parties resulting from damages caused by Licensed Products which are manufactured, sold and distributed by the Licensee, Affiliates or Sub-licensees.

For direct damages incurred by the Licensee in connection with the present licensing, the Licensor is liable only if they are caused by unlawful intent or gross negligence. Any further liability shall be excluded to the extent legally admissible. in addition Licensee’s agreement to indemnify and hold Licensor harmless is conditioned upon Licensor (i) providing written notice to Licensee of any claim, demand or action arising out of the indemnified activities within thirty (30) days after Licensor has knowledge of such claim, demand or action, (ii) permitting Licensee to assume full responsibility to investigate, prepare for and defend against any such claim or demand, (iii) assisting Licensee, at Licensee’s reasonable expense, in the investigation of, preparation of and defense of any such claim or demand; (iv) undertaking reasonable steps to mitigate any loss, damage or expense with respect to the applicable claim; and (v) not compromising or settling such claim or demand without Licensee’s prior written consent.

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| **11.** | **ADMINISTRATION, COSTS AND MAINTENANCE OF PATENTS** |

**11.1**    Licensee is responsible for filing and administration of the Patents on behalf of Licensor and will directly communicate with the patent attorney and/or patent offices. The Patents will be filed in the name of ABC. The Licensee shall take any and all actions necessary in order to prosecute and maintain the Patents. Licensee will carry all costs for the Patent prosecution, maintenance and renewal. All out-of-pocket patent costs paid by Licensee are creditable against the Annual minimum payments of the same calendar year.

**11.2**    The Licensee will use good faith commercially reasonable efforts to file, prosecute and maintain the Patents in at feast the following countries:

EP (including DE, FR, GB, CH, IT, ES); US; JP

**11.3**    Licensee shall send a copy of any significant Patent document to the Licensor. Any important decisions and actions that have to be taken must be discussed between the Parties in good faith and well in advance; provided, subject to Section 11.2 Licensee will have final discretion regarding the filing, prosecution and maintenance of the Patents. This is especially true for changes

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in the country list, substantial changes in Patent claims and other irreversible actions. Notwithstanding the foregoing, in the event that Licensee elects not to pursue or continue the filing, prosecution (including any material reduction in claim scope) or maintenance of any Patent in any country, Licensee shall provide Licensor with an opportunity to assume responsibility for such filing, prosecution or maintenance of such Patent; and Licensee will cooperate with Licensor as reasonably requested by Licensor to facilitate control of such filing, prosecution and maintenance by Licensor.

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| **12.** | **DEFENCE OF PATENTS** |

The Parties will inform each other of any violation of the Patents by third parties or of any third party’s attack against one of the Parties for the use of a Patent or against the validity of the Patents. The Parties shall jointly decide on first actions to be taken in connection with such violation.

**12.1**    Patent defence: ABC shall have the first right to defend the Patents at its expense. It has, however, no obligation. In case ABC does not make use of its first right, Licensee shall have the right to defend the Patents at its own expense.

**12.2**    Patent enforcement: Licensee shall have the first right to enforce the Patents.

The Parties will coordinate all efforts to defend and enforce the Patents and will reasonably support each other at their own expense.

Any recovery made by Licensee, through court judgment or settlement, first will be applied to reimburse each Party for its litigation expense and any remaining recoveries will be retained by Licensee; provided Licensee will pay royalties to Licensor on such retained amounts as Net Sales of Licensed Products in accordance with subsection (4) of Section 5. Any recovery made by Licensor in enforcing a Patent in accordance with Section 12.2, through court judgment or settlement, first will be applied to reimburse each Party for its litigation expense and any remaining recoveries will be retained by Licensor.

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| **13.** | **TERM OF THE AGREEMENT** |

**13.1**    This Agreement enters into force with the last signature of the Parties.

**13.2**    This Agreement terminates regularly when the last Patent claim expires.

**13.3**    This Agreement may be terminated by Licensee with 60 days written notice.

**13.4**    This Agreement can be terminated with immediate effect if:

**(a)**    Licensee itself or a third party files for insolvency, bankruptcy or liquidation of Licensee. Licensee has the duty to inform Licensor on any imminent insolvency.

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**(b)**    By Licensee for any or no reason upon at least 60 days written notice to Licensor.

**(c)**    Either Party breaches material terms of this Agreement and does not remedy such breach within 30 days after written notice by the other Party. Material breaches for Licensee are limited to the following events:

**(i)**    does not make undisputed payments when due and payable under this Agreement within the time agreed upon;

**(ii)**    does not develop or commercialize a Licensed Product and under Article 8, the arbitrator rules Licensor may terminate this Agreement;

**(iii)**    challenges the validity of the Patents.

Upon termination of this Agreement, Licensee shall immediately refrain from any use or exploitation of the Patents licensed under this Agreement. Furthermore, immediately upon termination of this Agreement, Licensee is obliged to return to the Licensor or cease using any documents and/or materials made available in connection with this Agreement. The same shall apply for copies made thereof.

If, upon termination of this Agreement, a stock of products remains, which were manufactured on the basis of the Patents, the Licensee may sell and distribute such products during six months subsequent to the termination of this Agreement. For such sales, the royalties and payment conditions as agreed under Article 5 and 6 shall apply.

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| **14.** | **APPLICABLE LAW AND PLACE OF JURISDICTION** |

Any dispute, controversy, or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be one or three; the seat of the arbitration shall be determined by the arbitrator(s); the arbitral proceedings shall be conducted in English.

The applicable law shall be Swiss law.

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| **15.** | **FINAL PROVISIONS** |

**15.1**    Advertising: Nothing contained in this Agreement confers any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of either party hereto unless mutually agreed in writing.

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**15.2**    Confidentiality of this Agreement: The Parties may acknowledge and communicate the existence of this Agreement and the extent of the license grant in Article 3 to third parties, but shall not disclose the financial terms of this Agreement to third parties without the prior written consent of the other Party, except where one Party is required by law to do so. In addition, Licensee may disclose this Agreement and its terms to advisors (including financial advisors, attorneys and accountants); actual or potential acquisition partners, private investors or Sub-licensees; and others on a need to know basis, in each case under the confidentiality provisions. Licensor may disclose this Agreement and its terms to its superior entities as required by ABC regulations.

**15.3**    Duty of assistance: The Parties will provide each other promptly, to the extent possible and reasonable, with any mutual assistance required to enable the Parties to exercise the rights which are conferred on them by this Agreement. In particular, they will provide the signatures required to obtain Patents.

**15.4**    Assignment: Licensee may not assign this Agreement and/or rights arising from this Agreement without the prior written consent of Licensor; except that either party may assign this agreement in connection with the sale (whether by merger, stock sale or asset sale) of all or substantially all of its business to which this Agreement relates.

**15.5**    Severability clause: Should any provision of this Agreement be invalid or unenforceable or should the Agreement contain an omission, the remaining provisions shall remain valid. In the place of an invalid provision, a valid provision is presumed to be agreed upon by the Parties which comes closest to the one actually agreed upon; the same shall apply in case of an omission.

**15.6**    Entire Agreement and amendments: 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. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each Party.

The Parties shall not infer from this Agreement any other rights than those that are explicitly stated herein.

Addresses for correspondence:

ABC Zurich, ABC transfer, HG E 43-49, Raemistrasse 101, CH-8092 Zurich

Hospital Help Inc., 1896 Rutherford Road, Carlsbad, CA 92008-7208, U.S.A.

Signed by the duly authorized representatives of the Parties:

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**ABC Zurich**    **Zurich**, May 7, 2010

/s/ M. Stoffel        /s/ R. Siegwart

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| Prof. Franz Brunner |  |

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| /s/ M. Stoffel |  | /s/ R. Siegwart |
| Prof. Franz Brunner |  | Monika Hueller Vice President Research and |
|  |  | Corporate Relations |

**Hospital Help Inc.**     California, April 30, 2010

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| /s/ Ferdinand Mayerbach |  |  |
| Ferdinand Mayerbach, Ph.D. |  |  |
| President and Chief Executive Officer |  |  |

**LicA#13**

EX-10.51

**Exhibit 10.51**

**Trademark Licensing Agreement**

This Trademark Licensing Agreement (hereinafter referred to as “**this Agreement**”) is made by and between the following parties on December 1, 2011 in Beijing.

Licensor: Beijing HONGFENG Century Science & Technology Co., Ltd.

Address: Room […], Haidian East Third Street, Haidian District, Beijing

Licensee: Beijing XIANHUI Advertising Media Co., Ltd.

Address: Room […] North Fourth Ring Third Street, Haidian District, Beijing

Whereas,

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| 1. | The Licensor is a wholly foreign-owned enterprise incorporated in Beijing, the People’s Republic of China (“**China**”). It owns the right to use the trademarks that are shown in Schedule I and is under registration application and has the right to license the use of such trademark to a third party; |

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| 2. | The Licensee is a limited liability company incorporated in Beijing, China; and |

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| 3. | The Licensor agrees to grant the Licensee the right to use the aforesaid trademarks in accordance with the terms and conditions of this Agreement, and the Licensee agrees to accept such license in accordance with the same terms and conditions. |

NOW, THEREFORE, the Parties, through negotiation, mutually reach this Agreement as follows:

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| 1. | Granting of License |

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| 1.1 | Trademark licensing |

Subject to the terms of this Agreement, the Licensor agrees to grant the Licensee the exclusive right and the Licensee agrees to accept such exclusive right granted by the Licensor to use all or any part of the trademarks as shown in Schedule I or to display any graphic, text, label, or mark of any part of the aforesaid trademarks (hereinafter collectively referred to as “**Trademarks**”). Without the consent of the Licensee, the Licensor shall not grant other third parties the right to use of the Trademarks.

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| 1.2 | Scope |

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| 1.2.1 | The right to use of the Trademarks granted to the Licensee hereunder applies only to websites operated by the Licensee, namely, www.ihongfeng.com (related connect domains include hongfeng.com, hongfeng.cn, hongfeng.mobi, hongfeng.tv, hongfeng.asia, hongfeng.tel, and hongfeng.hk,.com, and v.baidu.com (hereinafter collectively referred to as “**IHONGFENG**”). The Licensee agrees not to directly or indirectly use the Trademarks or license others to use the Trademarks in any other way, unless otherwise specified herein. |

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| 1.2.2 | The license granted to the Licensee under this Agreement is only effective in China. The Licensee agrees not to directly or indirectly use the Trademarks or license others to use the Trademarks in other regions. |

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| 2. | Terms of Payment |

The Licensee agrees to pay the Licensor licensing fee. See Schedule II to this Agreement for calculation method of licensing fee and terms of payment.

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| 3. | Reputation |

The Licensee recognizes the value of reputation in relation to the Trademarks, acknowledges that the Trademarks and its related rights and the reputation in relation to the Trademarks belong to the Licensor. The Trademarks have the secondary meaning in public impression.

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| 4. | Intellectual Properties and Non-disclosure Provisions |

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| 4.1 | The Licensee, through due and reasonable efforts, shall ensure to keep confidential all or any part of the information of the Licensor that is marked “classified” or for which the Licensee is advised of its confidentiality (“**Confidential Information**”); when this Agreement is terminated, the Licensee shall return any document, data, or software that contain the Confidential Information to Licensor at its request or destroy such documents, data, or software by itself, delete any Confidential Information from any related memory devices, and cease to use the Confidential Information. Without the consent of the Licensor, the Licensee shall not disclose, give, or transfer such Confidential Information to any third party. |

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| 4.2 | Both Parties agree that this Article 4 will survive regardless of whether this Agreement is amended, rescinded, or terminated. |

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| 5. | Representations and Warranties |

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| 5.1 | The Licensor represents and warrants that: |

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| 5.1.1 | The Licensor is a company that is duly incorporated and existing under laws of China in Beijing. |

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| 5.1.2 | The Licensor executes and fulfills this Agreement within its corporate power and scope of business and has taken necessary corporate actions to duly grant the license and obtain the consents and approvals of third parties and government authorities; and it does not violate any binding or affecting legal or corporate restrictions. |

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| 5.1.3 | This Agreement, upon execution, will constitute a legal, effective, and binding obligation that is enforceable against it according to the terms of this Agreement. |

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| 5.1.4 | The Licensor owns the right to use of the Trademarks and has the right to license the Licensee to use the Trademarks. |

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| 5.2 | The Licensee represents and warrants that: |

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| 5.2.1 | The Licensee is a company that is duly incorporated and existing under the laws of China in Beijing. |

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| 5.2.2 | The Licensee executes and fulfills this Agreement within its corporate power and scope of business and has taken necessary corporate actions to duly accept the license and obtain the consents and approvals of third parties and government authorities; and it does not violate any binding or affecting legal or corporate restrictions. |

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| 5.2.3 | This Agreement, upon execution, will constitute a legal, effective, and binding obligation that is enforceable against it according to the terms of this Agreement. |

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| 6. | The Licensor’s Right to Use and Protection of Licensor’s Rights |

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| 6.1 | The Licensee agrees that, during and after the term of this Agreement, it will not challenge the right to use or other rights that the Licensor is entitled to in respect of the Trademarks, challenge the effectiveness of this Agreement, or conduct any behavior that the Licensor will deem prejudicial to these rights and licensing. |

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| 6.2 | The Licensee agrees to provide the Licensor necessary assistance to protect the rights owned by the Licensor in respect of the Trademarks. In case that any third party files claims in respect of the Trademarks, the Licensor, at its own discretion, may appear and defend against the claim in its own name, in the Licensee’s name, or in both Parties’ name. In case of any infringement of the Trademarks by any third party, the Licensee shall immediately notify the Licensor in writing of such infringement of the Trademarks to the extent of its knowledge. Only the Licensor has the right to decide whether it will take action against such infringement. |

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| 6.3 | The Licensee agrees to use the Trademarks only in accordance with this Agreement and that it will not use the Trademarks in such a way that the Licensor may deem fraudulent, misleading, or otherwise prejudicial to the reputation of the Trademarks or the Licensor. |

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| 7. | Quality of IHONGFENG |

The Licensee shall do its utmost to improve the quality of IHONGFENG, to protect and enhance the reputation represented by the Trademarks.

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| 8. | Promotion Materials |

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| 8.1 | Under any circumstance, where the Licensee expects to produce any publicity material containing the Trademarks, the Licensee shall be responsible for the costs and time for production of such publicity materials. The Licensor has sole and exclusive right to the ownership of the publicity materials that involve the Trademarks hereunder or its duplicates, including all intellectual properties, no matter whether such publicity materials are invented or used by the Licensor or the Licensee. |

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| 8.2 | The Licensee agrees that, without written approval of the Licensor in advance, it will not publicize or broadcast the Trademarks hereunder on broadcast, TV, newspapers, magazines, internet (except the website specified in Clause 1.2.1), or other media. |

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| 9. | Competing Websites |

If the Trademarks and the trademarks of the Licensor or the affiliates of its parent company are in conflict with the trademarks in current or future use, the Licensee has the right to terminate this Agreement by sending a written notice to the Licensee thirty (30) days in advance.

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| 10. | Effectiveness and Term of this Agreement |

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| 10.1 | This Agreement will be executed and become effective on the date first stated above. Unless this Agreement is terminated early, the term of this Agreement shall be five (5) years. |

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| 10.2 | Unless the Licensor notifies in writing before expiration of non-renewal of this Agreement, this Agreement shall be automatically extended for one (1) year upon expiration (including expiration of any renewal). |

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| 11. | Termination |

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| 11.1 | Upon the Licensor’s written notification of non-renewal of this Agreement, this Agreement will be terminated on the date of expiration or expiration of renewal. |

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| 11.2 | Without prejudice to the rights or remedies that the Party terminating this Agreement is entitled to due to legal or other reasons, any Party may immediately terminate this Agreement by sending a notice to the other Party when the other Party materially breaches this Agreement, including but not limited to breach of the obligations under Clauses 6.1, 6.2, and 6.3 hereunder, and it fails to rectify such breach within thirty (30) days after the other Party receives the notification of occurrence and existence of the breach from the non-defaulting Party. The Licensor may terminate this Agreement by notifying the Licensee in writing at any time during the term of this Agreement. The termination notification will take effect thirty (30) days after service. |

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| 11.3 | Clauses 3, 4, 6, and 16 will survive the termination of this Agreement. |

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| 12. | Effect of Termination or Expiration of this Agreement |

When this Agreement terminates or expires, all rights granted to the Licensee shall be immediately returned to the Licensor. The Licensor may freely transfer the right to use of the Trademarks to other persons. The Licensee shall no longer use the Trademarks, either directly or indirectly.

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| 13. | Force Majeure |

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| 13.1 | “**Force Majeure event**” refers to any event that is beyond the reasonable control of any Party and is unavoidable despite reasonable care of the affected Party. It includes but is not limited to government actions, change in law, act of god, fire, explosion, geologic changes, storm, flood, earthquake, tides, lightning, or war. Credit, funds, or financing constraints shall not be deemed beyond the reasonable control of one Party. The Party that is affected by Force Majeure events and seeks exemption from liabilities under this Agreement or any provision of this Agreement shall notify the other Party of such exemption of liabilities as soon as possible. |

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| 13.2 | When the performance of this Agreement is delayed or impeded by the Force Majeure events as defined above, the Party affected shall not assume any liability under this Agreement in respect of the part whose performance is delayed or impeded. The Party seeking exemption of liability, however, can be exempted from performance of the liability in respect of the part whose performance is delayed or impeded, provided that the Party affected makes reasonable and practical efforts to fulfill this Agreement. Once the causes to such exemption of liability is rectified or remedied, both Parties agree to resume performance of liabilities hereunder with their best efforts. |

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| 14. | Notice |

Notices or other communications that are given by any Party under this Agreement shall be written in Chinese and shall be deemed served when they are sent to the address(es) of the related Party or both Parties by means of courier, registered air mail, prepaid air mail, or accepted express delivery service, or facsimile (the Party sending the notice by facsimile shall send the photocopy of the documents to be faxed afterwards for confirmation).

Licensor: Beijing HONGFENG Century Science & Technology Co., Ltd.

Recipient: Liu Lang

Tel:

Fax:

Licensee: Beijing XIANHUI Advertising Media Co., Ltd.

Recipient: Wang Lin

Tel:

Fax:

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| 15. | Transfer and Sub-licensing |

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| 15.1 | This Agreement and the rights and obligations that the Licensor grants to the Licensee under this Agreement shall not be transferred, pledged, or sub-licensed without the written consent of the Licensor. |

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| 15.2 | The Licensee hereby agrees that, the Licensor may transfer its rights and obligations hereunder to other third parties when necessary, the Licensor needs to notify the Licensee in writing upon the occurrence of such transfer, and the Licensor does not need to obtain the consent of the Licensee in respect of such transfer. |

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| 16. | Dispute Resolution |

Where any dispute arises between the Parties in respect of interpretation and fulfillment of the clauses hereunder, they shall resolve the dispute through consultation with good faith. If the Parties do not reach an agreement on settlement of dispute within thirty (30) days after one Party requires resolution of the dispute through consultation, any Party may submit the dispute to China International Economic and Trade Arbitration Commission. The arbitration award shall be final and binding on both Parties.

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| 17. | Governing Law |

The performance, interpretation, and enforcement of this Agreement shall be governed by the laws of the People’s Republic of China.

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| 18. | Amendment and Supplementation of this Agreement |

Both Parties may amend and supplement this Agreement by a written agreement. Amendments and supplemental agreements in relation to this Agreement duly signed by both Parties shall constitute an integral part of this Agreement and shall have the same legal force as this Agreement.

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| 19. | Severability of this Agreement |

If any of the provisions of this Agreement becomes invalid or unenforceable because of inconsistency of related laws, this provision shall only be held invalid to the extent governed by related laws and shall not affect the validity of other provisions hereunder.

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| 20. | Schedules to this Agreement |

Any Schedule to this Agreement shall be an integral part of this Agreement and shall have the same legal effect as this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective authorized representatives on the first date written above.

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| Licensor: |  | Beijing HONGFENG Century Science &Technology Co., Ltd. |
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| [*Company seal is affixed*] | | |

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|  |  | |
| By: |  | /s/ Liu Lang |
| Title: |  | Executive Director |

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| Licensee: |  | Beijing XIANHUI Advertising Media Co., Ltd. |
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| [*Company seal is affixed*] | | |

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| By: |  | /s/ Wang Lin |
| Title: |  | Executive Director |

Schedule I

List of Trademarks

Schedule II

Calculation Methods of Licensing Fee and Terms of Payment

Party A has the right to unilaterally decide the licensing fee and calculation method of such fee. Party A will otherwise notify Party B of the specific amount and calculation method of the licensing fee. The Parties may determine the terms of payment through consultation.

**LicA#14**

OF TRADEMARK LICENSING AGREEMENT

**Exhibit 10.6**

**TRADEMARK LICENSE AGREEMENT**

This TRADEMARK LICENSE AGREEMENT (this “Agreement”) is made and effective as of [ ] day of [ ], 2020 (“Effective Date”), by and between Waldron Capital Management LLC, a Delaware limited liability company (the “Licensor”), and Waldron Capital BDC Inc., a corporation organized under the laws of the State of Maryland (the “Licensee”) (each a “party,” and collectively, the “parties”).

**RECITALS**

WHEREAS, Licensee is a newly organized, externally managed, closed-end, non-diversified management investment company that intends to elect to be regulated as a business development company under the Investment Company Act of 1940, as amended (the “1940 Act”);

WHEREAS, Licensor, together with its affiliates, provides investment management, investment consultation and investment advisory services;

WHEREAS, Licensor and its affiliates, including Waldron BDC Advisor LLC, a Delaware limited liability company (“Investment Advisor”), have used the marks “Waldron”, “Waldron Capital” and derivations thereof (the “Licensed Mark”) in the United States of America and certain other jurisdictions (collectively, the “Territory”) in connection with the investment management, investment consultation and investment advisory services they provide;

WHEREAS, the Licensee is entering into an investment advisory agreement with Investment Advisor (the “Advisory Agreement”), wherein Licensee shall engage Investment Advisor to act as the investment adviser to the Licensee;

WHEREAS, it is intended that Investment Advisor be a third party beneficiary of this Agreement; and WHEREAS, the Licensee desires to use the Licensed Mark as part of its corporate name and in connection

with the operation of its business, and Licensor is willing to grant Licensee a license to use the Licensed Mark, subject

to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1.

LICENSE GRANT

* 1. License. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a personal, non-exclusive, royalty-free right and license to use the Licensed Mark solely and exclusively as a component of Licensee’s own corporate name and in connection with marketing the investment management, investment consultation and investment advisory services that Investment Advisor may provide to Licensee. During the term of this Agreement, Licensee shall use the Licensed Mark only to the extent permitted under this License, and except as provided above, neither Licensee nor any affiliate, owner, director, officer, employee or agent thereof shall otherwise use the Licensed Mark or any derivative thereof in the Territory without the prior express written consent of Licensor in its sole and absolute discretion and shall not use the Licensed Mark for any purpose outside the Territory. All rights not expressly granted to Licensee hereunder shall remain the exclusive property of the Licensor.
  2. Nothing in this Agreement shall preclude Licensor or any of its successors or assigns from using or permitting other entities to use the Licensed Mark, whether or not such entity directly or indirectly competes or conflicts with Licensee’s business in any manner.

ARTICLE 2. COMPLIANCE

* 1. Quality Control. In order to preserve the inherent value of the Licensed Mark, Licensee agrees to use reasonable efforts to ensure that it maintains the quality of the Licensee’s business and the operation thereof equal to the standards prevailing in the operation of Licensee’s business as of the Effective Date. The Licensee further agrees to use the Licensed Mark in accordance with such quality standards as may be reasonably established by Licensor and communicated to the Licensee from time to time in writing, or as may be agreed to by Licensor and the Licensee from time to time in writing.
  2. Compliance With Laws. Licensee agrees that the business operated by it in connection with the Licensed Mark shall comply with all laws, rules, regulations and requirements of any governmental body in the Territory or elsewhere as may be applicable to the operation, marketing, and promotion of the business and shall notify Licensor of any action that must be taken by Licensee to comply with such law, rules, regulations or requirements.
  3. Notification of Infringement. Each party shall immediately notify the other party and provide to the other party all relevant background facts upon becoming aware of (a) any registrations of, or applications for registration of, marks in the Territory that do or may conflict with the Licensor’s rights in the Licensed Mark or the rights granted to the Licensee under this Agreement, (b) any infringements or misuse of the Licensed Mark in the Territory by any third party (“Third Party Infringement”), or (c) any claim that Licensee’s use of the Licensed Mark infringes the intellectual property rights of any third party in the Territory (“Third Party Claim”). Licensor shall have the exclusive right, but not the obligation, to prosecute, defend and/or settle in its sole discretion, all actions, proceedings and claims involving any Third Party Infringement or Third Party Claim, and to take any other action that it deems necessary or proper for the protection and preservation of its rights in the Licensed Mark. Licensee shall cooperate with Licensor in the prosecution, defense or settlement of such actions, proceedings or claims.

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ARTICLE 3.

REPRESENTATIONS AND WARRANTIES

* 1. Licensee accepts this license on an “as is” basis. Licensee acknowledges that Licensor makes no explicit or implicit representation or warranty as to the registrability, validity, enforceability, ownership of the Licensed Mark, or as to Licensee’s ability to use the Licensed Mark without infringing or otherwise violating the rights of others, and Licensor has no obligation to indemnify Licensee with respect to any claims arising from Licensee’s use of the Licensed Mark, including without limitation any Third Party Claim.
  2. Mutual Representations. Each party hereby represents and warrants to the other party as follows:
     1. Due Authorization. Such party is a limited liability company duly formed or a corporation duly incorporated, as applicable, and is in good standing as of the Effective Date, and the execution, delivery and performance of this Agreement by such party have been duly authorized by all necessary action on the part of such party.
     2. Due Execution. This Agreement has been duly executed and delivered by such party and, upon due authorization, execution and delivery of this Agreement by the other party, constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
     3. No Conflict. Such party’s execution, delivery and performance of this Agreement do not: (i) violate, conflict with or result in the breach of any provision of the operating agreement, charter or bylaws (or similar organizational documents) of such party; (ii) conflict with or violate any governmental order applicable to such party or any of its assets, properties or businesses; or (iii) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of any contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which it is a party.

ARTICLE 4.

TERM AND TERMINATION

* 1. Term. This Agreement shall expire if the Investment Advisor or one of its affiliates ceases to serve as investment adviser to the Licensee. This Agreement shall be terminable by Licensor at any time and in its sole discretion in the event that Licensor or Licensee receives notice of any Third Party Claim arising out of Licensee’s use of the Licensed Mark; by Licensor or Licensee upon sixty (60) days’ written notice to the other party; or by Licensee at any time in the event Licensee assigns or attempts to assign or sublicense this Agreement or any of Licensee’s rights or duties hereunder without the prior written consent of Licensor.

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* 1. Upon Termination. Upon expiration or termination of this Agreement, all rights granted to Licensee under this Agreement with respect to the Licensed Mark shall cease, and Licensee shall immediately delete the term “Waldron” from its corporate name and shall discontinue all other use of the Licensed Mark. For twenty-four (24) months following termination of this Agreement, Licensee shall specify on all public-facing materials in a prominent place and in prominent typeface that Licensee is no longer operating under the Licensed Mark, is no longer associated with Licensor, or such other notice as may be deemed necessary by Licensor in its sole discretion in its prosecution, defense, and/or settlement of any Third Party Claim.

ARTICLE 5.

MISCELLANEOUS

* 1. Third Party Beneficiaries. The parties agree that Investment Advisor shall be a third party beneficiary of this Agreement, and shall have the rights and protections provided to Licensee under this Agreement. Nothing in this Agreement, either express or implied, is intended to or shall confer upon any third party other than Investment Advisor any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
  2. Assignment. Licensee shall not sublicense, assign, pledge, grant or otherwise encumber or transfer to any third party all or any part of its rights or duties under this Agreement, in whole or in part, without the prior written consent of the Licensor, which consent Licensor may grant or withhold in its sole and absolute discretion. Any purported transfer without such consent shall be void *ab initio*.
  3. Independent Contractor. Neither party shall have, or shall represent that it has, any power, right or authority to bind the other party to any obligation or liability, or to assume or create any obligation or liability on behalf of the other party.
  4. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service (with signature required), by facsimile or by registered or certified mail (postage prepaid,

return receipt requested) to the respective parties at the following addresses (or such other address as the parties may provide to each other by written Notice):

If to Licensor:

Waldron Capital Management LLC […], Kansas 66205

Tel. No.:

Fax No.:

Attn: Member

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If to Licensee:

Waldron Capital BDC Inc. […], Kansas 66205

Tel. No.:

Fax No.:

Attn: Chief Executive Officer

* 1. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of New York and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.
  2. Amendment. This Agreement may not be amended or modified except by an instrument in writing signed by each party hereto.
  3. No Waiver. The failure of either party to enforce at any time for any period the provisions of or any rights deriving from this Agreement shall not be construed to be a waiver of such provisions or rights or the right of such party thereafter to enforce such provisions, and no waiver shall be binding unless executed in writing by all parties hereto.
  4. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.
  5. Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.
  6. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original instrument and all of which taken together shall constitute one and the same agreement. Facsimile or portable document format (PDF) counterpart signatures to this Agreement shall be acceptable and binding.
  7. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to such subject matter.

*[Remainder of Page Intentionally Left Blank]*

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IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date first set forth above by its duly authorized officer.

|  |  |
| --- | --- |
| ACKNOWLEDGED AND AGREED TO | |
| **WALDRON BDC ADVISOR LLC** | |
| By: |  |
| Name: | Annika Wolf |
| Title: | Chief Financial Officer |

**LicA#15**

LICENSE AGREEMENT WITH ACTIVITY

**Exhibit 10.3**

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the “Agreement”), effective as of January 01, 2017 (the “Effective Date”), is entered into by and between Group Cohesion, Inc., located at [], Boulder, Colorado 80237 (the “Licensor”) and Activity, Inc., located at […], Colorado 80113 (the “Licensee,” together with Licensor, the “Parties,” and each a “Party”).

WHEREAS Licensor is the legal and beneficial owner of the Licensed Software and desires to license the Licensed Software to Licensee; and

WHEREAS Licensee desires to obtain a license to use the Licensed Software subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS. For purposes of this Agreement,

a. “Agreement” has the meaning set forth in the preamble.

b. “Confidential Information” means any non-public information in any form and however transmitted, whether orally, visually, in writing, or by electronic communication, that both Parties reasonably and in good faith deem to be confidential or proprietary. Confidential Information includes, but is not limited to, technological disclosures, trade secrets, ideas, concepts, know-how, business operations, plans, strategies, customer information, pricing information, and any other information that the disclosing Party is contractually or otherwise bound to keep confidential. Confidential Information may, but is not obligated to be designated, marked, or otherwise identified as “confidential.” See exclusions in the section titled “CONFIDENTIALITY” below.

c. “Documentation” means any and all manuals, instructions, and other end user materials that Licensor provides to Licensee describing the software’s functionality, components, technical specifications, capabilities, requirements, or limitations. Documentation may include, but is not limited to, aspects of the software that are of practical importance to Licensee, such as instructions on installation, configuration, integration, operation, use, support, or maintenance.

d. “Effective Date” has the meaning set forth in the preamble. It is the start date for this Agreement where all rights and obligations herein become operational and enforceable.

e. “Intellectual Property Rights” means any and all registered and unregistered rights to plans, ideas, designs, or other intangible assets. Such rights are granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, right of publicity, other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

f. “Law” means any statute, code, ordinance, rule, regulation, constitution, order, treaty, precedent, judgment, or other legal requirements of any authority of competent jurisdiction, including, but not limited to, federal, state, local, or foreign governments, political agencies or subdivisions thereof, or any appropriate courts or tribunals.

g. “Licensed Software” means software version 4.0 of SLN - Group Cohesion and eCommerce Platform, any ancillary data files, modules, libraries, tutorials, or demonstration programs, and any Maintenance Releases provided to Licensee according to this Agreement.

h. “Licensee” has the meaning set forth in the preamble.

i. “Licensor” has the meaning set forth in the preamble.

j. “Maintenance Release” means any update, upgrade, release, or other adaptation or modification of the Licensed Software or Documentation that Licensor may optionally and periodically provide to Licensee during the Term. Such release may include, but is not limited to, error corrections, enhancements, improvements, or other changes to the Licensed Software’s functionality, compatibility, capabilities, performance, efficiency, user interface, or quality. Such release is separate and distinct from any New Version Licensor may choose to release during the Term.

k. “New Version” means any new variant of the Licensed Software that Licensor may introduce and market from time to time as a distinct licensed product. A New Version may be indicated by Licensor’s designation of a new version or release number. Licensor may make a New Version available to Licensee at an additional cost under a separate agreement or by written amendment.

l. “Parties” mean the Licensor and Licensee collectively.

m. “Party” means the Licensor or Licensee individually.

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n. “Permitted Use” means use of the Licensed Software by an authorized user for specific purposes agreed upon herein. Licensee can use the Group Cohesion and eCommerce Platform for real estate website and mobile applications in all countries, without exception, and under any brand name that authorized by Group Cohesion, Inc. CEO or CTO, in advance of the deployment of the technology platform. Any unauthorized deployment or resale of the technology platform is strictly prohibited.

o. “Open-Source Components” means any software component that is subject to an open-source copyright license agreement. Qualifying open-source copyright license agreements include, but are not limited to, Apache License 2.0, BSD 3-Clause “New” or “Revised” license, BSD 20-Clause “Simplified” or “FreeBSD” license, GNU General Public License, GNU Library or “Lesser” General Public License, MIT License, Mozilla Public License 2.0, Common Development and Distribution License, Eclipse Public License, and any other obligations, restrictions, or license agreements that substantially conform to the “Open Source Definition” as prescribed by the Open Source Initiative or otherwise may require third-party disclosure or licensing if any source code of such software components is used or compiled.

p. “Term” has the meaning set forth in the Term section.

2. LICENSE GRANT. Subject to the terms and conditions of this Agreement and the Parties’ compliance therewith, Licensor hereby grants to Licensee, solely for defined Permitted Use, a non-exclusive, non-sublicensable, and non-transferable license to use the Licensed Software and Documentation during the Agreement Term.

a. Scope of Licensed Access and Use. Licensee can install, use, and run an unlimited number of copies of the Licensed Software on any device or network.

b. Additional Copy. Licensee is permitted to duplicate a copy of the Licensed Software exclusively for testing, disaster recovery, or archival purposes. Any copy of the Licensed Software made by Licensee, for any authorized or unauthorized purposes, continues to be Licensor’s exclusive property, is subject to the terms and conditions of this Agreement, and must include all Intellectual Property Rights notices contained in the original Licensed Software and Documentation.

c. Open-Source Licenses. Should the Licensed Software include any Open-Source Components, Licensee’s use of the Open-Source Components will be governed by, and subject to, the terms and conditions of the related open-source and public licenses. Licensor will provide Licensee with the license name, author information, license source, access information, and other relevant information for Open-Source Components.

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3. LICENSE RESTRICTIONS. Except as expressly permitted in this Agreement, and subject to the Open-Source Components if applicable, Licensee will not, and will not permit any third party to,

a. reproduce any portion of the Licensed Software for any purpose except as otherwise authorized in this Agreement;

b. decode, disassemble, reverse engineer, or otherwise attempt to derive or gain access to any portion the Licensed Software’s source code;

c. adopt, build upon, correct, modify, translate, or otherwise improve or create derivative works of the Licensed Software;

d. lend, publish, rent, lease, sell, sublicense, assign, transfer, or otherwise make available to any third party not authorized within this Agreement the Licensed Software in any manner, including, but not limited to, access to the Licensed Software on the internet or any timesharing, service bureau, software as a service, cloud, or similar technology or service;

e. breach or circumvent any disclosed or undisclosed security device or intended protection used for or contained in the Licensed Software or Documentation;

f. efface, alter, obscure, translate, combine, or otherwise change any trademarks, disclaimers, warranties, Documentation terms, Intellectual Property Rights, proprietary rights, or any symbols, notices, marks, serial numbers, or identification on or relating to any copy of the Licensed Software or Documentation;

g. use the Licensed Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or any applicable Law;

h. use the Licensed Software for the purposes of (i) comparative or competitive analysis of the Licensed Software; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that is to Licensor’s detriment or commercial disadvantage;

i. use the Licensed Software, alone or in part, in connection with any hazardous environments, systems, or applications; any safety response systems; any safety-critical applications; or any applications where the failure of the Licensed Software may reasonably and foreseeably lead to personal injury, severe physical damage, or severe property damage; or

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j. use the Licensed Software, Documentation, or any Open-Source Components for any purpose not expressly permitted under Permitted Use or in any manner not expressly permitted by this Agreement or the controlling Open-Source License.

4. TERM. The term of this Agreement commences as of the Effective Date and will continue in effect indefinitely until termination, pursuant to the Termination section under this Agreement.

5. DELIVERY. Licensor will deliver one copy of the Licensed Software electronically to Licensee on January 01, 2017.

6. INSTALLATION. Licensor will install the Licensed Software on Licensee’s computers, electronic devices, or systems in a commercially reasonable manner at Licensor’s discretion.

7. FEES AND TAXES. In consideration of the rights granted to Licensee under this Agreement, Licensee agrees to pay to Licensor the following fees in accordance to the payment terms set forth in this Agreement:

a. Group Cohesion, Inc. will receive $125,000 USD annually for the first two years of this agreement, and thereafter will receive 20% of the net profits from all monthly subscriptions and online ad sales from licensee, paid annually, on the 31st day of January for the preceding year. Early payment or installment payments on a monthly or quarterly basis are allowed.

b. Taxes. All fees are exclusive of taxes, duties, and other similar assessments. Licensee is responsible for all sales, service, use, exercise, and all other similar taxes, duties, and charges of any kind imposed by any governmental, federal, state, local, or regulatory authority on any amounts payable by Licensee hereunder. Notwithstanding the forgoing, Licensor is solely responsible for its own income tax.

8. PAYMENT

a. Payment Terms. Installments -or- Annual Lump Sum. Licensee will make all payments in U.S. currency by check to the Notice address or by wire transfer to any account as Licensor may specify in writing from time to time.

b. Late Payment. If any payment to Licensor is delinquent, then in addition to all other remedies available to Licensor,

i. Licensor may charge interest on the past due amount at a rate no higher than the highest rate permitted under applicable Law;

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ii. Licensee must reimburse Licensor for all reasonable costs incurred to collect any and all late payment and associated interest amounts, including, but not limited to, any attorneys’ fee, court costs, and collection agency fees; and

iii. if payment delinquency continues for five business days following written notice or demand for payment, Licensor may exercise any or all of the following remedies: (1) technologically disable Licensee’s use of the Licensed Software; (2) withhold, suspend, or revoke this license grant; and (3) terminate this Agreement pursuant to the Termination section.

9. TESTING AND ACCEPTANCE

a. Acceptance Parameters and Testing. Acceptance testing will be conducted by Licensor to establish whether the Licensed Software operates properly and in accordance with Documentation. Licensee will supply to Licensor suitable test data and the associated results Licensee reasonably expects to be achieved by using the Licensed Software. Licensor will carry out testing, in the presence of Licensee or its authorized representative, upon a mutually acceptable date and time after delivery and installation of Licensed Software.

b. Testing Failure. If the initial acceptance testing does not yield expected results, Licensor will, at its own cost, correct the errors and repeat the acceptance testing again under the same testing conditions as the initial test in the presence of Licensee or its authorized representatives. If the subsequent acceptance testing also fails to yield expected results and such failure is reasonably determined to be caused solely by the Licensed Software, Licensee may terminate this Agreement upon written notice to Licensor. On termination, Licensor will refund any and all license fees already paid by Licensee to Licensor under this Agreement. This is Licensee’s sole and exclusive remedy for any unresolved acceptance testing failures.

c. Acceptance. Notwithstanding any acceptance testing rights, requirements, and obligations herein, Licensee is deemed to have accepted the Licensed Software if

i. the acceptance testing conducted by Licensor and witnessed by Licensee or its authorized representative is successful;

ii. Licensee fails to provide the acceptance test parameters or voluntarily forgoes the acceptance testing process; or

iii. Licensee commences intended use of Licensed Software irrespective of acceptance testing parameters, process, or result.

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10. MAINTENANCE RELEASE. During the Term, Licensor may, at Licensor’s sole option and discretion, provide Licensee with Maintenance Releases and updated Documentation. All Maintenance Releases are considered part of the Licensed Software and are subject to all applicable terms and conditions in this Agreement. Licensee agrees to install all Maintenance Releases as soon as practicable after receipt. Licensor agrees to provide any Maintenance Releases free of charge.

11. NEW VERSION. Licensee does not have any right or option to receive any New Versions of the Licensed Software that Licensor, in its sole discretion, may release neither during nor after the Term. Licensee may seek to negotiate a new, separate, or amended license grant for any New Version at Licensor’s then-current price for the New Version, provided Licensee is in compliance with the terms and conditions of this Agreement.

12. TITLE, INTELLECTUAL PROPERTY RIGHTS, AND INFRINGEMENT

a. Ownership. Licensee acknowledges and agrees that

i. Licensor is and will remain the sole and exclusive owner of all rights, title, and interest in and to the Licensed Software, Documentation, Maintenance Release, New Version, and all Intellectual Property Rights associated herein, subject only to the rights of any disclosed third parties, within any Open-Source Components, and the limited license granted to Licensee under this Agreement;

ii. the Licensed Software, Documentation, and Intellectual Property Rights are licensed, not sold, to Licensee. Licensee does not, has not, and will not acquire any ownership interest in the Licensed Software, Documentation, or any related Intellectual Property Rights through this Agreement;

iii. nothing in this Agreement grants any implied rights to Licensee, including by implication, waiver, or estoppel, in any Intellectual Property Rights or other rights, title, or interest in any portion of the Licensed Software and Documentation; and

iv. Licensee unconditionally and irrevocably assigns to Licensor its entire right, title, and interest in any Intellectual Property Rights that Licensee may have currently or in the future relating to the Licensed Software or Documentation, including any derivative works or patent improvement rights, however held or acquired.

b. Licensee Cooperation and Notice of Infringement. Licensee will, during the Term,

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i. secure and protect the Licensed Software and Documentation from infringement, misappropriation, misuse, theft, or other unauthorized access through all commercially reasonable measures and precautions similar to those Licensee would employ to secure and protect its own intellectual property;

ii. take all reasonable steps as Licensor may require and request to maintain the validity, enforceability, and ownership of all Licensor’s Intellectual Property Rights herein;

iii. promptly notify Licensor in writing if Licensee becomes aware of any actual or suspected infringement, misappropriation, misuse, theft, unauthorized access, or other violations of Licensor’s Intellectual Property Rights in or relating to the Licensed Software or Documentation;

iv. promptly notify Licensor in writing of any claim that the Licensed Software or Documentation, in whole or in part, infringes, misappropriates, or otherwise violates any rights, including Intellectual Property Rights, of other persons or entities; and

v. fully cooperate with and assist Licensor in all commercially reasonable ways, including but not limited to providing records, information, depositions, and testimonies, and at Licensor’s sole expense, in any claim, suit, action, or proceeding to prosecute or defend Licensor’s rights in the Licensed Software, Documentation, and any Intellectual Property Rights herein.

13. SECURITY MEASURE DISCLOSURE. The Licensed Software may contain security features that prevent unauthorized or illegal use of the Licensed Software. Licensee acknowledges and agrees that Licensor may use these features and other lawful measures to verify Licensee’s compliance and to enforce Licensor’s rights under this Agreement. Licensee further acknowledges and agrees that Licensor may, from time to time at Licensor’s sole discretion, gather Licensee’s technical, usage, and other related information without disruption to Licensee’s use and for the sole purpose of improving the Licensed Software’s performance, developing Maintenance Releases, and developing New Versions.

14. VERIFICATION AND AUDIT

a. Verification. At Licensor’s written request, Licensee will confirm in writing the actual scope of Licensee’s access and use of Licensed Software and list all locations of actual use if applicable.

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b. Audit Procedure. Licensor or its representative may inspect and audit Licensee’s use of the Licensed Software under this Agreement at any time during the Term upon reasonable notice and request. All such audits will be conducted during regular business hours. Licensor will cooperate with Licensee to ensure such audits do not unreasonably interfere with Licensee’s business operations. Licensee agrees to make available all technology, records, equipment, information, and personnel, and to provide all cooperation and assistance as necessary for Licensor to reasonably conduct the audit. Licensor agrees to only examine information directly related to Licensee’s Licensed Software use. Licensor will keep confidential any information Licensee deems confidential that may be directly or incidentally disclosed during such audits.

c. Excessive Use Result. If the verification or audit determines that Licensee’s Licensed Software use exceeds the usage or scope permitted by this Agreement, Licensee agrees to pay Licensor all amounts due for excessive use of the Licensed Software as negotiated at such time.

15. CONFIDENTIALITY

a. Confidential Information. In connection with this Agreement, each Party may disclose or make available to the other Party Confidential Information which includes, but is not limited to, the Licensed Software, Documentation, and any terms of this Agreement.

b. Exclusions and Exceptions. Confidential Information excludes information that

i. was rightfully and lawfully known to the recipient without any restrictions on use or disclosure prior to disclosure by disclosing Party in connection with this Agreement;

ii. was or becomes part of the public domain by means other than by the recipient or any of the recipient’s representatives’ violations of this Agreement;

iii. was or is received by the recipient on a non-confidential basis from a third party that was not, or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or

iv. was or is independently developed by the recipient without reference to or use of any Confidential Information.

c. Protection of Confidential Information. As a condition of receiving any Confidential Information, the recipient will, for Throughout the active licensing agreement, plus one year after.,

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i. only access or use Confidential Information if absolutely necessary to exercise the recipient’s rights or perform the recipient’s obligations under this Agreement;

ii. except when compelled by Law, not disclose or permit access to Confidential Information other than to the recipient’s representatives on a need-to-know basis for the recipient to exercise its rights or perform its obligations under this Agreement, under strict information and understanding of the confidential nature of Confidential Information and the recipient’s obligations to protect Confidential Information, and with acknowledgment from such representatives that they too are bound by the confidentiality and restricted use obligations set forth herein;

iii. use, at minimum, the same degree of care that recipient uses to protect its own similarly sensitive information, and no less than a generally commercially reasonable degree of care, to secure and protect Confidential Information from unauthorized use, access, or disclosure;

iv. promptly notify the disclosing Party in writing of any actual or suspected unauthorized use or disclosure of Confidential Information and cooperate with disclosing Party by taking all reasonable steps to prevent further unauthorized use or disclosure; and

v. ensure recipient’s representatives comply with the terms of this section and are responsible and liable for their noncompliance, if any.

d. Trade Secrets Confidentiality Duration. Notwithstanding any other provisions in this Agreement, the recipient is obligated to protect any Confidential Information that constitutes as trade secrets under any applicable Law until such Confidential Information ceases to qualify for trade secret protection by operation of Law.

e. Compelled Disclosure. To the extent permitted by Law, if the recipient or its representatives are compelled by Law to disclose any Confidential Information, the recipient must promptly, and prior to such disclosure, notify the disclosing Party in writing of such requirement to allow the disclosing Party the opportunity to seek a protective order or other legal remedy. The recipient must also provide reasonable assistance to the disclosing Party to oppose such disclosure, to seek a protective order, or to seek other disclosure limitations or remedies. If disclosure is unavoidable, the recipient may disclose only such Confidential Information that recipient is legally required to disclose. Upon disclosing Party’s request, the recipient must use commercially reasonable efforts to obtain assurances of confidential treatment of all compelled Confidential Information from the applicable court or legal authority.

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16. TERMINATION. This Agreement may be terminated at any time

a. by Licensor if Licensee fails to make payment where such failures continue more than five business days after the due date, effective on written notice of termination to Licensee;

b. by either Party for the other Party’s material breach of this Agreement that is incurable or uncured by breaching party for 30 days after being served with notice of breach and demand for cure, effective on written termination notice to the breaching Party;

c. by Licensor, effective immediately irrespective of written notice, if Licensee

i. is dissolved or liquidated or takes any corporate action for such purposes;

ii. becomes insolvent or is generally unable to pay its debts as they become due;

iii. becomes the subject of any bankruptcy proceedings, voluntary or involuntary, under any domestic or foreign bankruptcy or insolvency Law;

iv. makes or seeks to make a general assignment for the benefit of its creditors; or

v. applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property; and

d. by both Parties upon mutual written agreement.

17. TERMINATION OR EXPIRATION EFFECTS. Upon early termination or the natural expiration of this Agreement,

a. all licenses, rights, and authorizations granted to Licensee herein will immediately terminate and Licensee will

i. promptly cease all use of the Licensed Software and Documentation;

ii. within five business days deliver to Licensor, or at Licensor’s written request, destroy and permanently erase from all Licensee’s and their representatives’ devices, equipment, and systems, the Licensed Software, Documentation, and all Licensor’s Confidential Information; and

iii. certify in writing that Licensee, and any of Licensee’s representatives, has complied with the termination requirements herein; and

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b. all amounts payable of any kind under this Agreement are immediately due and payable effective on the expiration date or early termination date.

18. MUTUAL REPRESENTATIONS AND WARRANTIES. Each Party represents, warrants, and covenants to the other Party that

a. it is duly established, validly existing, and in good standing to conduct business as a sole proprietorship, partnership, company, corporation, trust, organization, or any other valid entity under the Laws of its jurisdiction;

b. it has the full right, power, and authority to enter into this Agreement;

c. it is capable of performing its obligations and granting any licenses, rights, and authorizations specified under this Agreement;

d. the executing representative for each Party is duly authorized to represent each Party in this Agreement by all necessary business formalities and organizational actions; and

e. this Agreement is legal, valid, binding on, and enforceable against each Party when fully and mutually executed and delivered.

19. LIMITED WARRANTY

a. Warranty. Licensor warrants to Licensee, for 180 calendar days from the Effective Date or for the Term, whichever is less, that

i. the Licensed Software substantially conforms in all material respect to the Documentation specifications when it is installed, operated, and used as recommended in the Documentation and in accordance with this Agreement;

ii. all Maintenance Releases, when correctly and promptly installed in compliance with the Documentation and this Agreement, will not materially affect the Licensed Software’s functionality; and

iii. any storage media on which the Licensed Software may be provided will be free of substantial defect under normal use.

b. Conditions. Licensor’s aforementioned limited warranties are valid and apply only if Licensee complies with the following conditions:

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i. Licensee notifies Licensor in writing of any warranty breach during the limited warranty period.

ii. Licensee promptly installs all Maintenance Releases that Licensor previously made available to Licensee in order of distribution.

iii. Licensee is in compliance with and current on all terms and conditions of this Agreement, including the payment terms, as of the warranty breach notification date.

c. Exceptions. Notwithstanding any provisions to the contrary, Licensor’s aforementioned limited warranties are not valid and do not apply to problems arising out of or relating to

i. any modification or damage to the Licensed Software or its storage media caused by the Licensee or its representatives;

ii. any Licensed Software operation or use not expressly specified and permitted in the Documentation or this Agreement, including incorporating the Licensed Software in or with any non-Licensor approved technology or service unless otherwise expressly permitted by Licensor in writing;

iii. Licensee’s, its representatives’, or any third party’s negligence, abuse, misapplication, or misuse of the Licensed Software, including any use not expressly specified and permitted in the Documentation or otherwise expressly authorized by Licensor in writing;

iv. Licensee’s failure to promptly install the Maintenance Releases previously provided by Licensor in the order it was received;

v. Licensee’s or a third party’s system or network;

vi. any Open-Source Components, beta software, incomplete sample, demonstration or testing software, temporary software modules, or any software for which Licensor does not receive a license fee;

vii. Licensee’s breach of any material provision of this Agreement; or

viii. any other causes or conditions outside Licensor’s reasonable control.

d. Remedy. If Licensor breaches, or is alleged to have breached, any limited warranties herein, Licensor may, at its sole option and expense, take any of the following steps to appropriately remedy such breach:

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i. Repair the Licensed Software.

ii. Amend, supplement, or replace any incomplete or inaccurate Documentation.

iii. Replace the Licensed Software or Maintenance Releases with functionally equivalent software that, upon its replacement, constitutes the Licensed Software hereunder.

iv. Replace any defective storage media on which Licensor provided the Licensed Software.

v. Terminate this Agreement and, provided that Licensee fully complies with its post-termination obligations, promptly prorate and refund Licensee any prepaid amount by Licensee for any period after the termination date.

e. Sole Remedy. Should Licensor fail to cure a warranty breach or terminate this Agreement within a reasonable time period after Licensor’s receipt of Licensee’s timely written notice of such breach, Licensee can terminate this Agreement as provided herein. Provided Licensee fully complies with its post-termination obligations, Licensor must promptly prorate and refund Licensee any prepaid amount by Licensee for any period after the termination date. THIS IS LICENSEE’S SOLE REMEDY AND LICENSOR’S ENTIRE OBLIGATION AND LIABILITY FOR ANY LIMITED WARRANTY BREACH UNDER THIS AGREEMENT.

f. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND FOR THE EXPRESS LIMITED WARRANTIES HEREIN, ALL LICENSED SOFTWARE, DOCUMENTATION, MAINTENANCE RELEASE, PRODUCTS, INFORMATION, MATERIAL, AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED “AS IS, WHERE IS,” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR SPECIFICALLY AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS TO THIRD PARTIES, PATENT VALIDITY, OPERATION WITHOUT INTERRUPTION, ACHIEVEMENT OF LICENSEE’S REQUIREMENTS OR INTENDED RESULTS, OR COMPATIBILITY WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, OR MATERIALS EXCEPT AS EXPRESSLY SET FORTH IN THE DOCUMENTATION. FURTHERMORE, AND WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION IS OR WILL BE SECURE, ACCURATE, COMPLETE, OR FREE OF HARMFUL CODE OR ERROR. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. ANY OPEN-SOURCE COMPONENTS OR THIRD-PARTY REPRESENTATION OR WARRANTY IS STRICTLY LIMITED TO LICENSEE AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN-SOURCE COMPONENTS AND THIRD-PARTY MATERIALS AND UNRELATED TO LICENSOR.

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20. INDEMNIFICATION

a. Licensor Indemnification. Licensor will indemnify, defend, and hold harmless Licensee, its officers, directors, employees, agents, affiliates, and other representatives from and against any and all losses incurred by Licensee arising from any third-party action, suit, or claim that alleges the Licensed Software, or any use of the Licensed Software in accordance with this Agreement, infringes any Intellectual Property Rights.

b. Licensor Indemnification Exceptions. The foregoing Licensor indemnification does not apply to the extent that such actions or losses arise from any allegation of or relating to any

i. patent, copyright, or trademarks issued on a patent, copyright, or trademark application published or granted after the Effective Date;

ii. unauthorized, unlicensed, and unpermitted modification of the Licensed Software without Licensor’s express knowledge, written consent, and in direct contradiction to Licensor’s Documentation specifications;

iii. unauthorized, unlicensed, and unpermitted use of the Licensed Software outside the purpose, scope, or manner authorized by this Agreement or in any manner contrary to Licensor’s instructions;

iv. Open-Source Components, other third-party materials, or any material outside of Licensor’s exclusive control;

v. failure to promptly install and implement any Maintenance Release or Licensed Software replacement in order received and made available to Licensee by Licensor;

vi. Licensed Software use after Licensee’s receipt of Licensor’s written notice that such continued use may be alleged to or actually infringe upon, misappropriate, or otherwise violate a third party’s rights;

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vii. Open-Source Components or other third-party materials;

viii. negligence, abuse, misapplication, or misuse of the Licensed Software by or on behalf of Licensee, its representatives, or a third party;

ix. causes or conditions outside Licensor’s commercially reasonable control, including, but not limited to, any third-party equipment error or Licensee’s own system bugs, defects, or malfunctions; or

x. actions or losses for which Licensee is obligated to indemnify Licensor pursuant to this Agreement.

c. Licensee Indemnification. Licensee will indemnify, defend, and hold harmless Licensor and its officers, directors, employees, agents, affiliates, and other representatives from and against any and all losses incurred by Licensor due to any third-party actions, claims, or suits should such losses relate to any allegation

i. that any rights, including Intellectual Property Rights, is or will be infringed, misappropriated, or otherwise violated by Licensee’s unauthorized Licensed Software use in a manner inconsistent with the license grant in this Agreement and Documentation;

ii. of or relating to matters that would be deemed a Licensee breach of representation, obligation, covenant, or warranty under this Agreement if proven true;

iii. of or relating to negligence, abuse, misapplication, misuse, or other culpable acts or omissions by or on behalf of Licensee or its representatives with respect to the Licensed Software or otherwise in connection with this Agreement; or

iv. of or relating to the unauthorized, unlicensed, and unpermitted use of the Licensed Software or Documentation outside the purpose, scope, or manner authorized by this Agreement or in any manner contrary to Licensor’s instructions.

d. Mitigation. Should Licensor believe the Licensed Software, in whole or in part, may be claimed by any third party to be in violation of another’s Intellectual Property Right, or if Licensee’s use of the Licensed Software is enjoined or threatened to be enjoined, Licensor may mitigate the situation at its own option and expense by

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i. obtaining the right from the appropriate third party for Licensee to continue to use the Licensed Software materially as intended in and for the Term duration of this Agreement;

ii. modifying or replacing the Licensed Software to the extent that it becomes non-infringing while still providing the materially equivalent features and functionalities of the original software, and such modification or replacement will constitute the Licensed Software thereunder; or

iii. terminating this Agreement, in whole or in part, effective immediately upon written notice to Licensee and, provided that Licensee fully complies with its post-termination obligations, promptly prorate and refund Licensee any prepaid amount by Licensee for any period after the termination date.

e. Sole Remedy. THIS SECTION CONSTITUTES LICENSEE’S SOLE REMEDIES AND LICENSOR’S SOLE OBLIGATIONS AND LIABILITIES FOR ANY CLAIMS OR ALLEGATIONS, WHETHER ACTUAL OR THREATENED, THAT THIS AGREEMENT, SOFTWARE, DOCUMENTATION, OR ANY SUBJECT MATTER HEREOF, INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

21. LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCE, INCLUDING WHERE PARTIES WERE ADVISED THAT LOSSES OR DAMAGES WERE POSSIBLE OR FORESEEABLE, WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY: COST INCREASE; BUSINESS, PRODUCTION, REVENUES, OR PROFITS LOST; VALUE DIMINUTION; REPUTATIONAL LOSS; DAMAGED GOOD WILL; USE, INABILITY TO USE, DELAY, INTERRUPTION, LOSS, OR RECOVERY OF ANY LICENSED SOFTWARE, OPEN-SOURCE COMPONENTS, OR ANY THIRD-PARTY MATERIALS; DATA OR SYSTEM SECURITY BREACH, CORRUPTION, DAMAGE OR RECOVERY; REPLACEMENT COST OF GOODS, SOFTWARE, OR SERVICES; OR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, ENHANCED, OR PUNITIVE DAMAGES UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT, NEGLIGENCE, AND STRICT LIABILITY.

22. EXPORT REGULATION. Licensee acknowledges that the Licensed Software may be subject to applicable United States export Laws, including the United States Export Administration Act and its associated regulations. Licensee agrees to comply with provisions of such export Laws. Compliance may include, but is not limited to, obtaining any and all necessary export license or other governmental approval. Licensee shall not itself or permit any third party to directly or indirectly export, re-export, or release the Licensed Software, or use the Licensed Software, in any country prohibited or restricted under United States export Laws.

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23. FORCE MAJEURE. Neither Party will be liable to the other by reason of failure or delay in the performance of this Agreement if the failure arises out of any circumstance beyond such Party’s reasonable control, including acts of God, flood, fire, natural disaster, war, terrorism, invasion, riot, civil unrest, embargos, national or regional emergency, strikes, labor disruptions, Law changes, or power or telecommunication interruptions or shortages. The Party failing or delaying in performance of this Agreement due to circumstances beyond their control must give prompt written notice to the other Party stating the estimated length of time the occurrence is expected to continue. Either Party may terminate this Agreement if such uncontrollable circumstance continues for longer than 30 days.

24. GENERAL PROVISIONS

a. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or any other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party shall have the authority to bind the other in any manner.

b. Notices. Notices will be deemed effectively given when received if delivered by hand; when received if sent by a nationally recognized courier with required signature upon receipt; when sent if delivered by email with transmission confirmation and sent during receiving party’s normal business hours; and on the next business day if delivered by email with transmission confirmation and sent after normal business hours.

Any notice, request, consent, claim demand, waiver, or other communication under this Agreement must be in writing and addressed to Parties as follows:

i. Licensor

Address:

ii. Licensee

Address:

c. Publicity. Each Party agree to seek express permission and written consent before using the other Party’s trademarks, service marks, trade names, logo, domain names, or other indicia of source, association, or sponsorship for any purpose but specifically relating to publicity, marketing, or commercial materials.

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d. Governing Law. This Agreement is governed by and construed in accordance with the Laws of the State of Colorado without giving effect to any choice or conflict of law provisions or rules that would permit the application of the laws of any other jurisdiction.

e. Arbitration. Unless all Parties agree otherwise, Licensor and Licensee agree that any dispute, claim, or controversy arising out of or relating to this Agreement will be resolved through mandatory binding arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, and the judgment of its arbitrator(s) may be entered by any court of competent jurisdiction. Licensor and Licensee further agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY AND ALL RIGHTS TO BRING OR PARTICIPATE IN A CLASS ACTION OR MULTI-PARTY ACTION IN ANY ACTION, PROCEEDING, OR COUNTER-CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. ALL CLAIMS AND DISPUTES ARISING OUT OF THIS AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. ANY DISPUTE, CLAIM, OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION WILL BE PERMANENTLY BARRED. This provision will survive the termination of this Agreement.

f. Headings. The section and subsection headings or captions in this Agreement are for reference only and do not affect the meaning or interpretation of this Agreement.

g. Further Assurances. The Parties will cooperate with each other, execute and deliver such documents or instruments, and take all further actions as may be reasonably requested by the Parties from time to time in order to carry out, evidence, or confirm their rights or obligations or as may be reasonably necessary or helpful to give full effect to this Agreement.

h. Amendment and Modifications. This Agreement may be supplemented, amended, or modified only by mutual and written agreement of all Parties. No amendment, modification, rescission, or termination is effective unless it is in writing and executed by all Parties or their authorized representatives.

i. Waiver. No Party to this Agreement is deemed to have waived any of their rights, powers, remedies, or privileges under this Agreement unless such waiver is expressly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this Agreement, the failure to exercise or enforce any rights, powers, remedies, or privileges under this Agreement will in no way be construed as a present or future waiver of such rights, powers, remedies, or privileges.

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j. Assignment. Except as otherwise expressly permitted in this Agreement, Licensee may not, directly or indirectly, sell, assign, sublicense, lease, rent, distribute, or otherwise transfer the Licensed Software or any license rights and obligations under this Agreement, to any other person or entity without express written consent by Licensor.

k. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties. Nothing in this Agreement, express or implied, is intended to or shall confer on or create to any other person or entity any legal or equitable right, benefit, or remedy of any kind whatsoever.

l. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by electronic transmission, including email or facsimile, is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

m. Severability. If any provision of this Agreement or the application thereof is held to be invalid or unenforceable for any reason and to any extent, then that provision will be considered removed from this Agreement. However, the remaining provisions will continue to be valid and enforceable according to the intentions of all Parties and to the maximum extent permitted by Law. If it is held that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

n. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole, entire, and final agreement of the Parties with respect to the subject of this Software License Agreement. This Agreement supersedes all prior and contemporaneous understandings, representations, agreements, and warranties, whether written, oral, or implied. Should any inconsistency occur between statements made in the body of this Agreement, any related exhibits, schedules, attachments, and appendices, and any other documents incorporated herein by reference, the following order of precedence governs: (i) this Agreement, excluding any exhibits, schedules, attachments, appendices, or any other documents incorporated herein by reference; (ii) this Agreement’s exhibits, schedules, attachments, and appendices, if any; and (iii) any other documents incorporated in this Agreement by reference.

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IN WITNESS WHEREOF, the Parties execute this Agreement as of the date affixed to each signature.

Licensor: Group Cohesion, Inc.

Signed: /s/ Roger Norton Date: January 1, 2017

Name: Roger F. Norton

Title: CEO

Licensee: Activity, Inc.

Signed: /s/ Angelica Houston Date: January 1, 2017

Name: Angelica Houston

Title: CEO

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Instructions for Your Software License Agreement

For a business, its software is intellectual property and a valued business asset. It deserves certain protections and defined terms and conditions when the software is being used by a customer. Aidlaw’s software license agreement helps articulate how the Licensor and Licensee want the software to be used and help the parties establish a sound business relationship based on the benefits that the software offers.

Important: This software license agreement is appropriate for situations where the software owner (the Licensor) permits or licenses the software “as is” to the user (the Licensee) for their use. It does not provide any additional development, customization, or servicing by the Licensor. This is not a software development contract to customize the software to the Licensee’s unique specifications. This agreement is also not a “Software as a Service” (SaaS) agreement where the software is generally hosted by the Licensor and made available to the Licensee for access on a pay-per-use or subscription basis.

Definitions

The Definitions section contains a list of words or concepts that have very specific meaning within this agreement alone. For example, the word “Documentation” in the context of this agreement does not mean any information or records, but manuals and documents specifically relating to the software’s functionality, components, features, or requirements. When reading through the agreement, remember to consult this section for any defined terms to understand their specific significance and effect within this software license agreement.

License Details and Grant

This section contains the main details about the scope of the license granted using the answers and license parameters you supplied regarding the license’s nature and access and use parameters.

Exclusive or Non-Exclusive License

An exclusive license gives the Licensee exclusive right to use the software. No one else will have the right to use the software during the time frame that the Licensee has the right to the software as its sole user. This type of license generally garners a higher fee from the Licensor since the Licensor cannot generate additional profits by licensing the same software to other customers. A non-exclusive license can be used by many unrelated users so long as the Licensor grants permission for their use.

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Sublicense

Sublicensing concerns how the Licensee can use the software in relation to third parties not included in this contract. Software sublicensing is the concept that a third party may use a part or all of the software through their relationship with the Licensee alone. For example, if sublicensing is allowed, the Licensee may allow a non-related third party to use the Licensor’s software and even receive payment for the third party’s use of the Licensor’s software. If sublicensing is acceptable to the Licensor and Licensee, you should select “Yes” when asked if this license is sublicensable.

Licensors generally want control over the distribution of their software and may prefer to grant licenses that do not allow sublicensing. Select “No” to the question regarding sublicensing if this is the case for this agreement. In making this license non-sublicensable, any third party that wants to use the software will need to obtain a license directly from the Licensor, instead of going around the Licensor.

License Assignment or Unilateral Transfer of Rights

An assignment is different from sublicensing in that it transfers all the Licensee’s rights and responsibilities contained in this agreement onto a third party. This is a major change to any agreement and essentially changes who the Licensor is contracting with. Customarily, such a change to the parties in a contract would require the consent of all parties. However, if the Licensor is comfortable with contracting with any third party as long as they accept all the terms in this agreement just as the Licensee did, select “Yes” when asked if this license grant can be transferred unilaterally by the Licensee. If the Licensor wants full control and the opportunity to vet who uses their software, select “No” when asked whether the Licensee can unilaterally transfer their rights and obligations.

Access and Use

Software access and use is particularly important in a software license agreement because, unlike a traditional business asset like a physical computer or machine, software can be extremely easy to copy, duplicate, or transfer. To control the value of the asset, Licensors can place contractual limitations on the license granted to the Licensee. For example, this software could be limited for use 1) on only 10 of Licensee’s computers, or 2) for 30 Licensee employees, or 3) on an unlimited number of computers and users but only at Licensee’s offices in the state of Nevada, or 4) on two of Licensee’s computers and keep one copy as backup for disaster recovery only. Aidlaw allows you to customize the software’s access and use criteria and create your unique license grant. If the license grant does not have any restrictions on the number of copies or locations of access, select “Yes” when asked if the Licensee may use unlimited copies of the software from any location.

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Open-Source Licenses

Some software contains open-source code or technology that is widely available for a variety of uses. However, such use of open-source code or technology actually comes with its only open-source or public license. The Licensor should be aware that, if any part of their software contains open-source components, the open-source or public license information often requires the components to be readily identifiable and documented.

License Restrictions

Beyond the number of copies or location access for the software, there are some general prohibitions that the Licensee must comply with. This section articulates these prohibitions. The prohibitions generally protect the intellectual property of the Licensor and include common sense restrictions. For instance, the Licensee may not copy the software, lend out the software without the Licensor’s permission, reverse engineer the software, bypass the software’s security measures, misappropriate the Licensor’s intellectual property in any part of the software, use the license in applications that could result in injury or death, or use the software outside of the limitations of the license grant in general.

Term

The term establishes how long the Licensee can use the software under the parameters set by this agreement. If the parties want to continue this software license agreement indefinitely until one party decides the relationship is no longer suitable, select “Perpetual” under “License Term Duration.” If the parties know in advance exactly when the Licensee will stop using the software under the terms of this agreement, select “Ends on a specific date” to input that date. If the parties want to establish the duration of the contract in terms of a period basis such as “five years” or “18 months,” select “Ends after a specific period” and write in the duration.

Delivery

Software may be delivered to the Licensee in a variety of ways. The traditional method is a physical delivery on a tangible storage media such as CD, DVD, USB, external hard drive, and the like. This may add physical delivery time through the post or require coordination between the Licensor and Licensee to meet and receive the physical storage media. It has also become commonplace to deliver software electronically via email, through private networks, downloaded from hosted websites, and more. This method could make the delivery time more instantaneous but may require a certain degree of technological sophistication from both the Licensor and Licensee. The Licensor and Licensee should consider and select the delivery method, timeframe, and location that suits both parties’ needs.

Installation

Some Licensors offer installation services as an added bonus for the Licensee’s convenience and to ensure their software is installed properly. Other Licensors prefer to leave the installation to the Licensee and avoid any liability that may arise from using the Licensee’s computers or network systems. The details regarding installation service, if any, should be decided in this agreement so both parties have the same expectations about who will set up the software.

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Fees and Taxes

The license fee is basically the cost of licensing the software. It can be measured by different metrics. Some companies prefer a lump sum total for unlimited use restrictions; others prefer to pay for their exact use, such as having a fix fee per user, per computer used, per installation, or per location used. Aidlaw allows you to choose from all these options to decide the appropriate pricing basis for your agreement.

While the license fee is the most common type of fee in a software license agreement, your agreement may include other fee types and structures such as an installation fee and training fee for the Licensor to teach the Licensee and their employees or representatives how to make the most out of the software. Taxes are not included in this contract, so the Licensee should be aware that it is responsible for any taxes that may be assessed in this agreement.

Payment

In addition to the manner in which the software is used and the fee structure considerations, payment for the fee is often dependent on the business relationship between the Licensor and Licensee. When deciding on what kind of payment structure to use, the Licensor may wish to take into consideration the duration of the agreement, the creditworthiness of the Licensee, and how the Licensee will use the software and then evaluate what is commercially reasonable based on all these factors.

This agreement also includes a standard late payment term that provides some remedy options for the Licensor if the Licensee is late on payment. These remedies include the ability to charge interest or obtain reimbursement for the Licensor’s costs, such as the cost of using a collection agency, disabling the software technically, or suspending or terminating this software license agreement altogether.

Acceptance

This section affords the Licensee the ability to reject the software or make sure the software works properly before the Licensor is deemed to have completed their obligation of delivering on the software. It sets out a process by which the Licensee determines the criteria of what it means for the software to be working properly. For example, a test for spreadsheet-like software function could be to calculate the appropriate numbers in a formula with expected results. The Licensor will carry out the test with the Licensee or its representative present and both parties can witness the software being tested.

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Ideally, the software test will succeed and the Licensee will accept that the software is working properly. However, if the software should fail and generate unacceptable or unexpected results, the Licensor has the opportunity to correct the software error. Additionally, if the Licensor is unable to address the software error, the Licensee has the opportunity to reject the software and terminate the agreement.

Acceptance testing may be appropriate if the Licensor and Licensee both want a process that assures the software functions as described. It is a quality test for the Licensee and documentation of properly functioning software for the Licensor. This is an optional process available in this form to help both the Licensor and Licensee establish a fair way to test the software.

Maintenance and New Version

From time to time, the Licensor may release updates on the software that does not substantially change the software’s functions but enhances the software in minute but helpful ways. This is a maintenance release and is offered at no cost to the Licensee. It is vastly different from a new version of the software that contains many more changes and upgrades.

This software license agreement grants the Licensee the right to receive any maintenance releases that may be released at the Licensor’s sole discretion during the term of this agreement. However, the Licensee does not have any rights to new versions of the software. If the Licensee wishes to use a new version of the software, the Licensee must enter into a separate negotiation and software license agreement with the Licensor.

Title, Intellectual Property Rights, and Infringement

This section affirms that the Licensor is the proper owner of the software and no part of the software is sold to the Licensee. This is purely a license, or a permission, to use the software. The Licensee also agrees to cooperate with the Licensor to protect the intellectual property that is this software during the duration of this agreement. This includes safeguarding the software, informing the Licensor of suspected or known intellectual property infringement, and assisting the Licensor in any claims or actions where the Licensor tries to prosecute third parties for infringing on the Licensor’s rights over this software.

Security Measures and Usage Tracking Disclosure

If this software contains any mechanisms that detect unauthorized use that includes a certain degree of the Licensor’s control or monitoring of the Licensee’s use, select “Yes” to the question on whether the Licensor can control or monitor the Licensee’s access. This disclosure is included to ensure transparency to the Licensee that their information may be collected or viewed incidental to their ordinary software use.

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Verification (On-Site Compliance Monitoring)

The Licensor may, from time to time, request verification from the Licensee that the software is being used according to this software license agreement. If the Licensee agrees, this agreement can also include a right for the Licensor to conduct a non-intrusive on-site audit. If the verification or audit indicates that the Licensee is using the software beyond the scope agreed upon in this agreement, additional fees would be negotiated at that time.

Confidentiality

As with any business relationship, confidential information and trade secrets may be disclosed and exchanged. Both parties must determine and agree on how long to keep such confidential information private and only to disclose such information when compelled to do so by law. The duration of confidentiality may be the same as the duration of the license or much longer.

Termination and Effects

This section outlines all the ways in which this agreement could be terminated and which party can seek to terminate this agreement under the described circumstances. Upon termination of this agreement, it is important that the Licensee immediately stops using the software, returns or destroys the software and any confidential information, and pays all amounts due under this agreement.

Mutual Representations and Warranties

In order to enter into a commercially reasonable agreement, the Licensor and Licensee affirm and assure each other in this section that they are legally constituted entities that can do business, either under their own personal name or as an LLC or corporation, and have the full right, power, and capacity to enter into such a contract.

Licensor’s Limited Warranty

This agreement provides a limited warranty of the software for six months or for the duration of the agreement, whichever is less. The warranty assures the Licensee that the software and any maintenance release operate as described when properly installed, and if the software is provided on a separate media, that media is not defective. Everything else, if not included specifically in this section, is not warranted and is to be accepted “as is” by the Licensee. The limited warranty is additionally limited and not applicable if the software is improperly used, damaged, or modified by the Licensee, or in error because of causes outside of the Licensor’s reasonable control.

The Licensee’s remedies under the limited warranty include the Licensor replacing the software, the Licensor repairing the software, or either the Licensor or Licensee terminating this agreement early with appropriate pro rata refund by the Licensor of any prepaid license fee.

Indemnification

Indemnification is a concept for securing another party against loss or damage. In the case of the Licensor’s indemnification, the Licensor agrees to secure the Licensee and its representatives against actual losses from actions where a third party claims the Licensor’s software is an infringement of the third party’s intellectual property rights.

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In the case of the Licensee’s indemnification, the Licensee agrees to indemnify the Licensor and its representatives against actual losses from actions from a third party that somehow relates to this agreement.

Limitation of Liability

Limitation of liability is a standard contract provision that protects both the Licensor and Licensee from the amount of exposure they each face if any action is filed against either party in relation to this agreement. It caps the amount of potential damage the parties may seek from each other and should always be read carefully so all contracting parties understand their risk exposures.

Export Regulation

Software, like other commercial objects, may be subject to export control rules and regulations such as the United States Export Administration Act. For example, there is sensitive software that cannot be exported to certain restricted countries. If the Licensee seeks to export the software, the Licensee must conduct its own due diligence regarding applicable export laws and affirm their compliance with all applicable laws.

Force Majeure

On rare occasions, there may be events or circumstances out of the Licensor’s or Licensee’s reasonable control that prevents this agreement from operating as intended for a period of time. For example, the Licensee may be late on payment when their bank’s server experienced a severe weather-induced power outage. In such uncontrollable and unpredictable circumstances where no party is intentionally at fault, this term provides an allowance for the breach if it is under 30 days and the ability for either party to cancel this agreement if the event continues for longer than 30 days.

Governing Law and Dispute Resolution Options

The choice of law that governs this agreement is an important selection. Often, parties select the law of the state where they are located because of familiarity. This form allows the parties to select the agreed-upon state law that will dictate how this agreement will be interpreted if any conflict should arise in the future.

Furthermore, this document allows the parties to decide whether conflict should be resolved in a public court of law or in private arbitration. If the Licensor and Licensee wish to litigate in public court, select “No” when asked if arbitration is required. If the parties wish to resolve any issues privately as decided by an independent arbitrator, select “Yes” for the same question.

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**LicA#16**

EX-10.7

**Exhibit 10.7**

**LICENSING AGREEMENT**

THIS LICENSING AGREEMENT is made as of April 17, 2015 by and between BCD Labs Colorado, Inc. a Florida corporation, its successors and assigns, with offices at […], FL 33156, (“LICENSOR”), and High Point Outlets, LLC, a Colorado limited liability company, with offices at […], CO  80304 ("LICENSEE") (collectively the “PARTIES”).

**RECITALS**

WHEREAS, LICENSOR is the owner and developer of certain proprietary inventions and formulas relating to the extraction from, separation and processing (the “Process”) of marijuana to produce certain marijuana-infused products, including edibles, e liquids, waxes and shatter (the “Products”);

WHEREAS, LICENSOR has developed specific know-how based on practical experience in employing the Process and producing the Products, which know-how is of great commercial importance and is not readily available from any patents or other publications;

WHEREAS, LICENSEE is currently licensed by the applicable local and state licensing authorities pursuant to various licenses to produce, manufacture, and sell marijuana-infused products at LICENSEE’s facility (“Facility”) located at the address set forth in the first paragraph of this agreement (the "Leased Real Property"), and such licenses are in good standing;

WHEREAS, LICENSEE desires to obtain exclusive rights to use LICENSOR’S Process in the state of Colorado (the “Territory”), and LICENSOR is willing to grant such rights on the terms and conditions contained in this agreement;

WHEREAS, LICENSEE desires that LICENSOR build a plant at its Facility for the purpose of using the Process to manufacture the Products; and

WHEREAS, as an inducement and condition to LICENSOR'S agreement to build a plant at LICENSEE'S Facility, LICENSEE has agreed to lease the leasehold improvements constructed by LICENSOR from LICENSOR pursuant to a separate agreement (the "Lease") and to enter into this agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. LICENSEE’S RIGHTS**

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| --- | --- |
| A. | License. LICENSOR hereby grants to LICENSEE, an exclusive license, without the right to sublicense, for the Term of this Agreement as hereinafter defined, to practice and use the Process in conjunction with the manufacture, production, sale, and distribution of the Products, in the Territory using any and all know how that LICENSOR has or may subsequently acquire during the Term of this Agreement. Such license shall include the right to use any of LICENSOR’S intellectual property rights associated with or related to the Process or the use of the Process in manufacturing and producing the Products including but not limited to brands, trade names, trademarks, and other intellectual property.  Licensee shall have the sole right to determine what Products to manufacture using the Process.  However, it is specifically acknowledged by the LICENSEE that it is not acquiring any rights in or to the Process and as a material part of this exclusive license, LICENSEE shall make no effort to learn or otherwise make use of the Process except as provided herein. |

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| B. | No Other Licenses. The license granted under this Licensing Agreement is specifically set forth herein, and no licenses are granted by LICENSOR to LICENSEE by implication or estoppel. |

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| C. | Limitation on Use.  LICENSEE shall not use the license granted herein for any purpose other than as authorized by this Licensing Agreement. Any proposed additions or modifications to the Process, Products or proposed new developments based on the Process or Products shall be submitted in writing to LICENSOR. |

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| D. | Compliance.  LICENSEE shall package and label the Products in accordance with the Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code using mutually agreed upon brand names and labels as set forth in Schedule "A" attached hereto. Licensee shall not use any brand names other than the mutually agreed upon brand names in connection with the production, manufacture, advertising, sale, and distribution of the Products. |

**2.TERM OF THE AGREEMENT**

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| --- | --- |
|  | A. This Licensing Agreement and the provisions hereof, except as otherwise provided, shall terminate upon the earlier of the date that is ten (10) years from the date of execution of this Licensing Agreement by both parties (the “Effective Date”), or the date upon which LICENSOR'S lease of the Leased Real Property is terminated (the “Term”), and shall automatically be renewed for a term of twelve (12) months at the end of each term as long as the lease for the Leased Real Property is in effect (or such lesser period as remains under the lease for the Leased Real Property)  unless written notice is provided by either party to the other, at least fifteen (15) days before the end of the Term. |

**3.OBLIGATIONS OF LICENSEE**

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| A. | Compliance with Colorado Law. LICENSEE agrees that it shall, at all times, comply with the C.R.S. 12-43.3-101 et. seq (“Colorado Medical Marijuana Code”), C.R.S. 12-43.4-101 et seq. (“Colorado Retail Marijuana Code)*,* and any other applicable state or local law |

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| B. | Process. LICENSEE shall not reverse engineer, reverse compile or disassemble any Process, or otherwise attempt to analyze any steps in the Process. The foregoing shall not apply to such activities conducted in the ordinary course of technical support of Products. |

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| C. | Records and Reports. LICENSEE will maintain accurate records of amounts and kinds of Products processed by use of the licensed Process and will submit monthly reports reflecting its operations under this agreement in such form as LICENSOR shall require from time to time. |

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| D. | Inspection of Premises, Records and Products. LICENSOR shall have the right at all times to inspect the premises of LICENSEE (including all materials and supplies used by LICENSEE in its operations under this agreement), to audit LICENSEE’S records for the purpose of determining compliance with any or all portions of this agreement provided such inspection is permitted under the Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code, and to test LICENSEE'S Products to confirm the quality thereof provided such testing is in compliance with Colorado law. |

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| **E.** | Testing of Products.  LICENSEE shall periodically send its Products to an independent Marijuana Testing Facility licensed by the State of Colorado and applicable local licensing authorities, at its sole cost, to confirm that LICENSEE'S are of the quality stated by LICENSEE and otherwise comply with applicable law. |

**4.OBLIGATIONS OF LICENSOR**

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| A. | LICENSOR shall also be available by telephone, e-mail, fax or, if requested by LICENSEE, in person, in connection with LICENSEE’S use of the Process to develop and support the Products, including the use of reasonable commercial efforts: (I) to answer LICENSEE’S questions regarding the proper utilization and optimization of the Process; and (ii) to provide solutions, to correct any reproducible error in the Process. |

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**5. COMPENSATION**

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| A. | License Fee. LICENSEE agrees to pay LICENSOR \* annually, payable in monthly installments of \* no later than the fifth (5th) day of each month, in advance, to secure the licensing rights to use the Process to manufacture, produce and sell the Products (the “License Fee”). The License Fee is a payment independent of any other payments required to be paid between the Parties and is not creditable against any such payments. |

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| B. | Survival. LICENSEE’S obligations for the payment of the License Fee shall continue for so long as LICENSEE continues to use the Process to manufacture, sell or otherwise market the Licensed Products. |

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| C. | Late Payments. Late payments shall incur interest at the rate of ten percent (10%) per annum from the date such payments were originally due. |

**6.  MARKETING AND PUBLICITY**

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| A. | Joint Efforts. The Parties agree to work together to identify areas where joint-marketing efforts would benefit both parties, and upon mutual agreement shall implement such efforts. |

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| B. | Non-Disclosure. Neither party shall disclose the terms of this Agreement to any third party, other than its financial or legal advisors, or make any announcements regarding the nature of the relationship between the parties without the prior approval of the other party, except that a party may disclose the terms of this Agreement where required by law, provided that such party uses reasonable effort to obtain confidential treatment or similar protection to the fullest extent available to avoid public disclosure of the terms of this Agreement. A party required by law to make disclosure of the terms of this Agreement will promptly notify the other party and permit the other party to review and participate in the application process seeking confidential treatment. Under this provision, the parties agree that the terms of the agreement are also to be kept confidential, unless required by law, or otherwise agreed to by both parties. |

**7. INTELLECTUAL PROPERTY RIGHTS**

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| A. | LICENSEE acknowledges that the Process is a valuable property of LICENSOR and qualifies as a trade secret within the meaning of the Colorado Uniform Trade Secrets Act. LICENSEE further acknowledges that LICENSOR is the sole and exclusive owner of the Process. |

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| B. | This Agreement shall not be construed to give LICENSEE any vested right, title, or interest in the Process, the Products, or any trademarks or copyrighted materials of LICENSOR except to the extent and in the manner, time, and places LICENSEE is authorized subject to the provisions of this Agreement. |

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| C. | LICENSOR may seek, obtain and, during the Term of this Agreement, maintain in its own name and at its own expense, appropriate intellectual property protection for the Process or the Products. |

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| D. | LICENSEE acknowledges the legal validity and commercial value of the Process and the Products and Licensor’s related intellectual property, including but not limited to any state or federal registrations that LICENSOR owns, obtains, or acquires. LICENSEE shall not, any time, file any application for intellectual property protection with the United States Patent and Trademark Office, or with any other governmental entity for the Process or the Products. This shall include any related or substantially similar intellectual property related to the Process or Products or any proposed new intellectual property that has been developed using the Process licensed hereunder, including intellectual property developed by the employees of LICENSOR who are supervised by LICENSEE and work for have worked at LICENSEE'S Facility.. |

\* Portions of this document omitted pursuant to an application for an order for confidential treatment pursuant to Rule 24b-2 under the Exchange Act. Confidential portions of this document have been filed separately with the Securities and Exchange Commission.

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| E. | In the event that a material breach of this Agreement by LICENSEE occurs or is threatened, the LICENSOR shall be entitled to injunctive relief restraining the act or threatened act which constitutes or would constitute a breach hereunder.  In addition, the LICENSOR shall be entitled to other available relief for any such material breach. |

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| F. | The parties agree to execute any documents reasonably requested by the other party to effect any of the above provisions. |

**8. INFRINGEMENTS**

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| A. | LICENSOR shall have the sole and exclusive right, but not the obligation, in its discretion, to institute and prosecute lawsuits against third persons for infringement of the rights licensed in this Agreement. All sums recovered in any such lawsuits, whether by judgment, settlement or otherwise, in excess of the amount of reasonable attorneys’ fees and other out of pocket expenses of such suit, shall be retained solely by LICENSOR. |

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| B. | LICENSEE agrees to fully cooperate with LICENSOR in the prosecution of any such suit against a third party and shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. The LICENSOR shall reimburse the LICENSEE for any expenses incurred as a result of such cooperation. |

**9.REPRESENTATIONS AND WARRANTIES**

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| A. | LICENSOR represents and warrants that it has the right and power to grant the licenses granted herein. |

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| B. | LICENSEE shall be solely responsible for the manufacture, production, sale and distribution of the Products and will bear all related costs associated therewith. |

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| C. | LICENSEE shall provide and maintain at it sole cost and expense during the term of this agreement commercial general liability insurance endorsed for [\*](https://www.sec.gov/Archives/edgar/data/1522222/000118518515001059/ex10-7.htm#ref.ID0EJTAE) which insurance policy shall name LICENSOR as an additional insured and shall be written on an occurrence form coverage basis. Evidence of such coverage reasonably satisfactory to LICENSOR shall be delivered to LICENSOR upon request therefor. Such insurance shall be issued by reputable and sound insurance companies satisfactory in LICENSOR’s discretion. |

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| D. | LICENSEE shall also comply with such guidelines, policies, and requirements as LICENSOR may give written notice from time to time related to the Process. |

**10. INDEMNIFICATION**

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| A. | LICENSEE shall, at its own expense, defend and indemnify LICENSOR for damages and reasonable costs incurred in any suit, claim or proceeding brought against LICENSOR or its subsidiaries based on (i) the manufacture, production, sale, and distribution of the Products by LICENSEE including, but not limited to product liability claims; (ii) modification of the Process by someone other than LICENSOR; (iii) LICENSEE’s continued use of the Process after notification that the Process may be infringing; (iv) LICENSEE’s use of the Process in a manner not permitted by Licensee; or (v) any matter relating to the Leased Employees. |

**CONFIDENTIAL INFORMATION**

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| A. | For purposes of this agreement, the term “Confidential Information” shall mean the following: |

\* Portions of this document omitted pursuant to an application for an order for confidential treatment pursuant to Rule 24b-2 under the Exchange Act. Confidential portions of this document have been filed separately with the Securities and Exchange Commission.

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| i. | Any information, formula, recipe, know-how, data, process, technique, design, drawing, program, formula or test data, work in process, engineering, manufacturing, marketing, financial, sales, supplier, customer, employee, investor or business information, whether in oral, written, graphic, or electronic form, or |

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| ii. | Any document, diagram, drawing, computer program or other communication which is either conspicuously marked “confidential”, known or reasonably known by the other party to be confidential, or is of a proprietary nature and is learned or disclosed in the course of discussions, studies, or other work undertaken between the parties. |

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| B. | During and after the term of this agreement, LICENSEE shall not use the Confidential Information except for the manufacture, sale and distribution of Products, as set forth herein, and shall not disclose the Confidential Information received under this agreement to any other person or entity other than its employees, and shall also require all its employees who receive such Confidential Information to sign written agreements requiring them not to disclose such Confidential Information during and after their tenure with LICENSEE. LICENSEE shall be responsible for a breach of this agreement by its employees. |

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| C. | Upon termination of this agreement, LICENSEE shall promptly deliver to LICENSOR any and all Confidential Information in its possession or under its control. |

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| D. | The parties agree that Confidential Information shall not include any of the following types of information: |

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| i. | Information that is or becomes generally available to the public other than as a result of a disclosure by LICENSEE or its employees, |

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| ii. | Information that was available to LICENSEE on a non-confidential basis prior to its disclosure to LICENSEE by LICENSOR or its agents, or |

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| iii. | Information that becomes available to you on a non-confidential basis from a source other than LICENSOR or its agents, provided that such source is not bound by a confidentiality agreement with LICENSOR known to LICENSOR or its employees. |

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| E. | LICENSEE shall not be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government; provided that ten (10) days’ notice first be given to LICENSOR so a protective order, if appropriate, may be sought by LICENSOR. |

**12.OPTION TO OWN PORTION OF MIP LICENSE**

If during the Term of the Agreement, applicable state and local laws should change to permit, in whole or in part, the ownership or issuance of a marijuana-infused products license in Colorado (a "MIP License"), directly or indirectly, by or to a person or entity who is not a Colorado resident, at LICENSOR'S request, LICENSEE shall, to the extent permitted by and in accordance with applicable laws, promptly transfer up to a 56% ownership interest in its MIP Licenses  (or such lesser percentage as may be permitted by law, from time to time), directly or indirectly, to LICENSOR or its designee or designees, if and only if LICENSOR or its applicable designee meets all applicable legal requirements to be an owner, directly or indirectly, in the MIP License.  Such transfer or transfers may occur in one or more increments to the maximum extent permitted by applicable laws as interpreted by legal counsel for LICENSOR.  In exchange for such transfer or transfers, the License Fee payable by LICENSEE shall be reduced proportionately. For example, if LICENSEE transferred 28% of its ownership in its MIP license to LICENSOR, the License Fee would be reduced to[\*](https://www.sec.gov/Archives/edgar/data/1522222/000118518515001059/ex10-7.htm#ref.ID0ESBAG) per year. Notwithstanding the foregoing, this Section 12 shall only apply to the extent LICENSEE has not already transferred a total of 56% of its ownership in its MIP License to LICENSOR, pursuant to this or any other Agreement between LICENSEE and LICENSOR, and the reduction in the License Fee shall occur upon and to the extent of the transfer of the MIP Licensee in addition to, and not in lieu of, any other monetary concessions provided by LICENSOR to LICENSEE under any other agreement between the parties.

\* Portions of this document omitted pursuant to an application for an order for confidential treatment pursuant to Rule 24b-2 under the Exchange Act. Confidential portions of this document have been filed separately with the Securities and Exchange Commission.

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**13.TERMINATION**

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| A. | Default and Termination. LICENSOR shall have the right to immediately terminate this Agreement by giving ten (10) days written notice of a material breach by LICENSEE, followed by LICENSEE’s failure within the above-mentioned ten (10) day period to cure the breach. A material breach includes, but is not limited to: |

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| a. | LICENSEE’s violation of the Colorado Retail Marijuana Code, Colorado Medical Marijuana Code or any other applicable state or local law; or |

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| b. | LICENSEE’s filing of a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if the LICENSEE discontinues its business or a receiver is appointed for the LICENSEE or for the LICENSEE’S business and such receiver is not discharged within thirty (30) days; or |

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| c. | LICENSEE’s breach any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Process; or |

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| d. | LICENSEE’s failure to make timely payment of the License Fee when due two or more times during any twelve-month period; or |

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| e. | A material change in the ownership or control of LICENSEE or material change of location; or |

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| f. | LICENSEE’s attempt to grant or grant a sublicense or assign any right or duty under this Licensing Agreement without the written consent of LICENSOR; or |

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| g. | LICENSEE'S default under the Lease after the expiration of any applicable notice and cure periods; or |

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| h. | LICENSEE commits any act or omission that, in the sole discretion of LICENSOR, damages or reflects unfavorably, or otherwise detracts from the good reputation of LICENSOR |

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| i. | A change in state or local laws or regulations, or the application thereof, that makes LICENSEE’s business or the production of the Products unlawful at the facility, or a change in federal enforcement priorities that make LICENSEE’s business reasonably impracticable. |

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| B. | Effect of Termination. |

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| a. | Upon the expiration or termination of this Agreement, all of the rights of LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR and LICENSEE shall immediately discontinue all use of the Process and the like, at no cost whatsoever to LICENSOR. |

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| b. | After expiration or termination of this Agreement for any reason, LICENSEE shall immediately discontinue the use of the Process and manufacture, distribution, and sale of the Products and any packaging and advertising materials, official labels or trademarks unless expressly authorized in writing by LICENSOR. |

**14.RELATIONSHIP OF THE PARTIES**

The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

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**15.MISCELLANEOUS**

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| A. | Governing Law. This Agreement shall be governed in accordance with the laws of the State of Colorado. |

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| B. | Notice. Any notice required to be given pursuant to this Agreement shall be in writing and delivered via e-mail, personally to the other designated party at the above stated address, or mailed by certified or registered mail, return receipt requested or delivered by a recognized national overnight courier service. Either party may change the address to which notice or payment is to be sent by written notice to the other in accordance with the provisions of this paragraph. |

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| C. | Assignability. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns, provided, however, that the license granted hereunder is personal to LICENSEE and shall not be assigned by any act of LICENSEE or by operation of law without the written consent of LICENSOR. |

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| D. | Prior Agreements. This agreement contains the entire understanding between the parties relating to the subject matter of this agreement; and all prior proposals, discussions and writings between the parties and relating to the subject matter of this agreement are superseded by this agreement. |

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| E. | Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement. |

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| F. | Severability. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement and replaced by a similar provision that best reflects the intentions of the Parties and that is valid and enforceable. |

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| G. | No Joint Venture. Nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership. It is understood that the relationship established by this agreement is a license and nothing more. |

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| H. | Arbitration. Except as provided for herein, any dispute or disagreement which may arise between LICENSOR and LICENSEE in connection with either any interpretation of this Agreement or the performance or nonperformance thereof shall be settled by an arbitrator that is mutually agreed upon by the Parties. All arbitration shall be subject to the Uniform Arbitration Act as set forth in C.R.S. 13-22-201 et seq. Unless otherwise agreed to by both parties, any arbitration shall be conducted in the city of Denver, CO in the United States of America. The judgment upon any award rendered by the arbitration tribunal may be entered in any court having jurisdiction thereof, for the purpose of judicial enforcement. |

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| I. | Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties named below have duly executed or caused to be duly executed a counterpart of this Agreement. |

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| J. | Agreement Subject to Government Approval. The Parties acknowledge and agree that all provisions of this Agreement are subject to regulatory oversight and approval. In the event that any provision is determined to be non-compliant by any applicable regulatory authority, this Agreement shall be amended by the Parties within the timeframe given by the applicable regulatory authority or thirty (30) days, whichever occurs earlier. If the Parties are unable to negotiate appropriate amendments within the required timeframe, this Agreement shall terminate and be subject to the provisions of section 13 above. |

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

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| LICENSOR  BCD LABS COLORADO, INC. | LICENSEE  High Point Outlets, LLC |
| By:  /s/ Timothy Morrison | By: /s/ Janette Jouplin |
| Title:  Chairman, President and Chief Executive Officer | Title: Member and CEO |
| Date:   4/17/15 | Date: 4/17/15 |

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**SCHEDULE A**

**BRAND NAMES**

**BCD Labs**

**Cannabis for President**

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**LicA#6**

EXHIBIT 10.1 LWERNERNSE AGREEMENT WERNERLOUNGE

**EXHIBIT 10.01**

WERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| THIS **AGREEMENT** is made effective 10/01/2011 between Werner, Inc.,(WERNER) a Nevada corporation with offices at […], NV 89509 (“we”, “us”, and “our”) and Family United, a related party (“you” and “yours”). We and you are referred to collectively as “both of us” or the “parties” and individually as the party. Family United is being treated as an outside party for purposes of this licensing Agreement in anticipation of its ultimate sale or merger with a third party.  **1.01 SCHEDULES**  This Agreement consists of the terms and conditions set out herein and the following Schedules and/or Exhibits (as applicable):    X .  Appendix 1  Order Form    X .  Schedule A  Software License Terms & Conditions    X .  Schedule B  Software Maintenance and Support    X .  Schedule C  Professional Services Terms & Conditions    X .  Exhibit C-1  Change Order Document    X .  Exhibit C-2  Statement of Work  **2.0 DEFINITIONS**  2.1 “Affiliate” shall mean, with respect to the Customer entity signing this Agreement: (1) all business units and divisions of the entity signing this Agreement, or the parent(s) of the entity signing the Agreement, and (2) any entity controlled by, controlling, or under common control with the entity signing this Agreement. Such entity shall be deemed to be an “Affiliate” only so long as such control exists. Upon request, Customer agrees to confirm the Affiliate status of a particular entity.  2.2 “Ancillary Program” shall mean the third party materials delivered with the Programs as specified in one or more Order Forms or the Documentation.  2.3 ”Commencement Date” shall mean the date on which the Program(s) specified in an Order Form is first delivered to Customer.  2.4 “Documentation” shall mean our then current on-line help, guides, and manuals published by us and made generally available by us for the Programs. Documentation shall include any updated Documentation that we provide with Updates. | 2.5 “Maintenance Services” shall mean the services provided by us pursuant to its then current Maintenance Services Policy.  2.6 “Order Form(s)” shall mean a document provided by us to you by which you order Program licenses and related Services and which is executed by the parties. Each Order Form shall incorporate this Agreement by reference.  2.7 “Program” shall mean (i) the version of our software identified as Program(s) specified in an Order Form, and (ii) Updates to such Programs. Programs shall not include Ancillary Programs.  2.8 “Services” shall mean all services provided by us under this Agreement, including Maintenance Services.  2.9 “Statement of Work” shall mean a document provided by us to you under which you may order Services, other than Maintenance Services, at the rates set forth therein , and which is executed by the parties. All Services provided under a Statement of Work shall be provided on a time and material basis unless otherwise set forth therein. Each Statement of Work shall incorporate this Agreement by reference.  2.10 “Supported Platform” shall mean the hardware and software platforms (e.g., database server systems, application server systems, and client systems) that operate with the Programs as expressly set forth in the Documentation.  2.11 “Fees” means the license fees, maintenance fees, professional service fees, equipment purchase price and support fees, and the hosting fees, all specified on an Order Form.  2.12 “Proprietary Information” means:  (i)  In our respect…to be determined at spin-off  (ii)  In your respect...to be determined at spin-off,  2.13 “Software” means the executable object code for: (i) our MISSION solution, together with those of the applications, modules, and toolkits that are licensed by us to you as set out in Appendix 1, (ii) all Software Updates to which you are entitled under our Maintenance Services, and (iii) any complete or partial copies or replacements of any of the foregoing. In the event that you gain access to or possession of any source code for the Software, the term “Software” will include the source code for the Software and all modifications and enhancements thereto. |

WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| **3.0 PRWERNER AND PAYMENT**  3.1 Fees. You agree to pay us for the Fees set out in Order Forms and/or Statements of Work. All Fees are non-refundable, except as specifically otherwise provided herein. Other than as set out in this Agreement, all Fees will be due thirty (30) days from the date of the relevant invoice. An amount in respect of Fees unpaid for thirty (30) days after the due date will bear interest from the due date at a rate of one percent (1%) per month. In the event of any good faith dispute with regard to a portion of an invoice, the undisputed portion will be paid as provided above. Upon resolution of the disputed portion, any amounts owed by you to us will be paid with interest at the rate set forth above, accruing from the due date. Any pre-printed terms on a purchase order that are in addition to or in contradiction of the terms of this Agreement shall be inapplicable. Time is of the essence for all payments due under this Agreement.  *3.2 Late Payments. To avoid the necessity of increasing fees to all Clients to cover the added costs incurred due to Clients who are delinquent, a monthly service charge will be added to late payments. This monthly service charge is determined on a month-to-month basis, and is calculated at an annual rate equal to the higher of (a) 10% or (b) the maximum rate allowable by law This charge will be assessed on all past due invoices where payment is not received by us within sixty (60) days from the date of the invoice.*  3.3 Taxes. The Fees do not include any sales, use, property, excise, value added, gross receipts, or other taxes, or any import or export duties, all of which will be paid by, or invoiced to you. This section does not apply to taxes based on our net income or employer contributions.  **4.0 WARRANTIES**  4.1 No Disabling Devices or Malicious Code. Developer represents and warrants that the Software will not contain any viruses, worms, date or time bombs, back doors, booby traps, trap doors or other code placed therein by Developer or, to Developer’s knowledge, by any third party for the specific purpose of causing the Software to cease operating, or to damage, interrupt, or interfere with Client’s use of or access to the Software, services or associated hardware or data.  b. Service Warranty. Developer represents and warrants that the services shall be performed in a professional and workmanlike manner, and that Developer shall use commercially reasonable efforts to perform such services in accordance with the Deliverables described above.  c. Right to Enter Agreement. Developer represents and warrants that it owns or has the right to license all Software and other materials licensed under this Agreement, to perform the services, and that execution and performance of this Agreement does not violate the terms of any agreement between Developer and any third party. | **5.0 TERM AND TERMINATION**  **5.1 Initial Term and Duration of Agreement.**  The term of this Agreement shall be for an initial 12-month contract period and shall be subject to automatic 12-month renewals on each anniversary thereof unless otherwise terminated by Client by providing notice of termination in writing to Developer no later than ninety (90) days prior to the annual renewal date.  **5.2 Termination.**  If at any time you have issues with the way the program is being executed, you agree to provide us with a written list of any performance-related issues, and allow us thirty (30) days to correct said problems. In the event we have not corrected the issues to your sole satisfaction, you shall be permitted to terminate this agreement with written notice to us. Upon termination, you agree to pay any unpaid amounts due and accrued only through the date of termination. Upon any termination of the agreement we retain full ownership of our software and all the privileges entailed therein provided that you will be entitled to the all the database and other content (as defined below) which shall include but not be limited to member data collected on Client's from your instance of the Software, and archival material for compliance reasons (such as web logs, etc).  **5.3 Termination without Cause.**  Either party shall be permitted to terminate this Agreement at any time, with or without cause on sixty (60) days prior written notice, provided that  (i)  In the event such termination is initiated by us, we shall use best efforts to notify you as soon as possible of such termination and we agree that such termination shall not be effective until you have confirmed in writing to us that you have located alternative services to replace the services provided by us. In addition, we agree to assist you in transferring the Software implementation from our platform to your new service provider. Upon any such termination by us, we shall, within fifteen (15) days of the effective date of termination, refund to you any prepaid fees.  Term. This Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to the terms hereof, shall continue for a period of one (1) year (the “Initial Term”). At the expiration of the Initial Term, this Agreement shall be automatically renewed for successive one (1) year periods (each, a “Renewal Term”), unless either party notifies the other party in writing if its intent not to renew at least sixty (60) days prior to the end of the Initial Term or any Renewal Term (as applicable). The Initial Term and any Renewal Terms are collectively referred to herein as the “Term.” |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| Either party may terminate this Agreement and all rights granted under this Agreement upon written notice to the other party if (a) the other party materially breaches any term or condition of this Agreement and fails to correct such breach within thirty (30) days following written notice specifying such breach, or (b) the other party applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets, or such a receiver, trustee or liquidator is appointed for the other party; or the other party has filed against it an involuntary petition for bankruptcy that has not been dismissed within sixty (60) days thereof, or the other party files a voluntary petition for bankruptcy or a petition or answer seeking reorganization, becomes or is insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors.  **11. Indemnification.**  Each party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party and its directors, officers, employees, agents and affiliates (each, an "Indemnified Party") from and against any and all claims, liabilities, damages, losses and expenses (including, without limitation, attorneys’ fees and expenses, expert witnesses’ fees and expenses, costs of investigation and settlement, and court costs) to the extent they are caused by the negligence or intentional misconduct of the Indemnifying Party, any alleged breach by the Indemnifying Party of any material provision of this Agreement, any allegation inconsistent with any representation or warranty of the Indemnifying Party herein. The Indemnified Party shall promptly notify the Indemnifying Party in writing of any such action, and shall give full and complete authority, information and assistance to control the defense and settlement of such action provided however, the Indemnified Party shall not settle any such action on terms which impose any continuing obligation on the Indemnifying Party without the prior written consent of Indemnifying Party, which shall not be unreasonably withheld or delayed. liability, loss, damage, expense, claims or suits arising out of the Indemnified Party’s use of any material furnished by the Indemnifying Party, and shall pay all expenses in connection therewith, including but not limited to attorneys' fees.  The Indemnifying Party shall have the right, but not the obligation, to control any defense and settlement negotiations that are subject to such indemnification.  We shall have no liability under this section for any claim based upon (i) modifications to our Software not made by us, (ii) the combination or use of our Software with materials not furnished by us, if the claim would have been avoided by use of our Software alone, (iii) your Data, or (iv) your failure to properly license | Third Party Software. In the event any element of our Software is held to, or we believe is likely to be held to, infringe the intellectual property rights of a third party, we shall have the right, in full satisfaction of its indemnification obligations, to (i) substitute or modify the element, (ii) obtain a license for you to continue using the element, or (iii) refund all fees paid by you under this Agreement.  **12.0 Non-disclosure and Confidentiality**  (a) Definitions. Each party hereby acknowledges that it may receive confidential or proprietary information of the other party, including, without limitation, patient information, medical records, pricing information, software, functional and technical specifications, designs, drawings, analysis, research, processes, methods, ideas, “know how”, business information, marketing information and materials and other information designated as confidential expressly or understood to be confidential by the circumstances in which it is provided. Confidential Information does not, however, include:  (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the recipient; or (iii) information received by the recipient from a third party who was free to disclose it.  (b) Covenants. With respect to the other party's Confidential Information, the recipient hereby agrees that during the term of this Agreement and at all times thereafter it shall maintain such Confidential Information in confidence and shall not use, commercialize, publish, transfer, report or disclose such Confidential Information to any person or entity, except to its own employees having a "need to know" (and who are themselves bound by similar nondisclosure restrictions), and to such other recipients as the other party may approve in writing; provided that all such other recipients shall have first executed a confidentiality agreement. Neither party nor any recipient may alter or remove from any software or associated documentation owned or provided by the other party any proprietary, copyright, trademark, service mark or trade secret legend. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event less than reasonable care.  (c) Injunctive Relief. The parties acknowledge that a violation of this Agreement by either party could cause irreparable harm to the other party which would not be adequately compensated by monetary damages, and that in addition to other relief, the non-breaching party shall be entitled to obtain injunctive relief to prevent any actual or threatened violation of any such provision. |

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AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| **13. Publicity.**  The parties agree that each party shall be permitted to make an initial press release announcing the relationship between the parties within sixty (60) days of execution after public release, provided that each party shall, at least ten (10) days prior to release, provide the other party with a proposed copy of the release for review and comment shall not issue the initial press release said party has provided written notice of its approval of the content of the press release. We may use your name on our customer lists and disclose the same to its present and potential customers including, without limitation, by including your name and/or logo on our website and on printed publications such as press releases. We will obtain pre-approval from you for such use.  1. Dispute Resolution. All disputes between the parties arising from or relating to this Agreement shall be settled by final and binding arbitration in accordance with and subject to the Federal Arbitration Act. Judgment upon the award rendered in any such arbitration may be entered in any court of competent jurisdiction in Orange County, California, or application may be made to such court for a judicial acceptance of the award and enforcement, as the law of such jurisdiction may require or allow.  2. Attorneys' Fees. In the event of any dispute with respect to the subject matter of this Agreement, the prevailing party shall be entitled to all of its costs and expenses, including reasonable attorneys' fees and costs, incurred in resolving and/or settling the dispute.  **16. Amendment and Waiver.** Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or in any particular instance and either retroactively or prospectively) only in a written document signed by both parties. Failure of either party to enforce any provision of this Agreement or any right hereunder shall in no way be considered a waiver of such provision or right. No term or provision hereof shall be deemed waived, and no breach excused, unless such waiver or consent is in writing and signed by the party claiming to have waived or consented. A waiver or consent given by a party on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.  **17. Severability.** If any provision of this Agreement is held to be illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. | **18. Binding.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.  **19. Modification.** This Agreement shall not be modified by either party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the parties.  **20. Assignment.**  Neither party may assign this Agreement without the other party’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment by either party in contravention of the foregoing shall be void and of no effect. This Agreement shall inure to the benefit of and be binding upon respective successors and permitted assigns.  **Successors and Assigns.**  The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns, but neither party may assign its interest herein without the prior written consent of the other party.  **21. Entire Agreement.** This Agreement does not constitute an offer by either party and it shall not be effective until signed by both parties. This Agreement, together with the attached schedules that are incorporated by reference, constitute the entire agreement between the parties concerning the subject matter hereof, and this Agreement supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom, including the Previous Agreement.  **22. Force Majeure.** Except for Client's obligation to pay the Fees, if the performance of this Agreement is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, explosion, war, judicial or governmental action, labor dispute, act of God, telephone failure or any other cause beyond the control of either party, performance shall be excused to the extent that it is affected by such causes.  **23. Governing Law.** This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed under the laws of the State of California without regard to conflicts of law provisions thereof. The parties agree that the sole venue and jurisdiction for any dispute arising from this Agreement shall be in Orange County, California. |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

By execution, signor certifies that signor is duly authorized to execute this Agreement on behalf of:

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| **WERNERWERNER BROTHERS, INC.** | |  | **CUSTOMER** | |
|  |  |  |  |  |
| By: | */s/ Henry Cho* |  | By: | */s/ Anne Cho* |
|  | (Authorized Signature) |  |  | (Authorized Signature) |
|  |  |  |  |  |
|  | Henry Cho |  |  | Anne Cho |
|  | (Print Name) |  |  | (Print Name) |
|  |  |  |  |  |
|  | VP Corp Dev |  |  | President |
|  | Title |  |  | Title |
|  |  |  |  |  |
|  | 10-1-2011 |  |  | 10-1-2011 |
|  | Date |  |  | Date |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

This Order Form shall evidence the licenses granted and services provided to the Customer identified below under the terms and conditions contained in the Software License and Services Agreement between Family United and WERNER, Inc. (“WERNER”), WERNERWERNER BROTHERS Contract No. 10012011MC (“Agreement”), the terms of which are hereby incorporated by reference. To the extent that the terms of the Agreement between the parties are in conflict with the terms and conditions of this Order Form, the terms and conditions of this Order Form shall control. Where applicable, the defined terms in the Agreement shall have the same meaning in this Order Form. All monetary denominations shall be in United States dollars. This Order Form shall not be effective unless executed by Customer and an WERNER Company Officer. This Order Form shall not be amended in any manner (e.g., act, custom, e-mail, etc.) and no other agreement between the parties shall be effected except pursuant to a writing signed by Customer and an WERNER Authorized Signatory

1.

SOFTWARE LWERNERNSED AND LWERNERNSE FEES:

$15,000 per month until such time as the Customer’s severability from the WERNER group is determined to be inevitable, in the judgment of WERNER management. Thereafter, the fees will be $1,000 per month for a five (5) year period.

2.

MAINTENANCE FEES

Waived.

3.

BILLING

To be accrued each month until such time as the Customer can pay.

4.

APPROVAL

This appendix will be approved upon execution by both parties:

**Order Accepted and Acknowledged:**

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| **WERNERWERNER BROTHERS, INC.** | |  | **CUSTOMER** | |
|  |  |  |  |  |
| By: | */s/ Henry Cho* |  | By: | */s/ Anne Cho* |
|  | (Authorized Signature) |  |  | (Authorized Signature) |
|  |  |  |  |  |
|  | Henry Cho |  |  | Anne Cho |
|  | (Print Name) |  |  | (Print Name) |
|  |  |  |  |  |
|  | VP Corp Dev |  |  | President |
|  | Title |  |  | Title |
|  |  |  |  |  |
|  | 10-1-2011 |  |  | 10-1-2011 |
|  | Date |  |  | Date |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| The following terms and conditions shall apply to the Software and Documentation provided by us to you and described in Agreement Appendix 1 – Order Form.  **A.1 Definitions**  A.1.1  “End Users” means your full-time, part-time, or seasonal employees, consultants or contractors who either use the Software or are entered as a live master record in the Software or related databases accessed by the Software.  (b)  "Toolkit" means the Software modules that, if licensed to you as set out in Appendix 1, enable you to configure certain aspects of the Software.  (c)  "Toolkit Configurations" mean the configurations you may make to the Software using the Toolkit.  **A.2 License Grant.**  We grant you a non-exclusive, perpetual, irrevocable, non-transferable license to use the Software and Documentation in the Territory as defined in Appendix 1. The license granted hereunder is limited to the maximum number of End Users set out in Appendix 1.  **A.3 Limitations on Use.**  You agree that you will:  (a) make no more copies of the Software than are necessary for your installation of the Software and to create backup copies for archival or disaster recovery purposes;  (b) maintain a log of the number of and location of all originals and copies of the Software;  (c) retain our copyright, trade mark and proprietary notices on any complete or partial copies of the Software, Documentation or our Proprietary Information in the same form and location as the notice on any original work;  (d) not modify any Documentation;  (e) not modify, translate, reverse engineer, decompile or disassemble the Software, except to the extent permitted by applicable law, or except to the extent the license we have granted you permits you to create Toolkit Configurations;  (f) not use the Toolkit to develop or create applications or modules, other than those applications or modules set out in Appendix 1;  (g) not sublicense, transfer, assign or rent the Software or Documentation, other than as permitted in this Agreement; and | (h) not use the Software for a service bureau application.  **A.4 Delivery and Acceptance.**  You may elect for us to either physically ship or electronically deliver the Software and Documentation to you at the address you specify. Delivery will be FCA (Incoterms) from our facility. You are deemed to have received the Software and Documentation upon physical delivery to you or your carrier at our distribution facility or upon our electronic forwarding of the Software and Documentation, as may be the case.  You will have thirty (30) days following delivery of the Software (the "Acceptance Period") to determine if the Software performs substantially in accordance with our specifications, as set out in the Documentation, using standard test data provided by us. If we do not receive notice of any deficiencies within the Acceptance Period, you will be deemed to have accepted the Software. If upon the expiry of the initial Acceptance Period, you identify material defects in the Software, the Acceptance Period will be extended by additional thirty (30) day periods to permit us to remedy any such material defects. Notwithstanding the above, if the Software is put to productive use by you, it will be deemed accepted. "Productive use" means any use of the Software by you other than testing. If, following the second thirty day acceptance period, there remain material defects in the Software, then you shall be entitled to return the Software to us and receive a full refund of all license fees paid by you for the defective Software or components thereof. Both of us agree to act reasonably in making any determinations under this section.  **A.5 Ownership.**  We represent that we have the rights, title or interests in the Software and Documentation to grant you the licenses set out herein. You acknowledge that we or our licensors own the Software and Documentation, including any and all related copyright, patent, trade secrets, moral rights, trade marks and other intellectual property rights, and that you have no right, title, or interest in the Software or Documentation, except for the right to use them as set out herein. We agree that you will own any Toolkit Configurations made solely by you, provided that such ownership rights will not prevent us or any of our other customers from developing and distributing configurations of any kind that are similar to the Toolkit Configurations owned by you. You agree that we will own any Updates, improvements or modifications to the Software other than such Toolkit Configurations made solely by you. |

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AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| **A.6 Source Code Escrow.**  At Client's written request, Developer shall enter into an escrow agreement ("Escrow Agreement") with a mutually agreed upon thirty party escrow agent ("Escrow Agent") and shall provide Client with a copy of any executed Escrow Agreement. Client shall, at its own expense, shall be entitled to participate as a beneficiary under such Escrow Agreement. Developer agrees that upon execution of the Escrow Agreement, Developer shall deposit copies of the source code for any revisions, updates or other modifications to the Software (together with the Current Version, the “Source Code”), to the extent there are any revisions, updates or other modifications delivered to Client, no less frequently than every six (6) months during the term of this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, the Source Code shall not include any source code for any third party software. The Source Code shall not be released from escrow, except in the following event (a “Release Event”):  (1) Developer ceases to carry on business on a regular basis, or becomes insolvent, or enters into voluntary or involuntary receivership; and (2) the Software is no longer supported by Developer or its successor in interest. Upon occurrence of a Release Event, prior to any release of the Source Code from escrow, Client shall provide at least fifteen (15) business days’ advance written Notice to Developer and the Escrow Agent of Client's intent to obtain the Source Code from escrow. Developer shall have five (5) business days to object to release of the Source Code from escrow by providing written Notice of Objection to Client and the Escrow Agent (“Notice of Objection”). If Developer provides Notice of Objection, the parties shall promptly attempt to resolve the issues related to the release of the Source Code from escrow. If the parties are unable to resolve such issues within five (5) business days after the Notice of Objection, either party may initiate arbitration with an arbitrator agreed upon by the parties or, if the parties cannot so agree, with JAMS. If Developer provides Notice of Objection, the Source Code shall not be released from escrow without Developer's prior written consent or a final decision by the arbitrator as provided in this Section. Upon release of the Source Code from escrow, Client shall maintain the Source Code in confidence, shall use commercially reasonable efforts to protect the Source Code from any unauthorized use or disclosure, and shall restrict access to the Source Code to those of employees who have a need for such access and who have agreed in writing to maintain the Source Code in confidence. Client shall use the Source Code to exercise Client’s rights under this Agreement and for no other purpose. Client shall promptly return the Source Code to escrow when it is no longer needed by Client. All expenses associated with the Source Code escrow shall be paid by Client. All expenses and fees associated with establishing the 3rd party relationship with the Escrow Agent will be handled by Developer. | **A.7 Limited Warranties.**  We warrant that:  (a) upon shipment, the media on which the Software is delivered will be free from physical defects and will be virus-free;  (b) the Software does not contain any viruses, disabling code or other similar devices; and  (c) for a period of ninety (90) days following delivery of the Software (the "Software Warranty Period"), the Software will materially perform the functions described in the Documentation.  **A.8 Exclusions.**  Any modifications made by you to the source code or object code of the Software will void any warranties and may limit our ability to provide Maintenance Services. The limited warranties in this Agreement will not apply in the event of any misuse or abuse of the Software. We are not responsible for errors, damage or problems caused by your failure to provide a suitable operating environment, or by any third party software or hardware, accidental damage or other matters beyond our reasonable control.  Client has agreed to license the Fusion Platform owned and operated by the Developer.  1. Engagement. The Developer is engaged by Client to perform the services and provide the software ("Software") as described in this Agreement in the Deliverables section, together with such other and further services as may be reasonably required by Developer, within its sole and absolute discretion, in order to carry out its representation of Client to the best interests of Client and in the furtherance of this Agreement. In the event Developer determines it is required to perform services in addition to those set forth in the Deliverables section, for which Client may be charged, Developer agrees to obtain Client's written approval prior to performing such services.  2. Services and License. The Developer will provide programming and implementation services on the Client’s behalf. These services include the development, implementation, and operation of our MISSION Software solution as identified in the Order Form. The Developer hereby grants the Client license to use the MISSION Software during the term of this Agreement. |

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AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| 3. Control of Services. The Developer shall use its best judgment to control and direct the manner in which the online services are performed on the Client’s behalf. The Client shall have the right to inspect the Developer’s work and to prescribe alterations to ensure that it conforms to the stated agreement.  4. Fees.  a. Shall be due and payable in connection with the Payment Schedule set forth above, provided that monthly payments shall be due and payable within thirty (30) days of the invoice date. These fees do not cover pre-approved out-of-pocket (OOP) expenses. Developer will advise Client when fees exceed this range so that in the event that Client and Developer jointly agree, in writing, to have Developer perform additional services not contemplated in the original plan, Client will be presented with an enhancement request document detailing additional charges, and billed for those additional services at a standard hourly rate, plus associated costs. See payment schedule above on page 11.  b. Failure to Meet Project Timeline. The parties acknowledge that Developer's failure to meet deadlines set forth in the Project Timeline above will cause Client damages in meeting Client's additional business objectives. To that end, Developer agrees that in the event the development period exceeds the timeline set forth above (i.e. 6 weeks), Developer shall refund to Client Five Hundred Dollars ($500) per day for each additional day the timeframe extends beyond the 6 week period described above, provided that in the event the 6 week timeline described above is extended beyond such period by mutual written consent of both parties, the penalty described in this Section 6(b) shall not apply until the end of such mutually extended timeframe.  5. Client Content. Client shall promptly provide Developer with materials (“Client Content”) for incorporation in the Website in a digital format specified by Developer. Client shall provide photographs in digital format. Client represents and warrants that it owns all right, title and interest, including, without limitation, all intellectual property rights in and to the Client Content, or has the right to use and grant Developer a license to use the Client Content. Client hereby grants Developer a non-exclusive royalty-free license to use, copy, prepare derivative works, and distribute the Client Content as part of the Services.  Developer also undertakes to return all Client content (review, membership information, blogs, etc.,) on the NRD and […].com sites, in a format such that the Client can read the content and utilize it in a reasonable manner, to support on-going services. Developer will maintain daily/nightly backups of the Client’s sites. The Developer will supply the Client with a monthly backup on DVD or tape or other suitable electronic medium a complete back up of all Client content. | 6 Client Data. Client shall promptly provide Software Solutions with data (“Client Data”) for incorporation in the solution database in a digital format specified by Software Solutions. Client shall be solely responsible for the accuracy of Client Data.  7. Developer Content. Client acknowledges that Developer may incorporate in the Website certain elements that are pre-existing and proprietary to Developer (“Developer Content”). Developer owns, and shall continue to own, all right, title and interest, including, without limitation, all intellectual property rights, in and to the Developer Content and all methods, techniques, documents, algorithms, knowledge, know-how, code and other works contained therein. Nothing in this Agreement shall constitute an assignment or waiver of Developer's exclusive ownership of Developer Content. Developer hereby grants Client license to use the Developer Content during the term of this Agreement.  8. SOFTWARE TESTING PERIOD. The Software Testing Period ("STP") means the time period during which the Software shall be subject to testing by Client. The STP shall commence on the Software delivery date and end thirty (30) days after the delivery date, at which time the STP shall be deemed to have been terminated unless Developer has received written notice of noncompliance from the Client that identifies with specificity any failure of the Software to operate in substantial conformity with the functional specifications for that release and version of the Software ("Notice of Noncompliance"). Developer shall have until the end of the thirty (30) day period, or ten (10) business days following receipt by Developer of Notice of Noncompliance, whichever is later, to describe in detail how Developer intends to correct the noncompliance, including the time required for such correction (the "Correction Plan"). Upon receipt of the Correction Plan, the Client shall have five (5) business days to provide any reasonable objection to the Correction Plan to Developer in writing ("Objection"). If Client timely provides any Objection to the Correction Plan, the parties shall use commercially reasonable efforts in good faith to agree upon a revised Correction Plan. If the Client does not provide any Objection to the Correction Plan within such five (5) day period, the Correction Plan shall be deemed to have been accepted by the Client. In the event the Client accepts such Correction Plan, Developer shall use commercially reasonable efforts to implement the Correction Plan. Following implementation of the Correction Plan, the Client shall continue the STP for a further fifteen (15) day period in accordance with the procedures set forth above. In the event (i) Developer fails to timely submit a reasonable Correction Plan, (ii) Developer fails to implement substantially the Correction Plan in accordance with its material terms, or (iii) the Software fails to operate in substantial conformity with the functional specifications for that release and version of the Software after the Correction Plan has been implemented and no revised Correction Plan has been reasonably proposed by Developer, the Client may terminate this Agreement and obtain a refund of any fees paid through such termination date. |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| The following terms and conditions shall apply to the **[ Basic | Standard | Enhanced ]** Maintenance and Support Services we provide to you in connection with the Software.  **B.1. STANDARD SOFTWARE MAINTENANCE.** In consideration of payment of the monthly software maintenance and support fee set forth in Section 4 below (the "Software Maintenance and Support Fee"), Licensor hereby agrees to provide Software Maintenance and Support (“Software Maintenance and Support”). Software Maintenance and Support entitles the client to assistance with the MISSION software application via email, telephone (866-311-5332) and/or other automated processes. Software Maintenance and Support is available Monday through Friday, 8:30 a.m. to 6:30 p.m. PST excluding holidays (New Year's Day, Presidents' Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day) ("Live Support Hours"). Assistance requested after hours will be handled the next business day unless After Hours Support is purchased (as further described below). Licensor will provide responses to specific questions on a best effort basis only and may not provide resolution to every request for Software Maintenance and Support. Software Maintenance and Support is provided for ongoing use of the Software; it is not intended to be a substitute for fee based support programs, professional services or training necessary for the implementation, installation or system redesign of the Software. All other services, including but not limited to, onsite assistance, custom programming, database and network administration, and custom designed reports and forms, may be furnished by Licensor, subject to staff availability, and at Licensor’s then current rates and costs. Software Maintenance and Support does not include or apply to any products that are not part of the Software. All terms not defined herein shall have the meaning set forth in the Web Development Agreement dated concurrently herewith ("Development Agreement").  Software Maintenance and Support Provides:  ·  Software Maintenance  ·  Free Error and bug corrections to the Software  ·  Support hours for all support levels 8:30 a.m. to 6:30 p.m. PST Monday - Friday, excluding holidays  ·  24-hour reporting mechanism  ·  Five (5) individual contacts, onetime fee of $250 for each additional individual contact. Individual contacts shall refer to those individuals designated by Licensee to act as the main contacts with Licensor and shall not refer to any limit on the number of calls which Licensee is permitted to make to Licensor relating to Error or bug reporting. | Customer Support  ·  Ten (10) non-cumulative customer support incidents per month. Non-cumulative support incidents shall refer to general "how-to" questions and shall not include any calls made with respect to Software maintenance issues.  In addition, client may choose to utilize consulting services of development or community management resources as needed.  ·  Additional customer support incidents may be purchased for $100.00 each  (a) Except as otherwise provided, Software Maintenance and Support does not include any of the following:  ·  Resolution of network, workstation or environmental errors not directly related to the Software;  ·  Support of any software other than the Software licensed pursuant to the License Agreement;  ·  Support of the Software being used or hosted in a manner for which it was not designed;  ·  Installation of additional copies of the Software.  2.  ERROR CORRECTION.  a. Error Reports. Licensee shall submit to Licensor by email, telephone or by using Licensor’s online tracking system, error reports (“Error Report”) to identify any alleged Errors. Any Error Reports that are submitted outside of Live Support Hours shall be processed by Licensor during the Live Support Hours on the next business day. Emergency Support Requests can also be made outside of Live Support Hours for Level 1 Severity Errors only on a 24-hour basis by calling Licensor’s Emergency Support Request line, and if Licensee has purchased After Hours Support, Licensor shall respond to such request by telephone within one (1) hour; provided. Prior to submitting any Error Report, Licensee shall first attempt reasonable steps to confirm that the problem is being caused by an Error in the Software.  i. Response Times. If Licensee purchases After Hours Support, Licensor shall acknowledge receipt of an Error Report outside of Live Support Hours in accordance with the Error Resolution Schedule set forth in Section 2(d), below.  ii. Term. After Hours Support shall be for a one (1) year and shall be subject to automatic one (1) year renewals on each anniversary of the Effective Date (as defined below) unless otherwise terminated by providing notice of termination in writing to Licensor no later than thirty (30) days prior to the annual renewal date. |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| c. Classification of Error Reports. Licensor shall process each Error Report by classifying the alleged Error into one of the following severity levels.  i. Level 1 Severity. Level 1 Severity means that (i) there is an Error in the Software that causes a site outage such that the service offered by Licensee to its Customers is unavailable for access or log in, or that causes an interruption of service to a Mission Critical Application such that the Mission Critical Application is unavailable; and (ii) there is not Work Around Solution to the computer system hosting the Software or similar type of correction. “Mission Critical Application” means a system, application, server or database that performs an essential function of the Licensee service. “Work Around Solution” shall mean a solution that, when implemented, causes the Software to function in a substantial conformity with the functional specifications.  ii. Level 2 Severity. Level 2 Severity means that (i) there is an Error in the Software that causes a material service performance degradation or latency for a Mission Critical Application, and (ii) there is no Work Around Solution.  iii. Level 3 Severity. Level 3 Severity means that (i) there is a Work Around Solution for what would otherwise be classified as a Level 1 or Level 2 Severity Error, or (ii) there is an Error in the Software that causes a material service performance degradation or latency for a non-Mission Critical Application, including, without limitation, a problem with the functionality of a link, button, graphic or option for either a Mission Critical Application or a non-Mission Critical Application.  iv. Level 4 Severity. All other Errors.  d. Licensor’s Response to Error Reports. Licensor shall acknowledge receipt of an Error Report by Licensee in accordance with the following Error Resolution Schedule.  i. One (1) hour after processing an Error Report involving a classification of a Level 1 Severity problem, or  ii. One (1) business day after processing an Error Report involving a classification of a Level 2, 3 and 4 Severity problem. | e. Error Correction. If Licensee reports an alleged Error to Licensor in writing, Licensor will perform issue analysis to determine whether such alleged Error is an Error. If Licensor confirms the existence of an Error, Licensor will use reasonable efforts to perform Error Correction; provided that: (i) Licensee has installed any updates for the Software that were previously issued to it; (ii) the Software is used solely on computer systems and operating environments and sites for which they were designed and authorized; (iii) no modifications, additions or changes to the Software have been made or added by Licensee or its agents without the prior written consent of Licensor; (iv) the Software is not used in an unauthorized manner. Licensor will not perform Error Correction for, or otherwise support, any version of the Software other than the current version and the immediately preceding version. The following response times constitute a guideline, but not a guarantee, with respect to Licensor’s Error Correction.  i. After processing a Level 1 Severity problem, Licensor will promptly begin and continue to use reasonable efforts on a 24-hour basis (if After Hours support is purchased) to identify and correct the Error. If the Error Correction is not complete within twenty-four (24) hours following processing of the Error Report, Licensor will inform Licensee of the status of such Error Correction efforts and will continue such efforts until Error Correction is complete.  ii. After processing a Level 2 Severity problem, Licensor will promptly begin and continue to use reasonable efforts during Live Support Hours to identify and correct the Error within seventy-two (72) hours following processing of an Error Report. If additional time is required, Licensor will inform Licensee of the status of such Error Correction efforts and will continue such Error Correction efforts until the Error Correction is complete.  iii. After processing a Level 3 Severity problem, Licensor will use reasonable efforts during Live Support Hours to identify and correct the Error within three (3) weeks. If additional time is required, Licensor will inform Licensee of the status of such Error Correction efforts and will continue such efforts until the Error Correction is complete.  iv. After processing a Level 4 Severity problem, Licensor will use reasonable efforts during Live Support Hours to identify the Error, will inform Licensee of the status of any Error Correction efforts and will discuss with Licensee any appropriate schedule for Error Correction.  f. For the purpose of this Maintenance Agreement, the term: |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| i. “Error” shall mean a reported, reproducible and verifiable failure of the Software to operate in substantial conformity with the functional specifications for that release and version of the Software; provided, however, that any non-conformity in performance of the Software resulting from Licensee’s misuse or improper use of the Software or using the Software on an unauthorized machine, in an unauthorized environment or with an unauthorized operating system shall not be considered an Error.  ii. “Error Correction” shall mean a modification or addition to the Software that, when made or added to the Software, renders the Software in substantial conformity to the functional specifications. Error Correction shall include bug fixes, patches, updates and other corrections.  **B.3. TERM.**  The term of this Maintenance Agreement, including After Hours Support, if accepted shall be one year from the go live date (“Effective Date”) and shall be subject to automatic one-year renewals on each anniversary of the Effective Date unless otherwise terminated by providing notice of termination in writing to Licensor no later than thirty (30) days prior to the annual renewal date. Furthermore, this Maintenance Agreement will terminate automatically without notice from Licensor if the License Agreement is terminated.  **B.4. FEES.**  ***[WAIVED]*** Licensee shall pay Licensor, quarterly in advance, a monthly Software Maintenance, Hosting and Support Fee of $1,000 per month as set forth in the License Agreement. Software Maintenance and Support will be suspended in the event Licensee is more than ninety (90) days past due on payment of the Software Maintenance and Support Fee. The monthly Software Maintenance and Support Fee may increase not more than once each year by the lesser of (i) the change in the “Other Goods and Services” category of the CPI for all urban consumers (CPI-U) U.S. City average as published by the U.S. Department of Labor in the prior twelve (12) months, or (ii) five percent (5.0%). Licensee will be notified not less than sixty (60) days in advance of any increase in the Software Maintenance and Support Fee. The monthly Software Maintenance and Support Fee may be pre-paid annually by Licensee at a 5% discount. The fees are defined as 40 percent for Licensing that can be applied in further Enterprise Licensing Agreement when necessary and 60 percent of the Fee as defined is for Hosting.  The 5 percent annual increase will only apply to the hosting percentage of the Fee and NOT to the licensing portion of the Fee.  **B.5. REQUESTS FOR SOFTWARE MAINTENANCE.**  Licensor requires that all requests for Software Maintenance and Support be communicated from an individual(s) so authorized by Licensee. | **B.6. STANDARD UPDATES AND ENHANCEMENTS TO THE SOFTWARE.**  At intervals of which Licensor may reasonably select, standard updates, enhancements and new versions to the Software and baseline functionality will be provided to Licensee at no additional cost, provided that there are no past due Software Maintenance and Support Fees. Unless otherwise communicated by Licensor, such standard updates, enhancements and new versions shall be provided via the Internet. Updates and enhancements to any customized Modules will be provided to Licensee on a bid per project basis.  7. PERIODIC UPDATES AND ENHANCEMENTS TO THE OPERATING SYSTEM AND DEVELOPMENT LANGUAGE LWERNERNSES. The Software Maintenance and Support provided pursuant to this Maintenance Agreement does not include any assistance in the installation of updates or enhancements to any third-party or vendor-provided software, including the operating system, databases and development languages of any third-parties.  **B.8. CUSTOMIZATIONS TO SOFTWARE.**  If Licensor makes any customizations or modifications to the Software, such customizations or modifications provided to Licensee by Licensor shall be considered part of the licensed Software and will be supported under this Maintenance Agreement. If Licensee or any third party makes any customizations or modifications to the Modules provided to Licensee by Licensor, such customizations or modifications will not be supported under this Maintenance Agreement. Licensee is not permitted to make any customizations or modifications to the Software.  **B.9. WARRANTY.**  The warranties, disclaimers, remedies and limitation of remedies noted in Sections A.7 of the License Agreement apply herein. |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

**SOFTWARE MAINTENANCE AND SUPPORT ACKNOWLDGED AND ACCEPTED:**

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| **WERNERWERNER BROTHERS, INC.** | |  | **CUSTOMER** | |
|  |  |  |  |  |
| By: | */s/ Henry Cho* |  | By: | */s/ Anne Cho* |
|  | (Authorized Signature) |  |  | (Authorized Signature) |
|  |  |  |  |  |
|  | Henry Cho |  |  | Anne Cho |
|  | (Print Name) |  |  | (Print Name) |
|  |  |  |  |  |
|  | VP Corp Dev |  |  | President |
|  | Title |  |  | Title |
|  |  |  |  |  |
|  | 10-1-2011 |  |  | 10-1-2011 |
|  | Date |  |  | Date |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| The following terms and conditions shall apply to the Professional Services we provide to you in connection with the Software.  **C.1 Definitions**  (a) "Services" mean the tasks, duties and responsibilities specified in a Statement of Work.  (b) "Statement of Work" means a statement of tasks and duties relating to a specific project or assignment, which is attached to this Agreement as a schedule upon the parties' mutual consent. The Statement of Work will include a statement of the fees and payments relating to the Services described therein.  (c) "Work Product" means any work product or any component thereof that that relates directly or indirectly to the Software and that we may produce, either alone or jointly with others, as specified in one or more Statements of Work.  **C.2 Engagement of Services.**  We agree to perform the Services specified in one or more Statements of Work, which have been signed by both of us and are attached hereto and made a part of this Schedule. In the event of a conflict between any term of this Schedule and a Statement of Work, the terms of this Schedule will prevail to the extent of the conflict. We will use reasonable commercial efforts to meet the timelines set out in the applicable Statement of Work. In the event of a delay or expected delay, we will promptly advise you of the nature and expected effect of the delay. You agree to act in a reasonable, non-capricious manner in resolving all issues related to any delay.  **C.3 Project Management.**  Each party will appoint a Project Manager in each Statement of Work to administer and co-ordinate the Services to be performed under such Statement of Work. The Project Managers will schedule formal program meetings at mutually agreeable times, to be attended by authorized program management personnel of both parties to discuss the status of the Services. | **C.4 Acceptance.**  Unless a different time period or acceptance process is set out in the applicable Statement of Work, you will notify us in writing within five (5) business days following receipt of any Work Product if such Work Product, or part thereof, does not meet the requirements in the Statement of Work. This notice will state the reasons for the Work Product failing to meet the requirements in the applicable Statement of Work. Acceptance will not be unreasonably withheld or delayed. The passage of five (5) business days without notice of non-acceptance following delivery will constitute acceptance by you. We will use all reasonable efforts to fix problems with such Work Product within fifteen (15) business days after receipt of notice or we will present you with a plan to fix such problems within a period of time that is reasonable under the circumstances. For the avoidance of doubt, we will carry out such activity free of additional charge, except to the extent that such activity is required due to your fault, in which case such activity will be carried out on a time and materials basis.  **C.5 Records and Reports.**  We will diligently prepare and keep complete work papers concerning our performance of the Services. At least once a month, or as otherwise mutually agreed to by both of us, we will report to you on the status of the work under all active Statements of Work. On reasonable notice to us, you may inspect our work in progress and receive copies of the same.  **C.6 Change Procedures.**  Changes within the scope of the Services will be made pursuant to a change order in the form set out in Appendix C-1 to this Schedule ("Change Order") executed by the Project Managers of both parties. We will have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change is agreed upon by both of us in writing. Notwithstanding the foregoing, if we, at your request or as otherwise reasonably required, perform work that is not covered by a Statement of Work or Change Order, or exceeds the scope of the Services set out in a Statement of Work or Change Order, such work will be deemed Services provided under this Agreement for which you will pay us on a time and materials basis. |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| **C.7 Personnel.**  We reserve the right to select and assign personnel to each Statement of Work based on available personnel resources and the skill classifications required. We may rely upon third party agents, contractors and subcontractors to provide the Services provided that we remain solely responsible for the Services provided by such third party and for such third party’s compliance with the terms of this Agreement. Notwithstanding the foregoing, we will use reasonable efforts to accommodate any requests that you may make with respect to the assignment of our personnel. In addition, provided that a Statement of Work is then in place, you will have the right to interview our personnel and request our additional recommendations with respect to the assignment of any personnel.  **C.8 Customer Responsibilities.**  General. In connection with our provision of the Services, you agree to perform those tasks and assume those responsibilities: (i) specified in the applicable Statement of Work, and (ii) which would reasonably fall to you. You acknowledge and agree that our performance is dependent upon your timely and effective satisfaction of your responsibilities under this Agreement, and that we will be relieved of any of our obligations (e.g. milestone dates) to the extent such obligations are dependent upon responsibilities of yours that are not met. You further agree to be responsible for any additional fees and expenses incurred due to any delays resulting from your failure to perform your responsibilities under this Agreement in a timely and satisfactory manner.  Premises. If the Services are to be provided on your premises, you shall provide reasonable access as well as safe and adequate space, power, network connections and other resources specified in the Statement of Work or otherwise reasonably requested by us. We shall adhere to your established written guidelines provided to us in advance concerning on-site visits by contractors and the use of your computers and other equipment.  **C.9 Ownership of Work Product.**  You agree that all Work Product will be our property, provided that any intellectual property rights that you may own at the time of executing this Agreement will remain your sole and exclusive property, even if such intellectual property rights are embedded in the Work Product. You irrevocably assign to us all right, title and interest worldwide in and to the Work Product and all applicable intellectual property rights related thereto. Subject to our receipt of your payment for the Services, we agree to provide you with a royalty-free, non-exclusive right to use the Work Product for your own internal business purposes, in conjunction with the Software. No other rights to sublicense or market the Work Products are expressed or implied. | **C.10 Expenses.**  You agree to reimburse us for all reasonable expenses incurred by us in connection with the performance of the Services. Unless otherwise expressly stated in Statement of Work, expenses will be reimbursed after they have been incurred and invoiced to you. We agree to submit such evidence of our expenses as you may reasonably require with written prior client consent. In the performance of Services, our employees will use commercially reasonable efforts to adhere to the following travel and expense guidelines:  (a) Airfare. Subject to availability, we will obtain the lowest-cost, refundable, changeable, economy class, direct (or, if direct flights are unavailable, indirect) fares when traveling by air. If you request in advance that we purchase non-refundable and/or non-changeable tickets, you agree to reimburse us for any scheduled non-refundable and/or non-changeable tickets that are cancelled and/or rescheduled at your request.  (b) Ground Travel. We will use the most economical form of ground travel available (subject to project timing requirements), which may include personal vehicles, rental cars, airport or hotel shuttle buses, and/or taxis.  (c) Lodging. If available, we will stay at hotels with corporate discounts. If your corporate rate is more favorable than our corporate rate, and you authorize us to use your corporate rate when booking, we agree to do so. The maximum reimbursable lodging expense is the room rate, plus reasonable communications charges used in the performance of Services and any applicable taxes. We will not request reimbursement of other items on our hotel bills.  (d) Per Diem Expenses. In lieu of actual meal expenses, a per diem rate of $50 for business travel within North America. To qualify for a per diem allowance, an individual must: (a) have at least one overnight stay away from their residence; and (b) be working at least 100 miles from their usual place of work.  (e) Communication Charges. Reimbursable communications include reasonable remote dial-up access charges, and mobile phone charges for (i) incoming calls directly related to the provision of Services; and (ii) emergency outgoing calls directly related to the provision of Services. We will use reasonable efforts to place outgoing calls from landlines rather than mobile phones whenever possible. Calls originating from a hotel will be made using our corporate calling card to minimize long distance charges. Personal calls and air-to ground telephone charges will not be reimbursed. |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| **C.11 Insurance.**  Each party agrees to carry such adequate health, auto, workers compensation and liability insurance as is required or common practice in its respective businesses. Upon request, each party agrees to provide the other with certificate(s) of insurance setting out the foregoing insurance coverage.  **C.12 Limited Warranty.**  We warrant that we will perform the Services in a workmanlike manner in accordance with industry standards and practices and with the degree of care, skill and expertise as is standard for the provision of services of a similar nature. The foregoing warranty will apply in respect of each Work Product for ninety (90) days following delivery of such Work Product.  **C.13 Termination**  If either party materially breaches the terms of this Schedule or a Statement of Work, the other party may, provided it is not then in breach of this Schedule or the applicable Statement of Work, give written notice of its desire to terminate and the specific grounds for termination. If such material breach is capable of cure and the party in default fails to cure the default within sixty (60) days of the notice, the other party may terminate this Schedule. If such material breach is incapable of cure, the other party may terminate this Schedule immediately upon written notice of its desire to terminate. Both of us agree to act reasonably in making any determinations under this section.  Upon the effective date of termination of this Schedule: (i) we will immediately cease providing the Services; and (ii) you will pay to us, all fees and expenses incurred up to the date of termination.  The Services set out in this Schedule and any Statement of Work attached hereto are not exclusive, and you agree that we may render similar services to others so long as our ability to perform under this Schedule, any Statement of Work or other agreements to which both of us are parties is not materially impaired.  ---------------------------------------------  Fees and Costs. Client agrees to pay fees (“*Fees*”) in the amount of **$15,000** per month for Services rendered pursuant to the Statement of Work. Client also agrees to pay Software Solutions for all reasonable costs and expenses incurred by Software Solutions in connection with the Services that are pre-approved in writing by Client. | Costs may include license fees for the use of any third party software that is included in the MISSION solution ("*Third Party Software*"), and Client shall bear sole responsibility for renewing such license(s), if applicable. Client shall pay all invoices upon receipt. Client’s failure to pay any invoice within 60 days from receipt shall be deemed a material breach of this Agreement, justifying suspension of the Services and immediate termination of this Agreement by Software Solutions. Software Solutions will invoice Client in the manner described in the Statement of Work.  Delays. In the event of (i) a delay by Client in performing any obligation hereunder, (ii) a delay due to Client's request for changes, (iii) a dispute in good faith between the parties as to whether a particular deliverable meets the relevant specifications, (iv) a delay due to any third party's act, failure to act, or delay in performing any obligation whatsoever, or (v) any other delay incurred as a result of Client's actions, the delivery of the remaining deliverables shall be deemed postponed for an equivalent time period. Except for delays incurred under (iii), no such delay shall relieve or suspend Client's obligation to pay Software Solutions, and with respect to (iii), Software Solutions may suspend performance until such dispute is resolved.  Client Data. Client shall promptly provide Software Solutions with data (“*Client Data*”) for incorporation in the solution database in a digital format specified by Software Solutions. Client shall be solely responsible for the accuracy of Client Data.  Software Solutions Data. Client acknowledges that Software Solutions may incorporate in the solution database certain data that is pre-existing and proprietary to Software Solutions (“*Software Solutions Data*”). Software Solutions owns, and shall continue to own, all right, title and interest, including, without limitation, all intellectual property rights, in and to the Software Solutions Data and all methods, techniques, documents, algorithms, knowledge, know-how, code and other works contained therein. Nothing in this Agreement shall constitute an assignment or waiver of Software Solutions's exclusive ownership of Software Solutions Data.  Future Uses. Software Solutions shall be free to use and incorporate into its future products and services any ideas, know-how and techniques that are disclosed to or developed by Software Solutions in the course of its provision of the Services. Nothing in this Agreement shall, or is intended to, limit Software Solutions's ability to develop or enhance its future products or services in any manner whatsoever, including through the use of residual knowledge gained as a result of rendering the Services. |

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

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| **CHANGE ORDER** | Change Order No.: |  |

One of the parties will complete Change Order Item 1. We will complete the remainder of the Change Order, except for the approval/rejection portion, which will be completed by you. Each section may be as long or short as the circumstances require. Additional pages may be attached as necessary.

1.

Describe changes, modifications, or additions to the Services, Work Products and specifications, and performance requirements.

2.

These modifications were requested by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3.

Modifications, clarifications or supplements to description of desired changes or additions requested in section 1 above, if any.

4.

Necessity, availability and assignment of requisite personnel and/or resources to make requested modifications or additions.

5.

Impact on intermediate or final costs, project schedule, specifications and performance requirements.

(a)

Changes in intermediate or final costs:

(b)

Changes in schedule:

(c)

Changes to specifications or performance requirements:

Days of Specification and Design:

Days of Documentation:

Days of Implementation:

Days of Testing:

Days of Training:

Days of Other:

(d)

Changes in materials:

6.

This Change Order will be approved upon execution by both parties:

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WERNERWERNER BROTHERS, INC.

AGREEMENT FOR THE PROVISION OF SOFTWARE AND RELATED SERVWERNERS

**STATEMENT OF WORK**

This Statement of Work shall evidence the Services to be provided hereunder pursuant to the terms and conditions of the **Agreement for the Provision of Software and Related Services** dated October, 1 2011 (“Agreement”) between WERNERWERNER BROTHERS, INC. (“WERNER”) and Family United (“Customer”) which terms and conditions are incorporated herein by this reference. To the extent that any terms and conditions contained in the Agreement or Addendum are in conflict with or in addition to the terms and conditions of this Statement of Work, the terms and conditions of this Statement of Work shall control to as the actual rates to be charged and the number of days and description of the Services to be performed under this Statement of Work. All capitalized terms used herein shall have the meanings given to them pursuant to the Agreement unless otherwise set forth herein.

**Our Understanding of the Project**

WERNERWERNER BROTHERS, Inc. provides it platform to the customer for development of its website.

**Project Approach**

WERNER projects are undertaken by a project team composed of both WERNER and Customer team members. This combined organization is called the integrated project team (“Integrated Project Team”). The Integrated Project Team is managed jointly by a Customer project manager and an WERNER project manager (collectively referred to as the “Project Management Team”).

Project management activities include risk management, task and time management, quality management, status reporting, milestone management and scope-change management. Issue and problem resolution are carried out on an on-going basis throughout the project lifecycle. The WERNER Delivery Quality Assurance Group (“DQA”) supports the Project Management Team with activities that may include Project kick-off activities, risk assessment, Project reviews and Project completion activities.

The composition of the Integrated Project Team will typically change during the various stages of the project. Some people may play more than one role during the project lifecycle.

**PROJECT ASSUMPTIONS**

Customer acknowledges that its participation and cooperation is critical for the success of the Project. The following assumptions are based on information provided by Customer to WERNER relating to the Project and Customer’s current business systems as of the date of this Statement of Work, and have been used to develop WERNER’s current level of effort and cost. Deviations from these assumptions may lead to commensurate changes in the timeline and milestone payments:

**General**

1.

The proposed Start Date for the Project is on or about October 1, 2011

2.

This Statement of Work is based upon WERNER’s initial understanding of the Project as described in Scope of Services and Appendix A above. Upon completing the Initiation Phase, if any scope/level-of-effort changes are discovered, the estimate for the timeline and the resources required to complete the Project will be communicated both verbally and in writing to Customer's management. The Project Plan and timeline, resource requirements and cost estimates may be refined throughout the Project as details on requirements are accumulated.

3.

There will be an Executive Steering Committee, which is made up of executives from Customer and WERNER. This is an oversight organization charged with providing both project vision and direction, which has ultimate responsibility for conflict/issue resolution and has the final decision on scope-change management.

4.

WERNER and Customer’s Project Manager will use Customer’s project management, issue tracking processes and tools, subject to review and approval by WERNER.

5.

Customer shall be responsible for all business process change management and end user education. WERNER will review Customer’s change management and user adoption plans and provide recommendations.

6.

Customer will provide resources with information and knowledge of Customer’s business policy, processes, and their organization sufficient to support WERNER’s provision of Services hereunder.

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7.

Customer will provide WERNER Staff with suitable working space at the designated Customer facility, or such other facility as the parties may agree upon. Such facilities must be available within one (1) week the start for each Consultant as listed in the Project Plan of the Project and shall include adequate environmental controls, lighting, telephones and network access including access to the World Wide Web via the Intranet, with free unescorted ingress and egress.

8.

Customer is responsible for understanding its legacy system data and the requirements for that data.

9.

Any non-availability of the appropriate WERNER or Customer resources may result in changes to the Project Plan and Project timelines. Signing of the Deliverable Acceptance Form and related milestone payment is based on WERNER completing those tasks for which it is responsible. Customer caused delay shall not be the basis for withholding signature and the related payment.

10.

The Detailed Project Plan will include approval time frames for each milestone and lead time for delivery of production hardware as needed.

**Customer – Technical Assumptions**

1.

Customer non-WERNER applications which the Software will communicate are identified in the Assumptions.

2.

Customer is responsible for all network, operating system, and premises security in accordance with its policies or local, state or government regulations.

3.

Customer is responsible for all reasonable backup and recovery to ensure no interruption or loss of work in the development, test, training and production environments.

4.

Customer shall provide ongoing network, database and systems administration support as required during the term of the Project.

5.

Hardware platforms required for development, test, training and production deployment will be identified as an outcome of the Sizing Review and be made available by Customer as needed based on the Project plan requirements.

6.

Customer will assign a test lead who will be responsible for systems test, user acceptance test and performance test and creating the associated test plans and test scripts.

7.

Customer will be responsible for testing, test planning, development of integration and acceptance test cases and test scripts and conducting testing. Also, Customer will be responsible for tools, including those needed for load/performance testing. WERNER will be available to review the test plan and support/fix any problems identified during testing. Customer will conduct the Certification/QA stage in parallel with UAT, and the level of effort for WERNER is be based on no anticipated conflicts to WERNER while Customer is operating in the Certification/QA environment. WERNER Consultants will be available to assist in end to end testing, also known as system integration testing for the components designed and configured by WERNER. WERNER will assist Customer in this testing by initiating or completing test scenarios based on data provided by Customer in a timely manner. If Customer components require rework, WERNER will make commercially reasonable efforts to refocus WERNER Consultants on other work in either Release 2a or Release 2b of the project to conserve budget and time. In the event that refocusing of WERNER Consultants is not feasible and Customer substantially delays in its performance of its obligations under this paragraph to perform various testing procedures, then WERNER may be compelled to request the initiation of the Change Control Process (as defined below).

8.

The creation of additional documentation to meet Customer’s internal policies and practices will be mutually agreed upon during the project.

9.

WERNER will assist Customer in developing business continuity plans, backup and disaster recovery plans, IT user guidelines and administrative procedures, a run book and operating procedures. Customer will take the lead and WERNER will review such documentation and/or provide best practice consulting advice. The plan would include the expected down time of services, action plans, and escalation procedures. The plan would also determine thresholds, such as the minimum level at which the business can operate, the systems that must have full functionality (all staff must have access), and the systems that can be minimized.

10.

WERNER will use commercially reasonable efforts to design the configuration of the UCM Application for optimum end user performance. WERNER will consider user acceptance of the application and recommend to Customer when user performance requirements and design criteria conflict. For example, the guiding principle that redundant data will be minimized may conflict with desired response times.

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**Performance Assumptions**

1.

WERNER will use commercially reasonable efforts to design the configuration of the Software for optimum end user performance. WERNER will consider user acceptance of the application and recommend to Customer when user performance requirements and design criteria conflict.

**Customer – Data Assumptions**

1.

Customer will provide resources with information and knowledge of all business and technical requirements needed to configure the Target Applications.

2.

The deployed system will be in English-American.

3.

Customer will be responsible for cleansing and de-duplication of all Customer legacy data, where appropriate.

4.

The data formats for the data, and representative test data, to be imported from all the external systems will be provided by Customer by the mutually agreed upon dates that will be indicated in the Project plan. Customer will be responsible for the extraction of legacy data into a mutually agreed to format predefined by WERNER for data conversions.

5.

Customer shall be responsible for production of the Customer Test and Acceptance Plan, production of User Acceptance Test Scripts and for the provision of the necessary resources to execute the User Acceptance Tests. WERNER will assist with each of these tasks as set forth herein.

6.

Customer shall be responsible for provision of all test data.

7.

Customer is responsible for data validation, and data cleansing (data quality) and de-duplication of the underlying WERNER source data.

8.

Customer is responsible for understanding its data and the requirements for that data.

9.

Customer is responsible for error handling of real time interfaces.

10.

Integration will be as per named system interface table, Appendix D. Additional integration with systems not listed in this table required for Travel Services to capture profile attributes or any other business requirement is outside of the Scope of Services.

11.

New functionality in MRM Portal for de-duping/matching when searching on a member for leads is anticipated. No data cleansing is provided, since data will be cleansed by Customer’s current practice at the back end system source prior to migration to WERNER.

12.

There will be no initial data load of archived SOS complaints.

13.

Lead data matching to existing lead will be based on member number, name and/or address only.

14.

Customer is responsible for generating auto insurance quotes from its legacy back end systems.

15.

Email functionality to the customer will consist of writing of an Activity record.

16.

The inclusion of email attachments within the UCM Application will not cause a separate Activity record to be written for the attachment.

**Change Control Process:**

Customer acknowledges and agrees that a fundamental guiding principle for planning and executing this Project, including the establishment of the User requirements, will be the utilization of existing functionality of the Target Applications, leveraging a services oriented architecture, on an out of the box basis to the extent that Customer’s core business and technical needs are met. This functionality will be used to implement and deploy the requirements defined in the Business Requirements Document to be mutually developed and approved with Customer. The consulting fees and the planned schedule are based on this principle. The purpose of the Change Control Process is to ensure that requests for Project changes (to requirements or system configuration) are properly recorded, evaluated/assessed, proper disposition, and incorporated into the Project documents, as appropriate, and schedules with the proper priority and due dates.

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The Project Control Document shall include a change control process (the “Change Control Process”) that shall be mutually agreed to by the parties and used in good faith, and that shall include the following characteristics:

1.

A Change Management System (“CMS”) will be established at the beginning of the Project and utilized through the Project life cycle. A Change Control Board consisting of both Customer and WERNER representatives will be established as the governing board, which will approve/reject changes to the project baseline.

2.

Change Order Requests (“COR”) will be submitted using an agreed upon format indicating the requestor information, requested due date, request description, alternative approaches, cost estimates, risk assessments for each alternative, business justification and recommendation where applicable. The request will be submitted to the WERNER Project Manager via electronic mail where it will be evaluated for completeness, evaluated for impact, and forwarded to the Customer Project Manager for consideration by the Change Control Board (“CCB”). WERNER will evaluate the COR within five (5) days of receipt, or such mutually agreed to period of time and provide the COR to the CCB, provided that the COR contains enough detail for evaluation. WERNER generally recommends that the CCB meet on at least a minimum once a week basis, but the parties may agree otherwise. During these meetings, the CCB will evaluate change requests from a business perspective and will approve, disapprove, defer to subsequent Project phases, or return for clarification. In any case, the WERNER Project Manager will record the resulting disposition for Project control purposes.

3.

If the COR is approved, a CCB Change Order Authorization (“COA”) will be issued to the WERNER Project Manager (with a copy to each party’s Legal Department), including a reference to the original COR(s) along with associated priority, due date, and expenditure limits, if any. If the COA affects current approved tasks or other COA(s), the COA will note this as well.

4.

All approved change requests requiring significant effort, will have a dollar figure and schedule impact assigned to it. If the COR identifies a modified scope of Services that are estimated to require the same level of effort estimated in the original scope of Services set forth herein, then the approved COA will document that there is no impact on the Project estimated budget. In the event that there is a change in the fees agreed to through the Change Control Process, then the fees associated with the applicable milestone shall be adjusted accordingly.

5.

The WERNER Project Manager will log the COA. If the COA reflects an agreed change of scope to the Project, either in time, budget, or Materials, the WERNER Project Manager will reflect this change in an updated Project Plan and the affected sections of that plan. The updated Project Plan will then be used as the new baseline for all Project Management activities and referenced in subsequent status reports by the WERNER Project Manager.

**Status Meetings and Status Reports**

The Integrated Project Team will meet regularly (typically weekly) during the life of the Project. The purpose of the meeting is to review the tasks that have been performed in the prior week and that are to be performed in the coming week of the Project, to identify and discuss issues that either party believes to be significant or relevant to the Project, and to review the status of any material open issues.

The Project Management Team will be responsible for ensuring that a status report (usually weekly) is produced to assist Customer in tracking progress against the Project Plan, to document known issues and risks, and to document total hours performed to date and estimated total hours remaining to complete the Project. The weekly status report will be distributed to the Steering Committee. Additionally, status reports may contain details of resources to be assigned and the anticipated tasks planned for the subsequent reporting period.

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**Acceptance of Materials**

Acceptance Process. The parties shall work together in good faith to determine and agree upon an acceptance test procedure (the “Acceptance Test Procedure”) and User Acceptance Criteria for certain Materials, and shall document both in the Project Control Document. WERNER shall submit completed Materials to Customer to test against the applicable Acceptance Criteria and Customer shall notify WERNER promptly of such acceptance or rejection in accordance with the Acceptance Test Procedure. Each Material will be accompanied by a Deliverable Acceptance Form on which the Customer will provide signature. The Detailed Project Plan will identify the date of the Core Project Team meetings held to obtain signoff and the Executive Steering Committee meeting held to obtain signoff. In an effort to adhere to the project schedule, WERNER and the Customer will work to obtain signoff within five (5) business days. Accordingly, the core team meeting will be scheduled for two days following the deliverable handoff. The Executive Steering Committee meeting will be scheduled for two days following the **Core team meeting.**

Acceptance. Customer must accept all Materials that meet the applicable Acceptance Criteria and Acceptance Test Procedure. WERNER will provide to Customer one or more versions of the Business Requirements Document, Design Documents and Analytics Design Documents that will be labeled “draft” so that Customer may begin its review process in anticipation of the presentation of the final version. Customer will provide prompt feedback regarding any draft versions of such Materials. In those cases where: (i) five (5) business days pass without a response from the established Customer approver, (ii) the Materials conform in all material respects to this Statement of Work or the applicable Requirements Document, or (iii) the Materials have been deployed by Customer into production use regardless of whether it meets the agreed upon Acceptance Criteria, the applicable Materials will be deemed accepted so that Consultants may proceed with related subsequent Services (such deemed acceptance shall not void Customer’s right to make a claim under the Services Warranty set forth in the Agreement). Once all Materials required to meet a particular milestone have been accepted or are deemed accepted, the milestone shall be complete and the applicable payments shall be due, payable and nonrefundable (except as provided in the Agreement as a remedy for breach of the Services Warranty) in accordance with the payment schedule set forth under the Staffing and Fees section below. In the event there are no Materials for a milestone, payment shall be due and payable upon completion of the milestone.

Rejection. In the event that a WERNER Material is rejected within the five (5) business day testing period for failure to meet the Acceptance Criteria, Customer shall set forth in a detailed written notice the aspect(s) of the WERNER Material that prevents acceptance under the Acceptance Criteria. WERNER shall revise the non-conforming WERNER Material to meet the Acceptance Criteria and shall re-submit to Customer for further review. This sequence of events shall be repeated up to two (2) times (unless otherwise mutually agreed by the parties), at the end of which, provided Customer continues to reject such WERNER Material, WERNER may, in its sole and reasonable discretion, either (i) re-perform the applicable Service and redeliver the WERNER Material, or (ii) cease performing the Services, terminate this SOW, and refund to Customer the monies paid by Customer (if any) directly allocable to Services directly applicable to the production of the non-conforming WERNER Material. This sequence of actions by WERNER shall be repeated until either the WERNER Material is accepted or the Statement of Work is terminated.

**PAYMENT TERMS**

All Services related to this Project, as outlined in this Statement of Work, shall be performed on a firm fixed fee basis for 15,000 dollars (US $15,000.00) per month. (“Fixed Price Fee”), plus expenses. This Fixed Price Fee is based on the information that WERNER acquired during the due diligence period and WERNER’s experience in delivering many WERNER projects over the past years.

Payment Schedule:

Payment to be accrued on the first of each month until such time as the customer can pay, or the cumulative debt is settled.

Expenses. Expenses will be invoiced according to section 9.1.2 in the SLSA. Expenses for materials purchased specifically for Customer's benefit, if any, will be subject to prior written approval and charged to Customer at cost. No other expenses will be incurred by WERNER and billed to Customer without Customer’s written consent.

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Payment. Fees shall be billed in accordance with the payment schedule above. Expenses and other charges shall be billed on a monthly basis and such bills shall be due and payable net thirty (30) days from Customer’s receipt of said billings. Customer agrees to pay WERNER interest on all amounts not paid when due at the rate equal to the lower of twelve percent (12%) per annum or the highest rate permitted by law, commencing upon the date such amount was originally due and payable to WERNER and ending upon the date payment is received by WERNER. All invoices shall be provided to:

Family United, Inc.

Attn. Accounts payable

[…]

Customer shall inform WERNER promptly in writing if it changes the person to whom invoices should be sent. Customer 1does/0does not (check one) require a Purchase Order ("P.O.") in order to make payments to WERNER for all fees and expenses related to this Project, as outlined in this Statement of Work. If neither box is checked, Customer agrees that WERNER is entitled to payment of invoices without the requirement of a P.O. authorizing payments. In the event that Customer checks the box indicating that a P.O. is required, then Customer agrees to provide required P.O. to WERNER within ten (10) business days after the execution of the Statement of Work by the Customer.

Taxes. Customer shall be solely responsible for payment of any sales taxes (but expressly not for taxes on WERNER’s income, employee benefits, employee, officer, director or affiliate salaries or other compensation or for licenses or other governmental permits required in order for WERNER to do business generally) associated with WERNER’s provision of the Services; should WERNER be required to pay any taxes or other incidental charges associated with the provision of the Services outlined in this Statement of Work, then such taxes or other charges shall be billed to and paid in full by Customer. Should Customer be permitted to declare any such taxes to customs agencies, Customer shall declare and pay said taxes and WERNER shall not be required to invoice Customer with respect to said declarations.

Cost of Delay. Customer hereby acknowledges that as a condition of accepting a fixed fee payment structure, WERNER requires that Customer (1) dedicate resources to timely completing Customer’s obligations hereunder and the applicable Project Plan and (2) remain responsible for the performance of all legacy applications interfaced with the Target Application. In the event that the following occur:

(1)

Customer fails or is otherwise unable to adhere to an established Customer task completion date; or

(2)

a legacy application causes a performance issue because of (i) a lack of understanding by Customer of its legacy system data and the requirements for that data, (ii) Customer’s failure to cleanse and de-duplicate all of Customer’s legacy data as may be necessary, (iii) Customer’s failure to extract legacy data in a timely manner into a format predefined by WERNER for data conversions, or (iv) Customer’s failure to make appropriate changes to legacy systems to enable integration to the UCM application; and

(3)

the failures or inabilities listed in (1) and (2) above cause a delay in the Project that materially impairs WERNER’s ability to perform its obligations hereunder at the times set forth in the agreed upon Project Plan,

If Customer components require rework, WERNER will make commercially reasonable efforts to refocus WERNER Consultants on other work in either Release 2a or Release 2b of the project to conserve budget and time. In the event that refocusing of WERNER Consultants is not feasible and Customer substantially delays in its performance of its obligations under this paragraph to perform various testing procedures, then WERNER may be compelled to request the initiation of the Change Control Process (as defined below).

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Any non-availability of Customer resources or environments may result in changes to the Project Plan and Project timelines.

Miscellaneous. All pricing and discounts are valid through October 1, 2010 for the Services performed hereunder provided that this Statement of Work is executed on or before October 1, 2010. WERNER will provide employees of WERNER for all assigned work, except in the case where WERNER and Customer agree that subcontracted personnel will provide quality services consistent with given assignments. Subcontracted personnel assigned to perform Services hereunder by WERNER will be invoiced to Customer at the rates set forth above.

**ADDITIONAL TERMS AND CONDITIONS**

For purposes of this Statement of Work, Customer and WERNER hereby agree that the following terms and conditions shall apply and, by their signatures below, confirm that this Statement of Work constitutes an amendment to the Agreement solely with respect to the Services performed hereunder:

1.

Non-solicitation. Each party agrees any individual who has received Confidential Information of the other party shall not intentionally solicit for employment the employees or contractors of the other party who are directly involved in the performance of this Agreement for a period of twelve (12) months following such person's last involvement in the performance of this Agreement. Both parties acknowledge that any newspaper or other public solicitation not directed specifically to such person shall not be deemed to be a solicitation for purposes of this provision.

**STATEMENT OF WORK ACKNOWLDGED AND ACCEPTED:**

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| **WERNER BROTHERS, INC.** | |  | **CUSTOMER** | |
|  |  |  |  |  |
| By: | */s/ Henry Cho* |  | By: | */s/ Anne Cho* |
|  | (Authorized Signature) |  |  | (Authorized Signature) |
|  |  |  |  |  |
|  | Henry Cho |  |  | Anne Cho |
|  | (Print Name) |  |  | (Print Name) |
|  |  |  |  |  |
|  | VP Corp Dev |  |  | President |
|  | Title |  |  | Title |
|  |  |  |  |  |
|  | 10-1-2011 |  |  | 10-1-2011 |
|  | Date |  |  | Date |

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**Amendment A**

The platform lease between Werner,Inc, (“WIMI”) and Family United Online, Inc., (with an effective date of January 1, 2014) is hereby amended as follows:

1.

IMI will add a mobile component to the platform as well as any other ancillary upgrades necessary to add mobile functionality for the website www.momscorner.com.

2.

The lease payment from January 1, 2014 and forward will be $4,166.67 per month ($50,000 annually), payable on the first of each month.

3.

The effective date will be January 1, 2014

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|  |  |  |
| Family United, INC: |  | For Werner Brothers, Inc.: |
|  |  |  |
| Corey Meller |  | Henry Cho |
| Name |  | Name |
|  |  |  |
|  |  |  |
| CFO |  | VP of Corporate Development |
| Position |  | Position |
|  |  |  |
|  |  |  |
| */s/ Corey Meller* |  | */s/ Henry Cho* |
| Signature |  | Signature |
|  |  |  |
|  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
| Date |  |  |

**LicA#16**

EX-10.7

**Exhibit 10.7**

**LICENSING AGREEMENT**

THIS LICENSING AGREEMENT is made as of April 17, 2015 by and between BCD Labs Colorado, Inc. a Florida corporation, its successors and assigns, with offices at […], FL 33156, (“LICENSOR”), and High Point Outlets, LLC, a Colorado limited liability company, with offices at […], CO  80304 ("LICENSEE") (collectively the “PARTIES”).

**RECITALS**

WHEREAS, LICENSOR is the owner and developer of certain proprietary inventions and formulas relating to the extraction from, separation and processing (the “Process”) of marijuana to produce certain marijuana-infused products, including edibles, e liquids, waxes and shatter (the “Products”);

WHEREAS, LICENSOR has developed specific know-how based on practical experience in employing the Process and producing the Products, which know-how is of great commercial importance and is not readily available from any patents or other publications;

WHEREAS, LICENSEE is currently licensed by the applicable local and state licensing authorities pursuant to various licenses to produce, manufacture, and sell marijuana-infused products at LICENSEE’s facility (“Facility”) located at the address set forth in the first paragraph of this agreement (the "Leased Real Property"), and such licenses are in good standing;

WHEREAS, LICENSEE desires to obtain exclusive rights to use LICENSOR’S Process in the state of Colorado (the “Territory”), and LICENSOR is willing to grant such rights on the terms and conditions contained in this agreement;

WHEREAS, LICENSEE desires that LICENSOR build a plant at its Facility for the purpose of using the Process to manufacture the Products; and

WHEREAS, as an inducement and condition to LICENSOR'S agreement to build a plant at LICENSEE'S Facility, LICENSEE has agreed to lease the leasehold improvements constructed by LICENSOR from LICENSOR pursuant to a separate agreement (the "Lease") and to enter into this agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. LICENSEE’S RIGHTS**

|  |  |
| --- | --- |
| A. | License. LICENSOR hereby grants to LICENSEE, an exclusive license, without the right to sublicense, for the Term of this Agreement as hereinafter defined, to practice and use the Process in conjunction with the manufacture, production, sale, and distribution of the Products, in the Territory using any and all know how that LICENSOR has or may subsequently acquire during the Term of this Agreement. Such license shall include the right to use any of LICENSOR’S intellectual property rights associated with or related to the Process or the use of the Process in manufacturing and producing the Products including but not limited to brands, trade names, trademarks, and other intellectual property.  Licensee shall have the sole right to determine what Products to manufacture using the Process.  However, it is specifically acknowledged by the LICENSEE that it is not acquiring any rights in or to the Process and as a material part of this exclusive license, LICENSEE shall make no effort to learn or otherwise make use of the Process except as provided herein. |

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| B. | No Other Licenses. The license granted under this Licensing Agreement is specifically set forth herein, and no licenses are granted by LICENSOR to LICENSEE by implication or estoppel. |

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| C. | Limitation on Use.  LICENSEE shall not use the license granted herein for any purpose other than as authorized by this Licensing Agreement. Any proposed additions or modifications to the Process, Products or proposed new developments based on the Process or Products shall be submitted in writing to LICENSOR. |

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| D. | Compliance.  LICENSEE shall package and label the Products in accordance with the Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code using mutually agreed upon brand names and labels as set forth in Schedule "A" attached hereto. Licensee shall not use any brand names other than the mutually agreed upon brand names in connection with the production, manufacture, advertising, sale, and distribution of the Products. |

**2.TERM OF THE AGREEMENT**

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|  | A. This Licensing Agreement and the provisions hereof, except as otherwise provided, shall terminate upon the earlier of the date that is ten (10) years from the date of execution of this Licensing Agreement by both parties (the “Effective Date”), or the date upon which LICENSOR'S lease of the Leased Real Property is terminated (the “Term”), and shall automatically be renewed for a term of twelve (12) months at the end of each term as long as the lease for the Leased Real Property is in effect (or such lesser period as remains under the lease for the Leased Real Property)  unless written notice is provided by either party to the other, at least fifteen (15) days before the end of the Term. |

**3.OBLIGATIONS OF LICENSEE**

|  |  |
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| A. | Compliance with Colorado Law. LICENSEE agrees that it shall, at all times, comply with the C.R.S. 12-43.3-101 et. seq (“Colorado Medical Marijuana Code”), C.R.S. 12-43.4-101 et seq. (“Colorado Retail Marijuana Code)*,* and any other applicable state or local law |

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| B. | Process. LICENSEE shall not reverse engineer, reverse compile or disassemble any Process, or otherwise attempt to analyze any steps in the Process. The foregoing shall not apply to such activities conducted in the ordinary course of technical support of Products. |

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| C. | Records and Reports. LICENSEE will maintain accurate records of amounts and kinds of Products processed by use of the licensed Process and will submit monthly reports reflecting its operations under this agreement in such form as LICENSOR shall require from time to time. |

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| D. | Inspection of Premises, Records and Products. LICENSOR shall have the right at all times to inspect the premises of LICENSEE (including all materials and supplies used by LICENSEE in its operations under this agreement), to audit LICENSEE’S records for the purpose of determining compliance with any or all portions of this agreement provided such inspection is permitted under the Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code, and to test LICENSEE'S Products to confirm the quality thereof provided such testing is in compliance with Colorado law. |

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| **E.** | Testing of Products.  LICENSEE shall periodically send its Products to an independent Marijuana Testing Facility licensed by the State of Colorado and applicable local licensing authorities, at its sole cost, to confirm that LICENSEE'S are of the quality stated by LICENSEE and otherwise comply with applicable law. |

**4.OBLIGATIONS OF LICENSOR**

|  |  |
| --- | --- |
| A. | LICENSOR shall also be available by telephone, e-mail, fax or, if requested by LICENSEE, in person, in connection with LICENSEE’S use of the Process to develop and support the Products, including the use of reasonable commercial efforts: (I) to answer LICENSEE’S questions regarding the proper utilization and optimization of the Process; and (ii) to provide solutions, to correct any reproducible error in the Process. |

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**5. COMPENSATION**

|  |  |
| --- | --- |
| A. | License Fee. LICENSEE agrees to pay LICENSOR \* annually, payable in monthly installments of \* no later than the fifth (5th) day of each month, in advance, to secure the licensing rights to use the Process to manufacture, produce and sell the Products (the “License Fee”). The License Fee is a payment independent of any other payments required to be paid between the Parties and is not creditable against any such payments. |

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| B. | Survival. LICENSEE’S obligations for the payment of the License Fee shall continue for so long as LICENSEE continues to use the Process to manufacture, sell or otherwise market the Licensed Products. |

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| --- | --- |
| C. | Late Payments. Late payments shall incur interest at the rate of ten percent (10%) per annum from the date such payments were originally due. |

**6.  MARKETING AND PUBLICITY**

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| --- | --- |
| A. | Joint Efforts. The Parties agree to work together to identify areas where joint-marketing efforts would benefit both parties, and upon mutual agreement shall implement such efforts. |

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| B. | Non-Disclosure. Neither party shall disclose the terms of this Agreement to any third party, other than its financial or legal advisors, or make any announcements regarding the nature of the relationship between the parties without the prior approval of the other party, except that a party may disclose the terms of this Agreement where required by law, provided that such party uses reasonable effort to obtain confidential treatment or similar protection to the fullest extent available to avoid public disclosure of the terms of this Agreement. A party required by law to make disclosure of the terms of this Agreement will promptly notify the other party and permit the other party to review and participate in the application process seeking confidential treatment. Under this provision, the parties agree that the terms of the agreement are also to be kept confidential, unless required by law, or otherwise agreed to by both parties. |

**7. INTELLECTUAL PROPERTY RIGHTS**

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| A. | LICENSEE acknowledges that the Process is a valuable property of LICENSOR and qualifies as a trade secret within the meaning of the Colorado Uniform Trade Secrets Act. LICENSEE further acknowledges that LICENSOR is the sole and exclusive owner of the Process. |

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| B. | This Agreement shall not be construed to give LICENSEE any vested right, title, or interest in the Process, the Products, or any trademarks or copyrighted materials of LICENSOR except to the extent and in the manner, time, and places LICENSEE is authorized subject to the provisions of this Agreement. |

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| C. | LICENSOR may seek, obtain and, during the Term of this Agreement, maintain in its own name and at its own expense, appropriate intellectual property protection for the Process or the Products. |

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| D. | LICENSEE acknowledges the legal validity and commercial value of the Process and the Products and Licensor’s related intellectual property, including but not limited to any state or federal registrations that LICENSOR owns, obtains, or acquires. LICENSEE shall not, any time, file any application for intellectual property protection with the United States Patent and Trademark Office, or with any other governmental entity for the Process or the Products. This shall include any related or substantially similar intellectual property related to the Process or Products or any proposed new intellectual property that has been developed using the Process licensed hereunder, including intellectual property developed by the employees of LICENSOR who are supervised by LICENSEE and work for have worked at LICENSEE'S Facility.. |

\* Portions of this document omitted pursuant to an application for an order for confidential treatment pursuant to Rule 24b-2 under the Exchange Act. Confidential portions of this document have been filed separately with the Securities and Exchange Commission.

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| E. | In the event that a material breach of this Agreement by LICENSEE occurs or is threatened, the LICENSOR shall be entitled to injunctive relief restraining the act or threatened act which constitutes or would constitute a breach hereunder.  In addition, the LICENSOR shall be entitled to other available relief for any such material breach. |

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| F. | The parties agree to execute any documents reasonably requested by the other party to effect any of the above provisions. |

**8. INFRINGEMENTS**

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| A. | LICENSOR shall have the sole and exclusive right, but not the obligation, in its discretion, to institute and prosecute lawsuits against third persons for infringement of the rights licensed in this Agreement. All sums recovered in any such lawsuits, whether by judgment, settlement or otherwise, in excess of the amount of reasonable attorneys’ fees and other out of pocket expenses of such suit, shall be retained solely by LICENSOR. |

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| B. | LICENSEE agrees to fully cooperate with LICENSOR in the prosecution of any such suit against a third party and shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. The LICENSOR shall reimburse the LICENSEE for any expenses incurred as a result of such cooperation. |

**9.REPRESENTATIONS AND WARRANTIES**

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| A. | LICENSOR represents and warrants that it has the right and power to grant the licenses granted herein. |

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| B. | LICENSEE shall be solely responsible for the manufacture, production, sale and distribution of the Products and will bear all related costs associated therewith. |

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| C. | LICENSEE shall provide and maintain at it sole cost and expense during the term of this agreement commercial general liability insurance endorsed for [\*](https://www.sec.gov/Archives/edgar/data/1522222/000118518515001059/ex10-7.htm#ref.ID0EJTAE) which insurance policy shall name LICENSOR as an additional insured and shall be written on an occurrence form coverage basis. Evidence of such coverage reasonably satisfactory to LICENSOR shall be delivered to LICENSOR upon request therefor. Such insurance shall be issued by reputable and sound insurance companies satisfactory in LICENSOR’s discretion. |

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| D. | LICENSEE shall also comply with such guidelines, policies, and requirements as LICENSOR may give written notice from time to time related to the Process. |

**10. INDEMNIFICATION**

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| A. | LICENSEE shall, at its own expense, defend and indemnify LICENSOR for damages and reasonable costs incurred in any suit, claim or proceeding brought against LICENSOR or its subsidiaries based on (i) the manufacture, production, sale, and distribution of the Products by LICENSEE including, but not limited to product liability claims; (ii) modification of the Process by someone other than LICENSOR; (iii) LICENSEE’s continued use of the Process after notification that the Process may be infringing; (iv) LICENSEE’s use of the Process in a manner not permitted by Licensee; or (v) any matter relating to the Leased Employees. |

**CONFIDENTIAL INFORMATION**

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| A. | For purposes of this agreement, the term “Confidential Information” shall mean the following: |

\* Portions of this document omitted pursuant to an application for an order for confidential treatment pursuant to Rule 24b-2 under the Exchange Act. Confidential portions of this document have been filed separately with the Securities and Exchange Commission.

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| i. | Any information, formula, recipe, know-how, data, process, technique, design, drawing, program, formula or test data, work in process, engineering, manufacturing, marketing, financial, sales, supplier, customer, employee, investor or business information, whether in oral, written, graphic, or electronic form, or |

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| ii. | Any document, diagram, drawing, computer program or other communication which is either conspicuously marked “confidential”, known or reasonably known by the other party to be confidential, or is of a proprietary nature and is learned or disclosed in the course of discussions, studies, or other work undertaken between the parties. |

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| B. | During and after the term of this agreement, LICENSEE shall not use the Confidential Information except for the manufacture, sale and distribution of Products, as set forth herein, and shall not disclose the Confidential Information received under this agreement to any other person or entity other than its employees, and shall also require all its employees who receive such Confidential Information to sign written agreements requiring them not to disclose such Confidential Information during and after their tenure with LICENSEE. LICENSEE shall be responsible for a breach of this agreement by its employees. |

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| C. | Upon termination of this agreement, LICENSEE shall promptly deliver to LICENSOR any and all Confidential Information in its possession or under its control. |

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| D. | The parties agree that Confidential Information shall not include any of the following types of information: |

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| i. | Information that is or becomes generally available to the public other than as a result of a disclosure by LICENSEE or its employees, |

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| ii. | Information that was available to LICENSEE on a non-confidential basis prior to its disclosure to LICENSEE by LICENSOR or its agents, or |

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| iii. | Information that becomes available to you on a non-confidential basis from a source other than LICENSOR or its agents, provided that such source is not bound by a confidentiality agreement with LICENSOR known to LICENSOR or its employees. |

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| E. | LICENSEE shall not be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government; provided that ten (10) days’ notice first be given to LICENSOR so a protective order, if appropriate, may be sought by LICENSOR. |

**12.OPTION TO OWN PORTION OF MIP LICENSE**

If during the Term of the Agreement, applicable state and local laws should change to permit, in whole or in part, the ownership or issuance of a marijuana-infused products license in Colorado (a "MIP License"), directly or indirectly, by or to a person or entity who is not a Colorado resident, at LICENSOR'S request, LICENSEE shall, to the extent permitted by and in accordance with applicable laws, promptly transfer up to a 56% ownership interest in its MIP Licenses  (or such lesser percentage as may be permitted by law, from time to time), directly or indirectly, to LICENSOR or its designee or designees, if and only if LICENSOR or its applicable designee meets all applicable legal requirements to be an owner, directly or indirectly, in the MIP License.  Such transfer or transfers may occur in one or more increments to the maximum extent permitted by applicable laws as interpreted by legal counsel for LICENSOR.  In exchange for such transfer or transfers, the License Fee payable by LICENSEE shall be reduced proportionately. For example, if LICENSEE transferred 28% of its ownership in its MIP license to LICENSOR, the License Fee would be reduced to[\*](https://www.sec.gov/Archives/edgar/data/1522222/000118518515001059/ex10-7.htm#ref.ID0ESBAG) per year. Notwithstanding the foregoing, this Section 12 shall only apply to the extent LICENSEE has not already transferred a total of 56% of its ownership in its MIP License to LICENSOR, pursuant to this or any other Agreement between LICENSEE and LICENSOR, and the reduction in the License Fee shall occur upon and to the extent of the transfer of the MIP Licensee in addition to, and not in lieu of, any other monetary concessions provided by LICENSOR to LICENSEE under any other agreement between the parties.

\* Portions of this document omitted pursuant to an application for an order for confidential treatment pursuant to Rule 24b-2 under the Exchange Act. Confidential portions of this document have been filed separately with the Securities and Exchange Commission.

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**13.TERMINATION**

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| A. | Default and Termination. LICENSOR shall have the right to immediately terminate this Agreement by giving ten (10) days written notice of a material breach by LICENSEE, followed by LICENSEE’s failure within the above-mentioned ten (10) day period to cure the breach. A material breach includes, but is not limited to: |

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| a. | LICENSEE’s violation of the Colorado Retail Marijuana Code, Colorado Medical Marijuana Code or any other applicable state or local law; or |

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| b. | LICENSEE’s filing of a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if the LICENSEE discontinues its business or a receiver is appointed for the LICENSEE or for the LICENSEE’S business and such receiver is not discharged within thirty (30) days; or |

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| c. | LICENSEE’s breach any of the provisions of this Agreement relating to the unauthorized assertion of rights in the Process; or |

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| d. | LICENSEE’s failure to make timely payment of the License Fee when due two or more times during any twelve-month period; or |

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| e. | A material change in the ownership or control of LICENSEE or material change of location; or |

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| f. | LICENSEE’s attempt to grant or grant a sublicense or assign any right or duty under this Licensing Agreement without the written consent of LICENSOR; or |

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| g. | LICENSEE'S default under the Lease after the expiration of any applicable notice and cure periods; or |

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| h. | LICENSEE commits any act or omission that, in the sole discretion of LICENSOR, damages or reflects unfavorably, or otherwise detracts from the good reputation of LICENSOR |

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| i. | A change in state or local laws or regulations, or the application thereof, that makes LICENSEE’s business or the production of the Products unlawful at the facility, or a change in federal enforcement priorities that make LICENSEE’s business reasonably impracticable. |

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| B. | Effect of Termination. |

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| a. | Upon the expiration or termination of this Agreement, all of the rights of LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR and LICENSEE shall immediately discontinue all use of the Process and the like, at no cost whatsoever to LICENSOR. |

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| b. | After expiration or termination of this Agreement for any reason, LICENSEE shall immediately discontinue the use of the Process and manufacture, distribution, and sale of the Products and any packaging and advertising materials, official labels or trademarks unless expressly authorized in writing by LICENSOR. |

**14.RELATIONSHIP OF THE PARTIES**

The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

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**15.MISCELLANEOUS**

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| A. | Governing Law. This Agreement shall be governed in accordance with the laws of the State of Colorado. |

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| B. | Notice. Any notice required to be given pursuant to this Agreement shall be in writing and delivered via e-mail, personally to the other designated party at the above stated address, or mailed by certified or registered mail, return receipt requested or delivered by a recognized national overnight courier service. Either party may change the address to which notice or payment is to be sent by written notice to the other in accordance with the provisions of this paragraph. |

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| C. | Assignability. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns, provided, however, that the license granted hereunder is personal to LICENSEE and shall not be assigned by any act of LICENSEE or by operation of law without the written consent of LICENSOR. |

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| D. | Prior Agreements. This agreement contains the entire understanding between the parties relating to the subject matter of this agreement; and all prior proposals, discussions and writings between the parties and relating to the subject matter of this agreement are superseded by this agreement. |

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| E. | Waiver. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement. |

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| F. | Severability. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement and replaced by a similar provision that best reflects the intentions of the Parties and that is valid and enforceable. |

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| G. | No Joint Venture. Nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership. It is understood that the relationship established by this agreement is a license and nothing more. |

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| H. | Arbitration. Except as provided for herein, any dispute or disagreement which may arise between LICENSOR and LICENSEE in connection with either any interpretation of this Agreement or the performance or nonperformance thereof shall be settled by an arbitrator that is mutually agreed upon by the Parties. All arbitration shall be subject to the Uniform Arbitration Act as set forth in C.R.S. 13-22-201 et seq. Unless otherwise agreed to by both parties, any arbitration shall be conducted in the city of Denver, CO in the United States of America. The judgment upon any award rendered by the arbitration tribunal may be entered in any court having jurisdiction thereof, for the purpose of judicial enforcement. |

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| I. | Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties named below have duly executed or caused to be duly executed a counterpart of this Agreement. |

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| J. | Agreement Subject to Government Approval. The Parties acknowledge and agree that all provisions of this Agreement are subject to regulatory oversight and approval. In the event that any provision is determined to be non-compliant by any applicable regulatory authority, this Agreement shall be amended by the Parties within the timeframe given by the applicable regulatory authority or thirty (30) days, whichever occurs earlier. If the Parties are unable to negotiate appropriate amendments within the required timeframe, this Agreement shall terminate and be subject to the provisions of section 13 above. |

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

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| --- | --- |
| LICENSOR  BCD LABS COLORADO, INC. | LICENSEE  High Point Outlets, LLC |
| By:  /s/ Timothy Morrison | By: /s/ Janette Jouplin |
| Title:  Chairman, President and Chief Executive Officer | Title: Member and CEO |
| Date:   4/17/15 | Date: 4/17/15 |

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**SCHEDULE A**

**BRAND NAMES**

**BCD Labs**

**Cannabis for President**

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**LicA#17**

EXHIBIT 10.12

**Exhibit 10.12**

**TECHNOLOGY LICENSE AGREEMENT**

THIS TECHNOLOGY LICENSE AGREEMENT ("Agreement") is entered into as of March 24, 2006, (the "Effective Date") by and between Ceramac Technologies LLLP, a Florida limited liability limited partnership, having its offices located at […] (the. "Licensor"), and SurgeImpact , Inc. ("SIP"), a Florida corporation, having its offices located at […], Florida 33066 (the "Licensee").

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Background

1.1 Licensor is the owner of certain proprietary technology related to a heat 'regenerative engine that uses water as the working fluid as well as the lubricant as defined in Section 2.1 below as the "Licensed Technology".

1.2 Licensee wishes to acquire a license to use, make, sell, offer to sell, and import the Licensed Technology (as hereafter defined) in accordance with the terms of this Agreement.

1.3 As Licensee has represented that, its parent company, SurgeImpact International Management Company of Florida, Inc. and its President Jeb Boons are highly skilled and experienced in all aspects of business management and manufacturing, with special expertise in product development and commercialization of new technologies, including extensive experience and special expertise in marketing to and contracting with the U.S. Military Establishment (as hereafter defined),and Licensee hereby acknowledges that such representations have induced Licensor to enter into this Agreement in reasonable reliance thereon and that such representations are true and correct and made by Licensee in good faith. Licensor and Licensee may from time to time enter into separate Consulting Agreements whereby Licensor will provide consulting services to Licensee to obtain government and other contracts for further developn1ent and application of the Licensed Technology (as that tem1 is defined below); provided, however, that until and unless such Consulting Agreements are expressly entered into between Licensor and Licensee no commission, royalty or "finders fee" shall be due from Licensor to Licensee for any agreement, contract, letter of intent or other document entered into between Licensor and any third party, including, but not limited to, any third party who is recognized as affiliated or associated with any branch of the armed forces of any nation or any business which is in whole or in part recognized as a military contractor or subcontractor or otherwise performs services under contract for the military of any nation. Further any Consulting Agreements entered into by and between the Licensor and Licensee are hereby incorporated by reference. If there is a conflict between this Agreement and the terms of any Consulting Agreement, the terms of this Agreement shall govern.

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2. Definitions

2.1 Licensed Technology means Licensor's proprietary technology related to a heat regenerative engine that uses water as the working fluid as well as the lubricant and includes any Information, inventions, Innovations, discoveries, improvements, ideas, know-how, developments, methods, designs, reports, charts, drawings, diagrams, analyses, concepts, technology, records, brochures, instructions, manuals, programs, manufacturing techniques, expertise, inventions whether or not reduced to practice or the subject of a patent application, test-protocols,. test results, descriptions, parts lists, bills of materials, documentation whether in written or electronic format, prototypes, molds, models, assemblies, and any similar intellectual property and information, whether or not protected or protectable by patent or copyright, any related research and development information, inventions, trade secrets, and technical data in the possession of Licensor that is useful or is needed in the design or manufacture of such heat regenerative engine that uses water as the working fluid as well as the lubricant as identified in Exhibit "A", attached hereto and incorporated herein by reference and which may be amended from time to time by the parties. This includes without limitation, U.S. P tent Application Serial No. 111225,422, entitled Heat Regenerative Engine, filed September 14, 2005, all patents that may issue under this patent application and their divisions, continuations, continuation-in-patis, reissues, reexaminations, inventor's certificates, utility models, patents of addition, extensions, as well as certain research and development information, inventions, know-how, and technical data that relate to and/or are disclosed in said patent application, and any other patent applications, patents divisions, continuations, continuation-in-parts, reissues, reexaminations, inventor 's certificates, utility models, patents of addition, extensions that may issue or be filed that relate to said Licensed Technology and/or said Patent Application.

2.2 Licensed Products means products in the Field of Use (as· hereafter defined) made using in any manner the Licensed Technology in the Territory (as hereafter defined) and identified in Exhibit B, which may be amended by mutual agreement of the parties from time to time to include additional products. Licensed Product specifically excludes, without limitation, motive power and/or generator units in the automotive and truck industries. Licensee hereby agrees that in the event Licensee develops any Additional Licensed Products as defined in Section 6.1, Licensee shall notify Licensor within 10 days after the first sale of any Additional Licensed Products and upon the date such notification is sent such Additional Licensed Products shall be deemed included among the Licensed Products on Exhibit "B'' and such Exhibit shall be expressly amended by the parties to add such Additional Licensed Products within 30 calendar days after such notification. If Licensee fails to timely notify Licensor of such Additional Licensed Products then the License of Section 3.1 of this Agreement shall not apply to such product and such product shall be deemed infringing and this Agreement will terminate and the License for all Licensed Products shall be deemed null and void unless Licensor agrees in writing to waive termination of the Agreement and the License due to such failure, in Licensor 's sole and absolute discretion. At such time as the Additional Licensed Product is deemed included in Exhibit B Licensee agrees that it thereby sells, assigns, and transfers unto Licensor all of Licensee's .full and exclusive right, title, and interest in and to any and all intellectual property rights associated with such Additional Licensed Products, including; without limitation, to any and all inventions arising from the Additional Licensed Products ("Inventions") and all letters patent of the United States and other foreign countries which may be or have been issued on the Invention, all divisions, reissues, and continuations thereof, and all other inventions disclosed therein, together with all claims for damages by 'reason of past or future infringement, with the right to sue for and collect the same for the use and benefit of Licensor and its successors and assigns, to any copyrights, and any proprietary intellectual property rights in such Additional Licensed Products, and at Licensor's request, will cause to be executed and delivered any applications, affidavits, assignments, and other instruments as may be deemed necessary or desirable by Licensor to secure for or vest in Licensor, its successors or assigns, all right, title, and interest in and to any application, patent, or other right or property covered by this Section.

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1.2, including the right to apply for and obtain patents in the United States or any foreign countries under the provisions of the International Convention; and Licensee hereby requests and authorizes the United States Commissioner of Patents and Trademarks to issue any and all United States patents granted on the Inventions to Licensor as owner of the entire right, title, and interest in and to the same, and authorizes appropriately empowered officials of foreign countries to issue any letters patent granted on the Inventions to Licensor as owner of the entire right, title, and interest in and to the same.. Licensee shall have the right to use the Licensed Technology for such Additional Licensed Product in accordance with the License provided under this Agreement but no royalty shall be thereafter due to Licensor for such Additional Licensed Product.

2.3 U.S. Military Establishment means those branches of the Armed Forces, which are military branches of the U.S. Department of Defense.

2.4 Biomass Fuels means fuels where petroleum based fuels constitute twenty percent (20%) or less of the energy content of the fuel used. Biomass fuels include crop wastes such as stalks and leaves, wood, food wastes, manure and refuse (including tires).

2.5 Field of Use means electrical power generation that uses Biomass Fuels as a fuel source (“Biomass Use”) and electoral power generation solely for the U.S. Military Establishment that uses any fuel source (“Military Use”).

2.6 Territory means the United States and Canada for Biomass Use; and world-wide for the Military Use, but may be an1ended from time to time upon written agreement between the parties

2.7 Gross Selling Price means the total arms length selling price of a Licensed Product or the selling price as set forth on the invoice therefore, whichever is greater, net of any charges for shipping and insurance.

3. Grant of License

3.1 Licensor grants to Licensee an exclusive, non-transferable, non-sublicenseable license to use the Licensed Technology to make, use, sell, offer to sell, and import Licensed Products solely for the Field of Use and solely in the Territory ("License"). Notwithstanding the foregoing, the License may be transferred or sublicensed to a third party solely upon the prior written consent of the Licensor, which consent may be withheld at Licensor 's sole and absolute discretion. This License will automatically expire upon termination of this Agreement. . Licensee may sublicense to a subsidiary of Licensee which is at least 50% owned by Licensee; so long as such subsidiary first agrees in writing to abide by all of the terms and conditions of this Agreen1ent and fully discloses to Licensor in a manner acceptable to Licensor as determined in Licensor's sole discretion, all of the ownership interests held by all owners of such subsidiary and Licensee such that Licensor may determine whether to consent to such sublicense; if approved, Licensee ·shall guarantee all license payments due from such subsidiary under such sublicense.

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3.2 Unless terminated earlier pursuant to other provisions of this Agreement, this Agreement . and the License granted herein will take effect on the Effective Date and will continue in force and effect until December 31, 2030; provided, however, that the License is for the Licensed Technology and as such the parties agree that all License Fee, Royalties or , other payments required hereunder shall not be abated in the event of the termination or abandonment of any patent referenced herein or hereafter issued related to the Licensed Technology.

4. License Fee/Royalty

4.1 Licensee will pay to Licensor in consideration for the License granted above, $100,000 dollars (“License Fee”) by September 30, 2007, unless accelerated by the subsequent points of Clause 6.a thru I, according to the following schedule:

a. Licensee will pay $5,000 to Licensor at the signing of this Agreement.

b. In an effort to help accelerate payment due to Licensor hereunder, Licensee will use its best efforts to raise investment capital for Licensees company as soon as possible. Licensor shall retain for working capital and other purposes the first $125,000 of such funds raised by Licensee for Licensee’s business.

c. Thereafter, until the balance of the $100,000 has been paid in full, 50% of the subsequent net proceeds of investment capital in Licensee's business shall go to Licensor.

d. Any balance of the $100,000 not already paid shall be due and payable on September 30, 2007. However, if Licensor successfully completes 200 hours of continuous operation of a two cylinder engine embodying the Licensed Technology, then the balance of the $100,000 shall be due and payable 90 days from the completion of such 200 hour testing, but not in any case earlier than March 31, 2007. Licensor shall notify Licensee in writing within seven calendar days of the successful completion of such tests. If such notice is later than seven days, then the clock shall not start - running toward 90 days until the notice is received by Licensee.

e. If the full $100,000 has not been paid by September 30, 2007, (or earlier if accelerated as per clause 6.d., above) Licensor may terminate this Agreement by written notice to Licensee, but is not obligated to do so.

f. Any payments made under this Section 4.1 are non-refundable and shall be considered as an expense of Licensee when incurred, and as income when received by Licensor.

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g. Payments made under this Section shall be made within fifteen days of the end of any month in which funds have been received under this Section.

h. Once the $100,000 License Fee has been paid by Licensee to Licensor, then Licensee shall thereafter only be liable for the Royalty (as hereafter · defined), as subsequently specified; and/or minimum royalties.

4.2 In addition to the License Fee, Licensee will pay to Licensor a royalty of 3% percent of the Gross Selling Price per Licensed Product sold or otherwise disposed of by Licensee ("Royalty"). For purposes of this Agreement, Gross Selling Price shall have the meaning set forth in Section 2.7 above. In the event of any sublicense permitted under Section 3.1 the following additional provisions shall apply: 1) The sublicense shall be conditioned and contingent upon the sale by the sublicense of a specific number of Licensed Products in an amount and time period to be agreed upon by the parties as set fort in the applicable sublicense agreement ("Sublicense Sales Quota") and Licensor, in addition to any royalty received pursuant to any such sublicense agreement shall also participate and share in any commission, bonus, or other payment made to Licensee by any sublicensee in a percentage amount to be determined between Licensor and Licensee before the execution and delivery of any sublicense agreement ("Participation Amount"). The failure of the parties to agree on any Sublicense Sales Quota or Participation Amount may be grounds for Licensor to withhold its consent to any sublicense in its sole and absolute discretion.

4.3 Within 30 days after the first day of each month hereafter during Agreement Licensee will pay to Licensor royalties at the rate specified in Section 4.2 of this Agreement in immediately availabe U.S. funds.

4.4 If Licensor does not receive from Licensee the full amounts due on or before the day upon which such amounts are due and payable, such outstanding amounts will thereafter bear interest until payment at the rate of 1.25% per month, but in no event to exceed 25% per annum Amounts received by Licensor will first be credited against any unpaid interest and accrual of such interest will be in addition to and without limitation of any and all additional rights o remedies that Licensor may have under this Agreement or at law or in equity. Licensee agrees to pay all reasonable expenses in connection with the collection of any late payment.

5. Confidentiality

5.1 Confidential Information means information in oral and/or written form that (a) relates to - Licensed Technology, including, without limitation past, present and future research, development, business ·activities, products, and services, and (b) has been identified, either orally or in writing, as confidential by Licensor.

5.2 Licensee may use the Confidential Information only for the purpose of producing the Licensed Products. Licensee will not, at any time, use the Confidential Information in any other fashion, or manner for any other purpose.

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5.3 Licensee agrees not to disclose the Confidential Information in any manner to anyone other than persons within Licensee's organization who have a need to know for the purpose set forth above and who have acknowledged in writing the obligations hereunder and have agreed to abide by the terms hereof. Under no circumstances will Licensee disclose the Confidential Information to any third party.

5.4 Any Confidential Information in whatever form is the property of Licensor and will remain so at all times. Licensee may not copy any Confidential Information for any purpose without the express prior written consent of Licensor, and if consent is granted, any such copies will retain such proprietary rights notices as appear on the original thereof. Any copies of the Confidential Information that Licensor may have permitted Licensee to make, or other written materials incorporating Confidential Information, will be the sole property of Licensor and must be returned to Licensor or destroyed upon the first to occur of (a) termination or expiration of this Agreen1ent or (b) request by Licensor.

5.5 Nothing in this Section will prohibit or limit the 'Licensee's use of information Licensee can demonstrate is (i) previously known to Licensee, (ii) independently developed by Licensee, (iii) acquired by Licensee from a third party not under similar nondisclosure obligations to Licensor, or (iv) which is or becomes part of the public domain through no breach by Licensee of this Agreement.

5.6 Licensee acknowledges that the Confidential Information disclosed and/or made available 'to Licensee hereunder is owned solely by Licensor and that the threatened or actual breach of this Agreement will cause irreparable injury to Licensor, for which monetary damages would be inadequate. Accordingly, Licensee agrees that Licensor is entitled to an immediate injunction enjoining any such breach or threatened breach .of this Agreement. Licensee agrees to be responsible for all costs, including attorneys' fees, incurred by Licensor 1n any action enforcing the terms of this Section.

5.7 Licensee will promptly advise Licensor in writing of any unauthorized use or disclosure of Confidential Information of which Licensee becomes aware and will provide reasonable assistance to Licensor to terminate such unauthorized use or disclosure.

6. Reports/Audit/Referral Fees

6.1 Licensee agrees to make and provide written reports to Licensor concurrently with making each royalty payment due in Section 4.2.· Each report will state the number of Licensed Products. sold or otherwise disposed of during the preceding three calendar months and on which a royalty is payable as provided in Section 4.2. Each report shall also include notification of any Licensee Improvements (as defined in Section 9 below) incorporating the Licensed Technology in whole or in part which are proposed to be sold for the first time in the month following the month of the report (each an "Additional Licensed Product", and collectively, the "Additional Licensed Products"). All Additional Licensed Products shall be promptly added to the Licensed Products set forth on Exhibit " B", and shall be deemed to be included as part of the Licensed Products set forth on Exhibit "B" by virtue of this provision until such time as the official amendment to Exhibit "B" occurs in accordance with Section 2.2.

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6.2 Licensor (or its authorized representative) may upon reasonable notice and during Licensee's normal business hours, enter Licensee's premises for the purposes of auditing any and all books of account, documents, records, papers and files relating to Licensee's manufacture and sale of the Licensed Product ("Licensee Documents"). Licensee Documents will be made available to Licensor (or its authorized representative)·solely for · such auditing purpose. Licensor will bear the expense of any such audit unless such audit reveals that royalties and fees paid by Licensee pursuant to this Agreement for any payment period are less than 95% of what should have been paid by Licensee during such payment period. In such event the costs of the audit will be borne by Licensee, in addition to and without limitation of any other rights or remedies Licensor may have. Prompt payment of any amounts found due and owing Licensor, including audit fees and expenses due Licensor under this Section, will be made by Licensee.

6.3 Subject to the confidentiality provisions of Section 5, in the course of their business dealings both Licensor and Licensee may communicate with companies, governmental units, other entities and/or individuals who may express an interest in entering into an agreement relating to the business of the other party, sublicense the technology, and/or invest in their business. Where such interest appears serious and specific, and subject to compliance with all state and federal securities laws to the extent applicable, then either entity shall inform the other in writing within seven days of such contact (the "Referred Party") and the specific nature of their expressed interest. If the notified entity (either Licensor or Licensee) can reasonably demonstrate that it has already been in touch with the Referred Party, then it shall notify the other in writing within 10 days thereafter, and shall have no obligation for any business or investment resulting from such referral. If no such notice is sent within such 10 day periods and business or investment does actually result with the Referred Party in the form of a closing on an transaction, payment under an executed agreement, grant, investment, loan, licensing agreement or other sale, then the party having made the referral shall be paid by the party· to whom the referral was made (the "Benefited Party") a referral fee of three and one half (3.5%) percent of the amount actually received, paid within 30 days after such funds are received. Where such referral generates a stream of payments over time, then the referral fee shall be paid for three years from the time the initial payment in such stream of payments is received. No obligation shall be incurred for generalized references or broad lists, such as "Talk to the Governor" or "here is a list of wealthy investors". Referrals shall be paid only where direct contact and discussion provided by the referring party between the prospect and the Benefited Party resulted, and not based on generalized information in the trades, other press, or otherwise.

7. Representations and Warranties.

7.1 Licensor . represents and warrants to Licensee that Licensor is the owner of the Licensed Technology and has the right to grant the License to Licensee.

7.2 THIS SECTION IS LICENSOR'S ONLY WARRANTY CONCERNING THE LICENSED PRODUCT AND IS MADE IN LIEU OF ALL OTHER REPRESENTATION AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE.

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7.3 Licensee represents and warrants that it has full power and authority to enter into this Agreement.

7.4 Licensee represents and warrants that neither the execution nor delivery of this Agreement by Licensee, nor the consummation of the transactions contemplated herein, will constitute a violation or breach of Licensee's constituent documents or violate, conflict with, result in any breach of any material provisions of or constitute a default under any other contract or commitment made by Licensee, any law, rule or regulation, or any order, judgment or decree, applicable to or involving Licensee.

7.5 Licensee represents, covenants and agrees that it will comply with all applicable federal, state and local laws, regulations or other requirements, and agrees to indemnify Licensor against any liability arising from Licensee's violation of or noncmpliance with laws or regulations while using the Licensed Technology.

7.6 Licensee represents and warrants that no order, consent, filings or other authorization or approval of or with any court, public board or governmental body is required for the execution, delivery and performance of this Agreement by Licensee.

8. Identification of Infringers

8.1 Licensee will, without delay, inform Licensor of any infringement, unauthorized use, misappropriation, ownership claim, threatened infringement or other such claim (collectively, an "Infringement") by a third party with respect to the Licensed Products and/or the Licensed Technology, and will provide Licensor with any evidence available to Licensee of such Infringement. Upon receipt of such information, Licensor and Licensee shall mutually agree upon what action should be taken with respect to any such disclosed Infringement, whether o not litigation should be pursued against an alleged infringer, the jurisdiction in which any such litigation should be pursued, whether or not litigation should be settled or pursued to final resolution against an alleged infringer, and the terms of settlement; provided, however, that Licensor n1ay in its sole and absolute discretion decide to pursue litigation while Licensee declines to so proceed; and provided, further if Licensee so declines to participate in litigation and Licensor must proceed alone to protect the Licensed Technology, then the license to the Licensed Technology provided to Licensee under this Agreement shall no longer be exclusive. Licensee agrees that it shall be fully responsible for the costs of all enforcement to protect the Licensed Technology for the Licensed Products as has been agreed mutually between Licensee and Licensor and shall pay all expenses incurred in any action Licensor decides should be taken to protect the Licensed Technology as used in the Licensed Products from Infringement or to defend any claim against Licensor or the Licensed Technology from Infringement relating to the Licensed Products ("Infringement Action"), including all attorney, paralegal, accountant or other professional fees from the date of notice of such Infringement Action through all trial and appellate levels. The parties shall cooperate with each other and provide all advice and assistance reasonably requested by each other in pursuit of such Infringement matters.

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8.2 Each party will execute all necessary and proper documents, take such actions as is reasonably necessary to allow the other party to institute and prosecute such infringement actions and will otherwise use its commercially reasonable efforts to cooperate in the institution and prosecution of such actions. Each party prosecuting any such infringement actions will keep the other party reasonably informed as to the status of such actions. Any award paid by third parties as a result of such an Infringement action (whether by way of settlement or otherwise) will be applied first to reimburse both Licensee and Licensor for all costs and expenses incurred by the parties with respect to each such action on a pro rata basis in relation to the amount of costs and expenses so incurred by such party and, if after such reimbursement any funds will remain from such award, they will be allocated pro rata according to the costs incurred by each party.

9. Improvements

9.1 Licensee will timely inform Licensor, in writing, of any improvements, changes, advances and/or modifications to the Licensed Products or Licensed Technology, and the purpose(s) therefor, made by Licensee. Any and all such improvements, changes, advances and/or modifications to the Licensed Products or Licensed Technology made by Licensee ("Licensee Improvements") shall become the property of Licensor and Licensee hereby assigns all of its right, title and interest in and to such Licensee Improvements to Licensor regardless if developed or invented by Licensee or Licensor or any of their employees. Further, Licensor will own the entire right, title and interest in any and all patent applications resulting from or relating to any and all improvements and/or; modifications to the Licensed Products or the Licensed Technology, whether filed in the United States or countries other than the United States, related to said improvements and/or modifications; and in and to any and all patents which may be issued/granted on any and all said applications and any and all reissues thereof.

9.2 Licensee covenants and agrees for its self and for its successors and assigns that, at Licensor's request, it will cause to be executed and delivered any applications, affidavits, assignments, and other instruments as may be deemed necessary or desirable to secure for or vest in Licensor, its successors, legal representatives, or assigns, all right, title, and interest in and to any application, patent, or other right or property covered by this Section, including the right to apply for and obtain patents in foreign countries under the provisions of the International Convention; and Licensee hereby requests and authorizes the United States Commissioner of Patents and Trademarks to issue any and all United States patents granted on the Licensee Improvements, all divisions, reissues, and continuations thereof to Licensor as owner of the entire right title, and interest in and to the same, and authorize appropriately empowered officials of foreign countries to issue any letters patent granted on any patents and all divisions, reissues, and continuations thereof to Licensor as owner of the entire right, title, and interest in and to the same.

9.3 Licensor does have and will continue to have sole and absolute discretion to make decisions with respect to the procurement and prosecution of the patents and patent applications identified on Exhibit "A'' including the right to abandon any such patent application. Licensor's abandonment of or any failure to obtain or maintain an issued patent originating from any of the patents or patent applications identified on Exhibit "A" will not relieve or release Licensee from its obligation to pay the License Fee and Royalty provided in this Agreement. Similarly, a holding or decision by a court of law that any such issued patent is invalid or unenforceable will not relieve or release Licensee from its obligation to pay the License Fee or Royalty provided in this Agreement. If any of such events occur, Licensee must continue to pay any License Fee and Royalty due during the Term.

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9.4 Licensee will not contest the validity or enforceability of any patents that issue from or as a result of any of the patents or patent applications identified on Exhibit "A" or any continuations, divisionals or continuations-in-part of such applications. Licensee will not assert as a defense in any litigation with respect to Licensed Products that any patents that issue from or as a result of any , of the patent · applications identified on Exhibit "A" (including any continuations, divisionals or continuations-in-part of such applications) are invalid or unenforceable.

9.5 Should Licensor, prior to December 31, 2010, find a large organization that wishes to purchase all of Licensor's right, title and interest in the Licensed Technology, including the rights provided under this agreement and of Licensee therein, then Licensee. hereby agrees to such sale to such entity provided the following conditions are met:

a. The purchase consideration for Licensee is in such combination of cash, notes and securities as shall be acceptable to Licensee.

b. The purchase price of Licensee's rights and interest shall be determined by a completely independent appraiser not regularly used by the prospective buyer, and who is mutually acceptable to Licensor and Licensee. Such appraiser must have a specialty in the appraisal of high tech entities where much of the value is vested in intellectual capital, projected sales, and projected profits, reasonably discounted.

10. Default

10.1 If Licensee is in default of any material obligation under this Agreement, then Licensor may give written notice thereof to Licensee. If within 30 days after the date of such notice such default is not cured, then Licensor may terminate this Agreement with notice and all rights and licenses under this Agreement will revert to Licensor.

10.2 Upon expiration or termination of this Agreement for any reason, any remaining portion of any unpaid License Fee outstanding and all accrued Royalties under Section 4.2 and other sums due hereunder will become due and payable within 30 days of such expiration or termination. Upon expiration or termination of this Agreement for any reason, Licensee shall not thereafter make, use, sell, offer to sell, or import the Licensed Products or use the Licensed Technology for any purpose.

10.3 This Agreement will terminate immediately if Licensee is dissolved or liquidated. This Agreement wi11 also terminate immediately absent an adequate written assurance of future performance if: (i) any bankruptcy or insolvency proceedings under any federal or state bankruptcy or insolvency code or similar law, whether voluntary or involuntary, is properly commenced by or against Licensee; or (ii) Licensee becomes insolvent, is unable to pay debts as they come due or ceases to so pay, or makes an assignment for the benefit of creditors; or (iii) a

trustee or receiver is appointed for any or all of Licensee's assets.

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10.4 Immediately after the expiration or termination of this Agreement for any reason:

(a) All rights of Licensee granted hereunder will terminate and automatically revert to Licensor, and Licensee will discontinue all use of the Licensed Technology and will no longer have the right to use the Licensed Technology or any variation or simulation thereof for any purpose whatsoever.

(b) Licensee will be permitted to sell and dispose of its remaining inventory of Licensed Product on hand or in process on the date of such termination or expiration, for a period of ninety (90) days following the date of such expiration or termination (the "Sale Period"). Licensee expressly agrees that it will not market or sell any Licensed Product after the end of the Sale Period.

(c) All sums owed by Licensee to Licensor will become due and payable imn1ediately.

(d) Licensee will not following expiration or termination of the this Agreement use Confidential Informat,ion to manufacture or sell Licensed Products anywhere in the world; and

(e) Licensee retains no rights whatsoever to any of Licensor's Licensed Technology.

10.5 Notwithstanding the foregoing, or any other provisions of this Agreement to the contrary, Sections 5 thorough 7 and 9 through 12 will survive the expiration or termination of this Agreement.

11. Risk of Loss

11.1 Commencing with the start of sales of Licensed Products, Licensee will acquire and maintain at its sole cost and expense throughout the term of this Agreement, and for a period of five (5) years following the termination or expiration of this Agreement, Comprehensive Genera Liability Insurance, including product liability, advertiser's liability (1986 ISO form of advertising injury rider), contractual liability and property coverage, including property of others (hereinafter collectively, "Comprehensive Insurance") underwritten by an insurance company qualified to cover liability associated with activities in the Territory of this Agreement. This insurance coverage will provide liability protection of not less than $3,000,000 combined single limit for personal injury and property damage including products/completed operations coverage (on a per occurrence basis) with Licensor named as an additional insured party on the general liability coverage and as loss payee on the property coverage, and the policy will purport to provide adequate protection for Licensee and Licensor against any and all claims, demands, causes of action or damages, including attorney's fees, arising out of this Agreement including, but not limited to, any alleged defects in, or any use of, the Licensed Products or the Licensed Technology. Licensor will furnish to Licensee certificates issued by the insurance company (ies) setting forth the amount of the Comprehensive Insurance, the policy number(s), the date(s) of expiration,. and a provision that Licensor will receive thirty (30) days written notice prior to termination, reduction or modification of the coverage. Licensee's purchase and maintenance of the Comprehensive Insurance or furnishing of the certificates of insurance will not relieve Licensee of any of its obligations or liabilities under this Agreement.

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11.2 In the event of cancellation of any insurance required to be carried by Licensee under this Agreement, Licensor will be notified thirty (30) days prior to· cancellation of same. Additionally, notwithstanding anything else to the contrary, in the event Licensee's insurance is canceled and replacement Comprehensive Insurance meeting the requirements set forth above is not in place, then Licensor will have the right to terminate this Agreement.

11.3 Licensee assumes sole responsibility for any commitments, obligations, or representations made by it in connection with the use of the Licensed Products, Technical Information, and/or Confidential Information to manufacture, sell, market or advertise the Licensed Products, and Licensor will have no liability to Licensee, or any third parties, with respect to economic and/or personal injury, including wrongful death, caused by or resulting from the use of the Licensed Products, Licensed Technology and/or Confidential Information by Licensee, its agents, employees, or customers.

11.4 Licensee agrees to indemnify, defend and hold harmless Licensor, its shareholders, officers, directors, employees, affiliates, . successors and assigns from and against any and all expenses, damages, proceedings, direct or consequential claims, liabilities, suits, actions, causes of action of any character or nature, penalties, fines, judgments or expenses (including all attorneys' fees), arising out of, or related to Licensee's use, sale, manufacture, importation, offer to sell, distribution, disposal of, operation, etc. of the Licensed Product and/or attributable to Licensee's use of the Licensed Technology and/or Licensee's performance or breach of this Agreement. Agreement. This indemnity provision will survive the expiration or termination of this

11.5 All of Licensee's contracts, if any, with any person relating or pertaining to the Licensed Products will notify all such parties that Licensor has no such liability and will further include all such parties' acknowledgment and agreement that Licensor is excluded from any and all such liability.

11.6 Licensee acknowledges that · Licensor's liability for direct damages arising out or related to Licensee's use, sale, 1nanufacture, importation, offer to sell, distribution, disposal of, operation, etc. of the Licensed Product regardless of the form of action (i.e., whether in contract or tort, including without lin1itation, negligence or strict liability) will not exceed the Royalties paid by Licensee to Licensor. LICENSEE ALSO ACKNOWLEDGES THAT IN NO EVENT WILL LICENSOR BE LIABLEFOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENT AL OR PUNITIVE DAMAGE, LOSS OR EXPENSE, EVEN IF LICENSOR HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

12. Miscellaneous

12.1 Nothing contained in this Agreement will be construed as conferring by implication, estoppel, or otherwise, upon any party licensed hereunder, any license or other right under any patent except the licenses and rights expressly granted herein.

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12.2 Licensee will conspicuously mark directly on each Licensed Product it sells that the Licensed Product is "covered by U.S. Patent No. [ALL APPLICABLE PATENTS TO BE INSERTED AS SET FORTH ON COMPOSITE EXHIBIT A, AS AMENDED FROM TIME TO TIME]" or "Patent Pending" as applicable.

12.3 All notices required by this Agreement will be in writing and be sent by certified mail, return receipt requested, by hand or overnight courier, to the following addresses:

|  |  |
| --- | --- |
| If to Licensor: | Ceramac Technologies |
|  | [… |
|  | , FL 33064] |
|  | Tel: |
|  |  |
| With a copy to: | Fred Fernton Co., LPA |
|  |  |
|  | […] |
|  | , FL 33401 |
|  | Attn: Hillary Bales |
|  |  |
| If to Licensee: | SurgeImpact , Inc. |
|  | [...] |
|  |  |
|  | Florida 33066 |
|  | Tel: |

unless either party will at any time by notice in writing designate a different address. Notice will be effective three days after the date officially recorded as having been deposited in the mails, or upon receipt by hand delivery or the next day by overnight courier.

12.4 Licensee shall not assign, convey, encumber, or otherwise dispose of any of its rights or obligations under this Agreement, except as stated in Section 3.1, without the prior written consent of Licensor and any such purported assignment will be invalid.

12.5 No term of this Agreement will be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.

12.6 If any term or provision of this Agreement is determined to be illegal or unenforceable, such term or provision will be deemed stricken, and all other terms and provisions will remain in full force and effect.

12.7 This Agreement represents the entire agreement of the parties replacing any earlier agreements concerning the same matters. It may only be modified by a subsequent writing signed by the parties hereto.

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12.8 Each party is acting as an independent contractor and not as an agent of the other party. Nothing contained in this Agreement will be construed to confer any authority upon either party to enter into any commitment or agreement binding upon the other party.

12.9 This Agreement, including its formation, all of the parties' respective rights and duties in connection herewith and all disputes that might arise from or in connection with this Agreement or its subject matter, will be governed by and construed in accordance with the laws of the State of Florida, without giving effect to that State's conflict of laws rules, and will be subject to the exclusive jurisdiction of courts located in Broward County, Florida, and their applicable courts of appeal, each party agreeing to such jurisdiction exclusively.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the respective dates hereinafter set forth.

[TBIS SPACE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

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| --- | --- | --- | --- | --- |
| "LICENSOR" |  |  | "LICENSEE" |  |
| Ceramac Technologies, LLLP |  |  | SUREGEIMPACT, INC. |  |
| By: Schoell Consulting, Inc.  Its General Partner |  |  |  |  |
|  |  |  |  |  |
| By: /s/ Mohammad Al Mutairi  Mohammad Al Mutairi, President  Date: 3/24/06 |  |  | By: /s/ Jeb Boons  Jeb Boons, President  Date: 3/24/06 |  |
|  |  |  |  |  |
| By: /s/ Nora Adams  Nora Adams, COO  Date: 3/24/06 |  |  |  |  |

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EXHIBIT A

**Licensed Technology**

Exhibit A

The proprietary technology related to a heat regenerative engine that uses water as the working fluid was well as the lubricant as more specifically defined and set forth in Section 2.1 of the Agreement to which this Exhibit A is attached.

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**EXHIBITB**

**LICENSED PRODUCTS**

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| • | The following products in the Field of Use made using in any manner the Licensed Technology in the Territory, as all such terms are defined in the Technology License Agreement to which this Exhibit B is attached. |

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| SurgeImpact License Agreement Amendment #1 |  | 01/18/2007 |

This document represents an Amendment to clarify the Licensing agreement between SurgeImpact , Inc, (“SIP”) a Florida Corporation located at [...],Florida 33066 and Ceramac Technologies LLLP (“Ceramac”) located, Florida 33064.

Whereas, SIP and Ceramac agree to modify page 3 Section 2.6 of the Technology License Agreement titled Territory. Signed license agreement now reads “Territory means the United Stated and Canada for biomass use; and world-wide for the Military use, but may be amended from time upon written agreement between the parties.” This amendment replaces the above underlined sentence with: “Territory means worldwide for U.S. Military use; Non Exclusive for Biomass Generators 1 MGW (one mega watt) and above for the United States, Canada, the Caribbean Islands and Israel; as well as exclusive rights for all generators and engines for any Israeli Military applications.”

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| Signed: |  |  | Signed: |  |
|  |  |  |  |  |
| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi  General Partner/Ceramac Technologies LLLP |  |  | /s/ Jeb Boons  Dr. Jeb Boons  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams  General Partner/Ceramac Technologies LLLP |  |  |  |  |

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| SurgeImpact License Agreement Amendment #2 |  | March 6, 2007 |

This document is an Amendment to include the below captioned Paragraph in the Licensing agreement between SurgeImpact, Inc. ("SIP") a Florida Corporation located at [...], , Florida 33077 and Ceramac Technologies LLLP ("Ceramac") located at […], Florida 33064.

The Paragraph:

SurgeImpact , Inc. ("SIP") shall have a non-exclusive right to obtain contracts and/or purchase orders from the United States military for motive power engines (also called drive engines) from the date of this amendment for $1,000,000.00 (One million dollars). At anytime SIP secures a contact, SIP is required to pay 7% seven percent, of said contract at funding until these 7% payment reach a total paid to Ceramac Technologies LLLP in the amount of $1,000,000.00. The7% is royalties in addition to the base 3% production royalty provided in base Licensing agreement as captioned above. This non-exclusive Amendment #2 becomes a permanent Amendment when full payment is made.

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| Signed: |  |  | Signed: |  |
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| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi    Date 3/6/07  General Partner/Ceramac Technologies LLLP |  |  | /s/ Jeb Boons  Dr. Jeb Boons    Date 3/6/07  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams    Date 3/6/07  General Partner/Ceramac Technologies LLLP |  |  |  |  |

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| SurgeImpact License Agreement Amendment #3 |  | April 30, 2007 |

This document is an Amendment to include the below captioned Paragraph in the Licensing agreement between SurgeImpact, Inc. ("SIP") a Florida Corporation located […], Florida 33077 and Ceramac Technologies LLLP ("Ceramac") located at […], Florida 33064.

SurgeImpact , Inc. ("SIP") shall have a non-exclusive right to obtain contracts and/or purchase orders from the United States Postal Service for motive power engines (also called drive engines) from the date of this amendment until March 31, 2008, for $1,000,000.00 (One million Dollars). In the event of contracts pending or in process with the U.S. Postal Service for motive power engines then in effect or in process of being formalized they shall survive March 31, 2008. If there are no contracts pending or in process on March 31, 2008 this amendment will automatically renew in six-month increments until Ceramac Technologies LLLP cancels within a fifteen-day notice on either side of any automatic renewal date. At anytime SIP secures a contract, SIP is required to pay 7% seven percent, of said contract at funding until these 7% payments reach a total paid to Ceramac Technologies LLLP in the amount of $1,000,000.00. The 7% is royalties in addition to the base 3% · production royalty provided in base licensing agreement as captioned above. This non-exclusive Amendment #2 becomes a permanent Amendment when full payment is made.

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| Signed: |  |  | Signed: |  |
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| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi    Date 4/30/07  General Partner/Ceramac Technologies LLLP |  |  | /s/ Jeb Boons  Dr. Jeb Boons    Date 4/30/07  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams    Date 4/30/07  General Partner/Ceramac Technologies LLLP |  |  |  |  |

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| SurgeImpact License Agreement Amendment #4 |  | May 9, 2007 |

This document is an Amendment to include the below captioned Paragraph in the Licensing Agreement between SurgeImpact , Inc. (“SIP”), a Florida corporation located at [...],Florida 33066 and Ceramac Technologies LLLP (Ceramac) located at […], Florida 33064.

The Paragraph:

SurgeImpact , Inc. ("SIP") hereby has a one year option for a non-exclusive license to manufacture and sell in the United States generator sets or auxiliary power units (hereinafter referred to as "gensets") up to 20 kilowatts, on the following terms and conditions:

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|  | a. | The payment is hereby made of $5,000 on behalf of SIP to Ceramac as a non refundable consideration for this option. |

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|  | b. | SIP shall have until May 7, 2008 to pay an additional $100,000 to convert this option into a supplemental license for the manufacture and sale of genets up to 20 kilowatts. Payment of said $100,000 shall automatically convert this option in to a supplemental non-exclusive license. |

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|  | c. | The total payment for the supplemental non-exclusive license for gensets shall be a total of $2,500,000 (2.5 million dollars) consisting of the initial $5,000, the option exercises payment of $100,000, and an additional $2,395,000 ($2.395 million). Said additional $2.395 million shall be paid by an additional royalty of seven percent on sales of Ceramac engines within gensets until the full amount of said $2.395 million has been paid in full. The underlying three percent royalty shall be paid during this period until the full $2.5 million has been paid, and shall continue thereafter. |

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|  | d. | As long as this remains an option and not exercised should another party secure an exclusive license for gensets which includes the U.S., then at the request of Ceramac, this option shall be terminated. In such case the new exclusive license holder may agree as part of their transaction to pick up and honor any dealer agreements already signed by SIP, or make alternative arrangements acceptable to SIP, with such alternative arrangements reasonable to the circumstances. In the event of such termination during the option period, then Ceramac shall give a credit to SIP for all monies paid on this option with such credit to be applied first to SIP's underlying licensing balances (if any due), and then to advance royalties to the extent of any remaining credit balance. |

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| Signed: |  |  | Signed: |  |
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| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi    Date: May 9, 2007  General Partner/Ceramac Technologies LLLP |  |  | /s/ Jeb Boons  Dr. Jeb Boons    Date: May 9, 2007  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams    Date: May 9, 2007  General Partner/Ceramac Technologies LLLP |  |  |  |  |

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| SurgeImpact License Agreement Amendment #5 |  | September 7, 2007 |

This document is an Amendment to include the below captioned Paragraph in the Licensing agreement between SurgeImpact, Inc. ("SIP") a Florida Corporation located at [...], , Florida 33077 and Ceramac Technologies LLLP ("Ceramac") located at […] Florida 33064. Who on July 2, 2007, was bought by and is now know as Ceramac Power Technologies, Inc. ('Ceramac")

For value consideration of $1,000.00 US, the Licensing agreement termination date is extended until September 30, 2008. If by September 30, 2008, the balance of $95,000.00 US has not been paid then the licensing agreement shall be null and void in its entirety subject only to any additional mutual agreed Amendments.

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| Signed: |  |  | Signed: |  |
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| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi, CEO    Date:9-7-07  Ceramac Power Technologies, Inc. |  |  | /s/ Jeb Boons  Dr. Jeb Boons    Date:9-7-07  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams, COO   Date:9-7-07  Ceramac Power Technologies, Inc. |  |  |  |  |

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| SurgeImpact License Agreement Amendment #6 |  | November 20, 2007 |

This document is an Amendment to extend the kilowatts on Amendment #4 paragraph b. between SurgeImpact , Inc. (SIP), a Florida corporation located at [...], , Florida 33066 and Ceramac Technologies LLLP (Ceramac) located at […], Florida 33064, now assumed by Ceramac Power Technologies, Inc. at the same address.

The Paragraph:

The paragraph b. is now to read:

b. SIP shall have until May 7, 2008 to pay an additional $100,000 to convert this option into a supplement a l license for the manufacture and sale of gensets up to 100 kilowatts. Payment of said $1 00,000 shall automatically convert this option into a supplemental non-exclusive license.

SIP, here wit h pays Ceramac $1000.00 US non-refundable to include this amendment.

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| /s/ Mohammad Al Mutairi,  CEO    Ceramac Power Technologies, Inc.  Date: November 20, 2007 |  |  | /s/ Jeb Boons,  CEO    SurgeImpact , Inc.  Date: November 20, 2007 |  |

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| SurgeImpact License Agreement Amendment #7 |  | January 23, 2008 |

This document is an Amendment to include the below captioned Paragraph in the Licensing agreement between SurgeImpact, Inc. ("SIP") a Florida Corporation located at [...], , Florida 33077 and Ceramac Technologies LLLP now known as Ceramac Power Technologies, Inc. ("Ceramac") located at […], Florida 33064. Who on July 2, 2007, was bought by and is now know as Ceramac Power Technologies, Inc. ('Ceramac")

For payment consideration of $1,000.00 US, the Licensing agreement termination date is extended until March 31, 2009. If by March 31, 2009 the balance (as of January 23, 2008) of $94,000.00 USD has not been paid then the licensing agreement shall be null and void in its entirety subject only to any additional mutual agreed Amendments.

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| Signed: |  |  |  |  |
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| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi, CEO    Date:1-23-08  Ceramac Power Technologies, Inc. |  |  | /s/ Jeb Boons  Dr. Jeb Boons    Date:1-23-08  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams, COO   Date:1-23-08  Ceramac Power Technologies, Inc. |  |  |  |  |

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| SurgeImpact License Agreement Amendment #8 |  |  |

March 13,2008

This document is an Amendment to include the below captioned Paragraph in the Licensing Agreement between SurgeImpact , Inc. ("SIP"), a Florida corporation located at [...], , Florida 33066 and Ceramac Technologies LLLP (Ceramac) located at […], Florida 33064.

The Paragraph:

SurgeImpact , Inc. ("SIP") hereby has a one year option for a exclusive license to sell in the European Union Ceramac Engines for motive power or power generation (generator sets or auxiliary power units) (hereinafter referred to as "engines") for their military activities and applications, on the following terms and conditions:

a. The payment is hereby made of $1,000 on behalf of SIP to Ceramac as a non refundable consideration for this option.

b. SIP shall have until March 13, 2009 to pay an additional $120,000 to convert this option into a supplemental license for the manufacture and sale of Ceramac Engine. Payment of said $120,000 shall automatically convert this option into a supplemental an exclusive license.

c. The total payment for the supplemental non-exclusive license for Ceramac engines shall be a total of $500,000 ($500 Thousand US Dollars) consisting of the initial $1,000, the option exercises payment of $120,000, and an additional $500,000 ($5 Hundred Thousand). Said additional $500 thousand shall be paid by an additional royalty of seven percent on sales of Ceramac engines until the full amount of said $500 thousand has been paid in full. The underlying three percent royalty shall be paid during this period until the full $500 thousand has been paid, and shall continue thereafter.

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| Signed: |  |  |  |  |
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| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi, CEO    Date:3-13-08  Ceramac Power Technologies, Inc. |  |  | /s/ Jeb Boons  Dr. Jeb Boons    Date:3-13-08  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams, COO   Date:3-13-08  Ceramac Power Technologies, Inc. |  |  |  |  |

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| SurgeImpact Technology License Agreement - Amendment #9 |  |

This Amendment shall replace in its entirety Amendment #8 to the Technology License Agreement (the "Agreement") between SurgeImpact , Inc. ("SIP"), a Florida corporation located at [...], , Florida 33066 and Ceramac Power Technologies Inc. (the "Company") located at […], Florida 33064. The following provision shall be made part of the Agreement:

SIP hereby is granted an exclusive license to sell in the countries of the European Union as stated in the attached Amendment #9 Exhibit A, Ceramac Engines for motive power or power generation (generator sets or auxiliary power units) (hereinafter referred to as "Engines") specifically for their military activities and applications, on the following terms and conditions:

a. Payment is hereby made to the Company of $20,000 toward the balance due of $94,000 on the base Agreement, making the balance due on March 31, 2009, to be $74,000. If this payment is not made in full by that date, the original Agreement inclusive of the supplemental license set forth herein shall expire at the discretion of the Company. The total payment for the supplemental license set forth in this Amendment #9 for military- purpose Ceramac Engines shall be $1,000,000 (One Million US Dollars) plus $1,000 which was received by the Company on March 13, 2008. This additional $1,000,000 shall be paid by means of an additional royalty of seven percent (7%) on SIP's sales of Ceramac Engines (on top of the base royalty of 3%) until the full amount of said $1,000,000 has been paid in full.

b. Should SIP receive any rights fees, distribution fees, sub-license fees, investment proceeds (net of commissions . &/or finders fees paid) or other non-sales payments from any customer, sub-licensee, distributor, agent, investor or otherwise, then 100% of such payments shall be delivered to the Company to be applied first against the $74,000 due by March 31, 2009 on the base Agreement, and then 50% of all net proceeds related to this agreement shall be applied against the $1,000,000 due on this supplemental license, unless otherwise agreed to by both SIP and the Company in writing.

c. Except as expressly set forth in this Amendment #9, all terms and conditions in the Agreement and any other Amendments thereto shall survive in full force (except for the terms of Amendment #8, which have been replaced hereby).

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| Signed: |  |  |  |  |
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| /s/ Mohammad Al Mutairi  Mohammad Al Mutairi,    Date:9-02-2008  Ceramac Power Technologies, Inc. |  |  | /s/ Jeb Boons  Dr. Jeb Boons    Date:9-02-2008  SurgeImpact , Inc. |  |
|  |  |  |  |  |
| /s/ Nora Adams  Nora Adams,    Date:9-02-2008  Ceramac Power Technologies, Inc. |  |  |  |  |

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**AMENDMENT 9**

**EXIBIT A**

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Croatia, the former Yugoslav Republic of Macedonia, Turkey, Albania, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo, Iceland, Liechtenstein, Norway, Switzerland, Andorra, Liechtenstein, Monaco, San Marino, and Vatican City

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| SurgeImpact License Agreement Amendment #10. |  | November 5, 2009 |

This is Amendment #10 to the Technology License Agreement (the "License”) originally dated March 24, 2006, between SurgeImpact , Inc. (''SIP'), a Florida corporation located at [...], , Florida 33066 and Ceramac Power Technologies, Inc. ("Ceramac" f/k/a Ceramac Technologies LLLP) located at […], Florida 33064.

WHEREAS, Ceramac has successfully completed the testing of its heat regenerative external combustion engine (the "Engine") per the specifications of its Independent Research & Development contract with Thanatos Integrated Defense Systems, a business of Thanatos Company ("Thanatos"); and

WHEREAS, Thanatos and Ceramac have had preliminary discussion concerning the next phases of a busitiess relationship which may include a Teaming Agreement or some similar agreement; and

WHEREAS, Thanatos has expressed its requirement that it contracts directly with Ceramac, as the · developer of the Engine technology, and that on an ongoing basis, Ceramac assumes contractual responsibility and oversight of the development and manufacturing of the Engines and the License Technology (as such term is defined in the License).

NOW THEREFORE, for good and valuable consideration receivethe parties hereby agree as follows:

1. SurgeImpact hereby assigns back to Ceramac on a non-exclusive basis its rights under the License to make, use, sell, offer to sell, manufacture or have manufactured the Licensed Technology with respect to Engines purchased ordered, contracted, sub-contracted or licensed by Thanatos or any of its business divisions for its Military Establishment customers. SurgeImpact acknowledges that Thanatos's non-Military Establishment customers are not covered under SurgeImpact's License..

2. SurgeImpact understands that Ceramac expects to enter into agreements with Thanatos and other subcontractors of Thanatos which may provide for the sale of production Engines to Thanatos s Military Establishment customers, and with respect to this, SurgeImpact acknowledges and agrees that Ceramac has full and absolute authority to negotiate and execute such agreements as it determines in the best interest of Ceramac and its shareholders. This exclusion does not allow for said subcontractors to sell Ceramac Engines to other defense contractors (other than Thanatos) or directly to the Military Establishment.

3. For its assignment of its rights hereunder, SurgeImpact shall receive a commission equal to ten percent (10%) of the royalties or 2% of the sale price received by Ceramac from the sale of production Engines to Thanatos or its customers. ·

a. "Royalties" are defined as fees paid to Ceramac by a licensee manufacturer for the rights to sell Engines to Thanatos U.S. The 2% fee of the sales price shall be calculated against the invoice sale price to Thanatos either directly by Ceramac or by other Ceramac designated manufacturer.

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b. This commission shall not apply to fees received by Ceramac for prototype Engines, development services, or other fees in the R&D stage of its agreement with Thanatos, as such rights have been expressly reserved by Ceramac in the License.

c. The commission may be paid in cash, common stock of Ceramac, or some combination of the two, at the reasonable agreement of Ceramac and SurgeImpact.

4. SurgeImpact has expressed its plans to outsource the manufacturing of the Engines under its License to qualified machine shops,· engine manufacturers or other similar parties. Ceramac hereby approves of this approach.

5.Ceramac will continue to provide full marketing and technological cooperation to SurgeImpact in the pursuit of new customers, maintenance of current customers and the overall development of its business.

6. Nothing in this Amendment shall limit or abrogate the rights of MEO Products (SurgeImpact's sub- licensee for the European military) to contract directly with Thanatos subsidiaries or affiliates located within MEO's designated European military territory, provided such contracts do not conflict with this Amendment.

The parties hereby agree to the terms and conditions set forth in this Amendment to the License.

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**LicA#18**

**Exhibit 10.9**

**Technology License Agreement**

**This Technology License Agreement** (“Agreement”) is entered into as of December 11, 2009, (the “Effective Date”) by and between:

**Ceramac, Inc.**, a Florida Corporation, having its offices located at […], Florida 33064 USA (“CM” or “Licensor”)

and

**Powersource Systems Ltd,**a company organized under the laws of the British Virgin Islands, and having its offices located at […], British Virgin Islands. (“PS ” or the “Licensee”), its operating subsidiary to be established in the People’s Republic of China (the “Sub”, which unless otherwise stated herein, shall be included in the definition of the Licensee), and the guarantors to its duties, responsibilities and obligations, who are named on the signature page hereto (the “Guarantors”).

**Recitals**

Engine AREAS, CM has developed and patented a heat-regenerative external combustion engine system, which it has full rights and authority to license for applications that include power systems in China; and

Engine AREAS, PS wishes to obtain a License for CM ’s engine technology to use with and in power systems to be produced and sold in China subject to the terms and conditions set forth more fully in this Agreement; and

Engine AREAS, this Agreement contains: I. Specific License Terms, and II. Standard Terms and Conditions, which together with any Exhibits and Addendums hereto comprise the full agreement of the parties hereto.

NOW THEREFORE, for good and valuable consideration, and subject to the terms, conditions, representations and warranties contained more fully herein, the parties agree as follows:

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| **I.  Specific License Terms** |

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| Licensed Technology: | CM ’s heat regenerative, Rankine-cycle external combustion engine system (the “Ceramac Engine”). “Licensed Technology” is further defined in Section 1 of the Standard Terms and Conditions. |

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| Licensed Products: | (1) Engine A(2) Engine B; and Engine 3 System, No other Ceramac Engines or engine systems are currently contemplated and licensed under this Agreement. |

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| Applications: | The Licensee may use the License Products specifically as follows: |

Engine A: for electrical power generation from biomass combustion, waste heat recovery, and solar thermal collectors (specific note: the solar thermal collectors and Engine A associated with this Application may not operate at temperatures above 600F and pressures above approximately 300psi);

Engine B and 1MW: for electric power generation only, and not for any motive power applications, high temperature solar thermal, or any other application not specifically stated in this Agreement.

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| License Phases: | The License shall be divided into Two Phases for each engine to be developed by Licensee as follows: |

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|  | - | Phase I: Development and Proof of Concept |
|  | - | Phase II: Production and Sales |

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|  | The scope, key steps, objectives and goals of each of the two Phases are set forth in **Exhibit A** attached hereto. |

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|  | With respect to Phase I Licenses, the development timeline shall be further subdivided as follows: Licensee shall commence its ramp-up operations with development of a prototype Engine A, for the applications of B-2-P, waste heat recovery or solar thermal electrical generation (as the Licensee subsequently determines based on marketability of such products). Upon the completion by CM of its initial pre-production prototype Engine B engine in the United States, anticipated to be in mid to late 2010 (such date being a good faith estimate and not a definitive deadline), then at such time and provided Licensee is in good standing under this Agreement and all IP Protocols are in place to the full satisfaction of CM , Licensor shall deliver to Licensee the design drawings and bill-of-materials for the Engine B to commence development of said engine in China. At such time that the Engine B drawings are delivered to Licensee, Phase I shall commence for that engine project.   In the instance that designs for the Engine B are not able to be exported to China by the end of 2010, the parties shall work together in good faith to develop an alternative engine design to achieve the goals of Licensee to build high efficiency fuel-burning external combustion engines. |

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| Exclusivity: | CM grants exclusive rights to the Licensee to manufacture and sell the License Products for the specific Applications solely within the Territory for a period of two (2) years from the date of commencement of Phase II for such Licensed Products (as described above), automatically renewable for additional years upon reaching certain annual minimum royalty sales quotas (set forth below).  This renewal provision will remain in effect for the Term of the Agreement. |

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| Quotas: | Reasonable and mutually agreeable sales minimums (“Sales Quotas”) to extend exclusivity rights will be determined prior to commencement of Phase II of License, and included as an Addendum to this Agreement. Phase II shall not commence until such Sales Quotas are agreed. |

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| Territory: | People’s Republic of China (which shall include Hong Kong and Macao, but exclude Taiwan). Except as otherwise agreed, all production, distribution and sales (especially in Phase II) shall be made within the Territory and not made for export. |

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|  | To the extent that Licensee successfully builds a pre-production B-2-P system using the Engine A in its Phase I for this Licensed Product, the parties may in good faith expand the territory for such Licensed Product on a non-exclusive basis to other countries and territories. |

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| Term: | Phase I (for each engine): 12 months with one (1) six (6) month renewal period (no additional Development Fees required for this extension)  Phase II: 10 years with two (2) five (5) year renewal periods |

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| License Fees: | Licensee will pay US$125,000 for the Phase I License rights (“Development License Fee”), US$25,000 of which has been paid prior to the date hereof and shall constitute a deposit on the Engine B engine design delivery, US$62,500 to be paid upon the signing of this License for delivery of the Engine A designs, and US$37,500 to be paid prior to delivery to Licensee of the Engine B engine designs.  All Development License Fees once paid to Licensor are non-refundable; provided however, if the Engine B engine designs cannot be delivered to Licensee by the end of 2010, or an alternative engine design cannot be agreed upon, then the initial $25,000 deposit shall be returned to Licensee or credited toward Royalties or Licensee Fees then due to Licensor. |

Upon successful completion of the Phase I development process, as agreed in the reasonable determination of both parties, and provided Sales Quotas and Royalties have been agreed by both parties, the License will automatically convert into a Phase II Production License for the specified Application for production, sales and distribution in the Territory upon the payment of an additional License Fee of US$400,000 (“Production License Fee”), which shall be broken down as follows: (1) $100,000 when the Engine A Licensed Products are ready to enter into Phase II, and (2) $300,000 when the Engine B is ready to enter into Phase II of this License. No Licensed Products may be distributed or sold in Phase I of this License.  The entry into Phase II with respect to one Licensed Product will not guaranty entry into Phase II for other Licensed Products – Licensee must be in good standing under this Agreement and all pre-conditions specifically set forth herein (if applicable) must be met for each specific Licensed Product.  

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If Licensee chooses to produce a 1 Megawatt Engine, then prior to commencement of the initial prototype production (Phase I), the parties will determine in good faith the engineering and consulting services required of CM to complete the project, and will agree to reasonable compensation for such services which should not exceed $250,000 for consultation and assistance in preparation of technical drawings and specifications. Additional development fees may apply to different sized CeramacEngines to be developed for the Licensee, or different Applications, in the future.  These fees will be negotiated in good faith at the appropriate time.

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| Royalty: | No Royalty will be owed on Phase I prototype Engines; however, for all prototypes that Licensee creates it shall also provide to CM duplicate, made-in-China parts to allow CM to build at least one such prototype engine in the United States using Licensee’s parts. |

Royalties for Phase II Production will be determined prior to commencement of Phase II of the License for that Licensed Product and included as an Addendum to this Agreement. Royalties shall be reasonable and mutually agreeable by the parties.

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| Manufacturing: | CM shall have the right to review and reasonably approve prior to consummation all sublicenses, OEM, outsourced manufacturing, private labeling or other agreements which could expose any CM IP to third parties. Licensee shall have the right to undertake sales and marketing partnerships as necessary to achieve market penetration, provided Licensee assures CM that sales and distribution through such third parties shall be contained to the Territory. As part of its IP Protocols, CM shall have the right to inspect and audit any of Licensee’s or its contractors’ manufacturing or distribution facilities at any reasonable time. |
| Specific IP |  |

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| Provisions: | In addition to the intellectual property protections set forth in the Standard Terms and Conditions of this Agreement, License will structure an Intellectual Property program to protect the integrity of CM ’s Licensed Technology (the “IP Protocols”), which shall be guaranteed by the Guarantors. The IP Protocols will be patterned on a controlled access aerospace program, and will be monitored and audited by a Chinese law firm (or other professional 3rd party) retained by CM , for which Licensee shall reimburse CM its reasonable expenses for quarterly IP auditing retainers. Such quarterly fees shall be invoiced to Licensee and paid on presentment.  Key components of the IP Protocols are provided as **Exhibit B** attached hereto. |

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|  | Licensee and Licensor shall cooperate to have this License translated into Chinese and recorded before the Chinese Patent Office. Licensee shall pay the costs for the language translation. |
| CM Contacts: |  |

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| Technology: | […] |

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| Operational: | […] |  |

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| Legal: | […] |

PS Contacts:

Technology:                                […]

Operational:                                 […]

Legal/Finance/Service of Process:   […]

**[End of Specific License Terms]**

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|  | **II.Standard Terms and Conditions** |

1.           Grant of License

1.1           Licensor grants to Licensee a non-transferable license to use the Licensed Technology to develop, manufacture or have manufactured the Licensed Products for the specific Applications to be used and sold in the Territory set forth in the Specific License Terms (the “License”). Licensee may not manufacture or have manufactured the License Products for uses other than the Applications, or for use or sale outside the Territory.  This License is divided into two Phases, whereby Phase I relates solely to the technological development of the Licensed Products and Phase II relates to the production and commercial sale of the Licensed Products. Licensee may only use the Licensed Technology for the express purposes provided in the Specific License Terms during each of the two Phases.

1.2           With the exception of the PRC Sub to be established by PS , this License may be transferred or sublicensed to a third party solely upon the prior written consent of the Licensor, which consent may be withheld at Licensor’s sole and absolute discretion. This License will automatically expire upon termination of this Agreement.

1.3           The definition of “Licensed Technology” in the Specific License Terms shall be further defined to mean: Licensor’s proprietary technology related to its heat regenerative, external combustion engine and shall include any information, inventions, innovations, discoveries, improvements, ideas, know-how, show-how, developments, methods, designs, reports, charts, drawings, diagrams, analyses, concepts, technology, records, brochures, instructions, manuals, programs, manufacturing techniques, expertise, inventions whether or not reduced to practice or the subject of a patent application, test-protocols, test results, descriptions, parts lists, bills of materials, documentation whether in written or electronic format, prototypes, molds, models, assemblies, and any similar intellectual property and information, whether or not protected or protectable by patent or copyright, any related research and development information, inventions, trade secrets, and technical data in the possession of Licensor that is useful or is needed in the design or manufacture of the Licensed Products and that the Licensor has the right to provide to Licensee and has so provided to Licensee.  This includes without limitation, U.S. Patent #[…] entitled Engine, Chinese Patent #: ZL [/…], other patents pending US and foreign, all patents that may issue under this patent application and their divisions, continuations, continuation-in-parts, reissues, reexaminations, inventor’s certificates, utility models, patents of addition, extensions, as well as certain research and development information, inventions, know-how, and technical data that relate to and/or are disclosed in said patent application, and any other patent applications, patents divisions, continuations, continuation-in-parts, reissues, reexaminations, inventor’s certificates, utility models, patents of addition, extensions that may issue or be filed that relate to said Licensed Product and/or said patent application.

1.3           The Term of this License is set forth in the Specific License Terms, and will take effect on the Effective Date and will continue in force and effect unless at least 120 days prior to the expiration of the initial or any renewal/additional term, as the case may be, either party gives written notice to the other party hereto that such renewal is not to occur. If such notice is given, this Agreement will terminate at the end of the then current term and all rights and licenses under this Agreement will revert to Licensor at the end of the current term.

2.           License Fees and Royalty

2.1           Licensee will pay to Licensor the License and Development Fees set forth in the Specific License Terms.

2.2           Licensee will pay to Licensor the Royalties at the rate and on the schedules specified in the Specific License Terms, or any Addendums or Amendments. Royalties shall be due quarterly on the 15th day following the end of each fiscal quarter, for sales made in the previous three-month period. All Royalties shall be paid in immediately available U.S. funds.

2.3           If Royalties paid to Licensor in any given fiscal quarter are less than 10% of the total royalty Sales Quota required for that entire year to maintain exclusivity, as will be attached hereto in Addendum or Amendment, Licensor may require Licensee to pay the royalty Sales Quota on a quarterly basis (calculated by the total Sales Quota for that year, divided by 4, and multiplied by the highest applicable Royalty rate).

2.4           If Licensor does not receive from Licensee the full amounts due on or before the day upon which such amounts are due and payable, such outstanding amounts will thereafter bear interest until payment at the maximum rate permissible by applicable law, but in no event to exceed 18% per annum.  Amounts received by Licensor will first be credited against any unpaid interest and accrual of such interest will be in addition to and without limitation of any and all additional rights or remedies that Licensor may have under this Agreement or at law or in equity.  Licensee agrees to pay all reasonable expenses in connection with the collection of any late payment. Until such time that the Licensee has provided two (2) years of Phase II Royalties to Licensor, or Licensee has over US$1,000,000 in verifiable assets, whichever is sooner, Guarantors will guarantee all payments to Licensor under this Agreement. Such timeframe shall not limit Guarantors’ liability for failure to protect Licensor’s IP due to their negligence or misconduct.

3.           Reports and Audit.

3.1           Licensee will provide Licensor with a written report with each Royalty payment detailing the units manufactured and units sold in the previous three-month period, and the calculation of Royalties owed, including any Sales Quota calculations.

3.2           Licensor (or its authorized representative) may, upon reasonable notice and during Licensee's normal business hours, enter Licensee's premises for the purposes of auditing any and all books of account, documents, records, papers and files relating to Licensee's manufacture and sale/use of the Licensed Products ("Licensee Documents"). Licensee Documents will be made available to Licensor (or its authorized representative) solely for such auditing purpose.  Licensor will bear the expense of any such audit unless such audit reveals that royalties and fees paid by Licensee pursuant to this Agreement for any payment period are less than 90% of what should have been paid by Licensee. In such event the costs of the audit, including any required travel, will be borne by Licensee, in addition to and without limitation of any other rights or remedies Licensor may have. Prompt payment of any amounts found due and owing Licensor, including audit fees and expenses due Licensor under this Section, will be made by Licensee.

4.           Representations and Warranties.

4.1           Licensor represents and warrants to Licensee that Licensor is the lawful owner of the Licensed Technology, that Licensor has the right to grant the License to Licensee hereunder, and that to the best of the Licensor’s knowledge, the Licensed Technology is complete, error-free, valid, and capable of accomplishing contracted technical objectives; however, both parties acknowledge that the Licensed Technology is still in developmental stages and subject to improvement and advancement

4.2           Licensor represents and warrants that Licensor is not involved in any suits, litigation or other claims contesting the validity or ownership of any of the Licensed Technology, the Patents or Patent applications, and knows of no such claims at this time pending or anticipated. Licensor represents to Licensee that it has received patent protection for the Licensed Technology in China, and knows of no claims of infringement against said patent.

4.3           THIS SECTION IS LICENSOR’S ONLY WARRANTIES CONCERNING THE LICENSED TECHNOLOGY AND PATENTS, AND IS MADE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED.

4.4           Licensee and Licensor each represent and warrant to the other that:

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|  | 4.4.1 | It has full power and authority to enter into this Agreement; |

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|  | 4.4.2 | Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated herein, will constitute a violation or breach of the warranting party’s constituent documents or violate, conflict with, result in any breach of any material provisions of or constitute a default under any other contract or commitment made by it, any law, rule or regulation, or any order, judgment or decree, applicable to or involving it. |

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|  | 4.4.3 | It will comply with all applicable international, federal, state and local laws, regulations or other requirements, and agrees to indemnify the other party against any liability arising from its violation of or noncompliance with laws or regulations while using the Licensed Technology. |

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|  | 4.4.4 | No order, consent, filings or other authorization or approval of or with any court, public board or governmental body is required for the execution, delivery and performance of this Agreement by it; except this Agreement shall be translated and filed with the Chinese Patent Office or other appropriate governmental authorities in PRC upon execution hereof. |

4.5           Licensee represents to Licensor that neither it nor its affiliated companies or equity partners are currently or previously involved in any litigation or threatened litigation concerning patent infringement, unauthorized use of intellectual property, breach of a license agreement, or other similar claims.

4.6           Licensee represents to Licensor that no events specific to Licensee have occurred, or to its knowledge are pending, that have impaired or may impair materially the financial condition or viability of the Licensee, or otherwise make the performance of its financial and operational duties hereunder impossible or impractical.

5.           Identification of Infringers

5.1           Licensee will, without delay, inform Licensor of any infringement, unauthorized use, misappropriation, ownership claim, threatened infringement or other such claim (collectively, an “Infringement”) by a third party with respect to the Licensed Products and/or the Licensed Technology in the Territory, and will provide Licensor with any evidence available to Licensee of such Infringement. Licensee acknowledges and agrees that Licensor, in its sole and absolute discretion, will decide what action should be taken with respect to any such disclosed Infringement, whether or not litigation should be pursued against an alleged infringer, the jurisdiction in which any such litigation should be pursued, whether or not litigation should be settled or pursued to final resolution against an alleged infringer, and the terms of settlement.

5.2           Licensee agrees that it shall be responsible to contribute to the costs of all enforcement to protect the Licensed Technology from Infringement in the Territory and shall contribute to all expenses incurred in any action Licensor decides should be taken to protect the Licensed Technology from Infringement in the Territory (“Infringement Action”), including all attorney, paralegal, accountant or other professional fees from the notice of such Action through all trial and appellate levels. Contribution shall be limited to US$100,000 unless otherwise agreed by the parties; provided however, if the Licensee is shown to be responsible for the Infringement because of a breach of its IP Protocols or another provision of this Agreement, then there shall be no contribution limits. Licensee will be fully consulted on any legal action to be taken with respect to an Infringement Action for which they are responsible for contribution.  The parties shall fully cooperate with each other and provide all advice and assistance reasonably requested by each other in pursuit of such Infringement matters.

5.3           Licensee and its Guarantors shall be liable for any Infringement perpetrated or caused by any of its employees, agents, contractors, sub-licensees, manufacturers, or other parties to whom it shares any Confidential Information relating to the Licensed Technology if Licensee fails to comply completely and fully with its IP protection protocols, as determined by the Licensor’s IP auditor, or is otherwise negligent or acts wrongfully in the protection of Licensor’s Confidential Information. Licensee shall require all such third parties to sign a confidentiality and invention assignment agreement drafted by Licensee’s IP experts in China and approved by Licensor. Licensee shall provide copies of such agreements, translated into English, to the Licensor. Failure to comply with this provision shall be deemed a material breach of this Agreement.

5.4           Licensee has conducted an independent search and evaluation of the Licensor’s patent(s) in the Territory, and has satisfied itself as to the validity of such intellectual property. Under the Unified Contract Law, Licensee hereby waives any action or claim for indemnification from Licensor in the instance any party claims infringement against Licensee or Licensor for use of the Licensed Technology or manufacture and sale of the Licensed Products.

5.5           Each party will execute all necessary and proper documents, take such actions as is reasonably necessary to allow the other party to institute and prosecute such Infringement Actions and will otherwise use its commercially reasonable efforts to cooperate in the institution and prosecution of such actions.  Each party prosecuting any such infringement actions will keep the other party reasonably informed as to the status of such actions. Any award paid by third parties as a result of such an Infringement Action (whether by way of settlement or otherwise) will be applied first to reimburse the parties for all costs and expenses incurred by the parties with respect to such action on a pro rata basis in relation to the amount of costs and expenses so incurred by such party and, if after such reimbursement any funds will remain from such award, the parties will allocate such remaining funds between themselves in the same proportion as they have agreed in writing to bear the expenses of instituting and maintaining such action.

6.           Improvements

6.1           Licensee will timely inform Licensor, in writing, of any improvements, changes, advances and/or modifications to the Licensed Products or Licensed Technology, and the purpose(s) therefor, made by Licensee. Besides the royalty Licensee pays to Licensor, as further consideration, any and all such improvements, changes, advances and/or modifications to the Licensed Products or Licensed Technology made by Licensee (“Improvements”) shall become the property of Licensor, and Licensee hereby assigns all of its right, title and interest in and to such Licensee Improvements to Licensor regardless if developed or invented by Licensee or Licensor or any of their employees or affiliates.  Further, as part of this consideration, Licensor will own the entire right, title and interest in any and all patent applications resulting from or relating to any and all improvements and/or modifications to the Licensed Products or the Licensed Technology, whether filed in the United States, China or other countries, related to said improvements and/or modifications; and in and to any and all patents which may be issued/granted on any and all said applications and any and all reissues thereof.

6.2           Any Improvements made to the Licensed Technology by Licensee or any of its agents, contractors, manufacturers, or sub-licensees, and assigned to Licensor, shall be made part of this License and Licensee shall have the right to make use of, manufacture and sell such Improvements with the Licensed Products. Licensor shall also include in this License all improvements it makes independently to the Licensed Products, or that are made by other licensees and assigned back to Licensor – as such improvements to the Licensed Technology are include in its Section 1.3 definition.

6.3           Licensee covenants and agrees for itself and for its successors and assigns that, at Licensor’s request, it will cause to be executed and delivered any applications, affidavits, assignments, and other instruments as may be deemed necessary or desirable to secure for or vest in Licensor, its successors, legal representatives, or assigns, all right, title, and interest in and to any application, patent, or other right or property covered by this Section, including the right to apply for and obtain patents in foreign countries under the provisions of the International Convention; and Licensee hereby requests and authorizes all such patent offices to issue any and all patents granted on the Improvements, all divisions, reissues, and continuations thereof to Licensor as owner of the entire right, title, and interest in and to the same, and authorize appropriately empowered officials of foreign countries to issue any letters patent granted on any patents and all divisions, reissues, and continuations thereof to Licensor as owner of the entire right, title, and interest in and to the same.

6.4           Licensor has and will continue to have sole and absolute discretion to make decisions with respect to the procurement and prosecution of the patents and patent applications for the Licensed Technology, including the right to abandon any such patent application, provided such abandonment does not materially affect the Licensee. Licensee agrees and acknowledges that the IP licensed and delivered to Licensee hereunder includes vast amounts of know-how, trade secrets, opportunities, and other property that may not be specifically covered under any patent, and therefore, Licensor’s abandonment of or any failure to obtain or maintain an issued patent originating from any of the patents or patent applications will not relieve or release Licensee from its obligation to pay the License Fees and Royalty provided in this Agreement. Similarly, a holding or decision by a court of law that any such issued patent is invalid or unenforceable will not relieve or release Licensee from its obligation to pay the License Fees or Royalty provided in this Agreement. If any of such events occur, Licensee must continue to pay any License Fees and Royalty due during the Term.

6.5           Licensee will not contest the validity or enforceability of any patents that issue from or as a result of any of the patents or patent applications for the License Technology or any continuations, divisionals or continuations-in-part of such applications.  Licensee will not assert as a defense in any litigation with respect to Licensed Products that any patents that issue from or as a result of any of the patent applications (including any continuations, divisionals or continuations-in-part of such applications) are invalid or unenforceable.

7.           Default

7.1           If Licensee is in default of any material obligation under this Agreement, then Licensor may give written notice thereof to Licensee.  If within 60 days after the date of such notice such default is not cured, then this Agreement will automatically terminate at the discretion of the Licensor and all rights and licenses under this Agreement will revert to Licensor.

7.2           This Agreement will terminate immediately if Licensee is dissolved or liquidated.  This Agreement will also terminate immediately absent an adequate written assurance of future performance if: (i) any bankruptcy or insolvency proceedings under any federal or state bankruptcy or insolvency code or similar law, whether voluntary or involuntary, is properly commenced by or against Licensee; or (ii) Licensee becomes insolvent, is unable to pay debts as they come due or ceases to so pay, or makes an assignment for the benefit of creditors; or (iii) a trustee or receiver is appointed for any or all of Licensee’s assets; or (iv) Licensee or any of its assets are expropriated by any government authority, any permit or license to conduct business or own its assets is revoked, or any similar action of the government make Licensee’s performance under this Agreement impractical in the Licensor’s reasonable judgment.

7.3           Immediately after the expiration or termination of this Agreement for any reason:

(a)           All rights of Licensee granted hereunder will terminate and automatically revert to Licensor, and Licensee will discontinue all development or manufacturing of the Licensed Technology and will no longer have the right to develop, manufacture, or sell the Licensed Technology or any variation or simulation thereof for any purpose whatsoever; provided however, should the continuation of the sale of the Licensed Products in the Territory be required by any governmental authority, Licensor shall make such arrangements to continue such sales as may be deemed in the public welfare.

(b)           Licensee will be permitted to sell and dispose of its remaining inventory of Licensed Products on hand or in process on the date of such termination or expiration, for a period of ninety (90) days following the date of such expiration or termination (the “Sale Period”). Licensee expressly agrees that it will not market or sell any Licensed Product after the end of the Sale Period;

(c)           All sums owed by Licensee to Licensor will become due and payable immediately;

(d)           Licensee will not following expiration or termination of this Agreement use Confidential Information to manufacture or sell Licensed Products anywhere in the world; and

(e)           Licensee retains no rights whatsoever to any of Licensor’s Licensed Technology.

7.4           Notwithstanding the foregoing, or any other provisions of this Agreement to the contrary, Sections 4, 5, 6 and 9 will survive the expiration or termination of this Agreement, and shall be guaranteed by the Guarantors.

8.           Risk of Loss

8.1           To the extent applicable in the Territory, Licensee will acquire and maintain at its sole cost and expense throughout the term of this Agreement, and for a period of five (5) years following the termination or expiration of this Agreement, Comprehensive General Liability Insurance, including product liability, advertiser’s liability (1986 ISO form of advertising injury rider), contractual liability and property coverage, including property of others, (hereinafter collectively, “Comprehensive Insurance”) underwritten by an insurance company qualified to cover liability associated with activities in the Territory of this Agreement. This insurance coverage will provide liability protection with reasonable and adequate limits for personal injury and property damage including products/completed operations coverage (on a per occurrence basis) with Licensor named as an additional insured party on the general liability coverage and as loss payee on the property coverage, and the policy will purport to provide adequate protection for Licensee and Licensor against any and all claims, demands, causes of action or damages, including attorney’s fees, arising out of this Agreement including, but not limited to, any alleged defects in, or any use of, the Licensed Products or the Licensed Technology. Licensee will furnish to Licensor certificates issued by the insurance company(ies) setting forth the amount of the Comprehensive Insurance, the policy number(s), the date(s) of expiration, and a provision that Licensor will receive thirty (30) days written notice prior to termination, reduction or modification of the coverage. Licensee’s purchase and maintenance of the Comprehensive Insurance or furnishing of the certificates of insurance will not relieve Licensee of any of its obligations or liabilities under this Agreement.

8.2           In the event of cancellation of any insurance required to be carried by Licensee under this Agreement, Licensor will be notified thirty (30) days prior to cancellation of same.  Additionally, notwithstanding anything else to the contrary, in the event Licensee’s insurance is canceled and replacement Comprehensive Insurance meeting the requirements set forth above is not in place, then Licensor will have the right to terminate this Agreement.

8.3           Licensee, as the manufacturer of the Licensed Products, assumes sole responsibility for any commitments, obligations, or representations made by it in connection with the use of the Licensed Products and Confidential Information to manufacture, sell, market or advertise the Licensed Products, and Licensor will have no liability to Licensee, or any third parties, with respect to injury or damage caused by or resulting from the use of the Licensed Products, Licensed Technology and/or Confidential Information by Licensee, its agents, employees, or customers.

8.4           Licensee and its Guarantors agree to indemnify, defend and hold harmless Licensor, its shareholders, officers, directors, employees, affiliates, successors and assigns from and against any and all expenses, damages, proceedings, direct or consequential claims, liabilities, suits, actions, causes of action of any character or nature, penalties, fines, judgments or expenses (including all attorneys’ fees), arising out of, or related to Licensee’s use, sale, manufacture, importation, offer to sell, distribution, disposal of, operation, etc. of the Licensed Products and/or attributable to Licensee’s use of the Licensed Technology and/or Licensee’s performance or breach of this Agreement. This indemnity provision will survive the expiration or termination of this Agreement.

8.5           All of Licensee’s contracts, if any, with any person relating or pertaining to the Licensed Products will notify all such parties that Licensor has no such liability and will further include all such parties’ acknowledgment and agreement that Licensor is excluded from any and all such liability.

8.6           Licensee acknowledges that Licensor’s liability for direct damages arising out or related to Licensee’s use, sale, manufacture, importation, offer to sell, distribution, disposal of, operation, etc. of the Licensed Product regardless of the form of action (i.e., whether in contract or tort), including claim of infringement by Licensee on another party’s intellectual property, will not exceed the Fees and Royalties paid by Licensee to Licensor. Licensor expressly disclaims any right or obligation to indemnify Licensee in the instance of any patent infringement claims against Licensee.

8.7           LICENSEE ACKNOWLEDGES THAT IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGE, LOSS OR EXPENSE, EVEN IF LICENSOR HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

9.           Confidentiality

9.1           Confidential Information means information in oral and/or written form that (a) relates to the Licensed Technology, including, without limitation past, present and future research, development, business activities, products, and services, and (b) has been identified, either orally or in writing, as confidential by either party. Confidential Information shall also mean information provided by either of the parties to the other regarding its technology, systems engineering, business and marketing plans, and any other materials identified, either orally or in writing.

9.2           The receiving party may use the Confidential Information only for the purpose of producing the Licensed Products or as otherwise indicated or contemplated by this Agreement. The receiving party will not, at any time, use the Confidential Information in any other fashion, form, or manner for any other purpose.

9.3           With respect Licensor’s information in particular, Licensee agrees not to disclose the Confidential Information in any manner to anyone other than persons within its organization who have a need to know for the purpose set forth above and who have acknowledged in writing the obligations hereunder and have agreed to abide by the terms hereof, copies of which shall be provided to Licensor. Licensee and its Guarantors, jointly and severally, shall be liable for the misuse of any Confidential Information provided to any third party if Licensee has violated any IP Protocols in any manner, or otherwise has acted negligently or wrongfully.

9.4           Any Confidential Information in whatever form is the property of the disclosing party and will remain so at all times. The receiving party may not copy any Confidential Information for any purpose without the express prior written consent of the disclosing party, and if consent is granted, any such copies will retain such proprietary rights notices as appear on the original thereof.  Any copies of the Confidential Information that the disclosing party may have permitted the other party to make, or other written materials incorporating Confidential Information, will be the sole property of the disclosing party and must be returned to it or destroyed upon the first to occur of (a) termination or expiration of this Agreement or (b) request by the disclosing party.

9.5           Nothing in this Section will prohibit or limit the receiving party’s use of information it can demonstrate is: (i) previously known to the receiving party, (ii) independently developed by the receiving party, (iii) acquired by the receiving party from a third party not under similar nondisclosure obligations to the disclosing party, or (iv) which is or becomes part of the public domain through no breach by the receiving party of this Agreement.

9.6           The receiving party acknowledges that the Confidential Information disclosed and/or made available to it hereunder is owned solely by the disclosing party and that the threatened or actual breach of this Agreement would cause irreparable injury to the disclosing party, for which monetary damages would be inadequate. Accordingly, the receiving party agrees that the disclosing party is entitled to an immediate injunction enjoining any such breach or threatened breach of this Agreement.  The receiving party agrees to be responsible for all costs, including but not limited to attorneys’ fees, incurred by the disclosing party in any action enforcing the terms of this Section.

9.7           The receiving party will promptly advise the disclosing party in writing of any unauthorized use or disclosure of Confidential Information of which the receiving party becomes aware and will provide all possible assistance to the disclosing party to terminate such unauthorized use or disclosure.

10.           Miscellaneous

10.1           Nothing contained in this Agreement will be construed as conferring by implication, estoppel, or otherwise, upon any party licensed hereunder, any license or other right under any patent except the licenses and rights expressly granted herein.

10.2           Licensee will conspicuously mark directly on each Licensed Product it manufactures or sells that the Licensed Product is covered by Licensor’s patent, including the numbers and other identifying information for which will be provided to Licensee.

10.3           All notices required by this Agreement will be in writing and sent by certified mail, return receipt requested, by hand or overnight courier, to the addresses set forth on the initial page, with copies to the Legal Contacts set forth in the Specific License Terms, unless either party will at any time by notice in writing designate a different address.  Notice will be effective three days after the date officially recorded as having been deposited in the mail or upon receipt by hand delivery or the next day by overnight courier.

10.4           Licensee shall not assign, convey, encumber, or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of Licensor and any such purported assignment will be invalid.

10.5           No term of this Agreement will be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.

10.6           If any term or provision of this Agreement is determined to be illegal or unenforceable, such term or provision will be deemed stricken or reduced to a legally enforceable construction, and all other terms and provisions will remain in full force and effect.

10.7           This Agreement represents the entire agreement of the parties replacing any earlier agreements concerning the same matters. It may only be modified by a subsequent writing signed by the parties hereto.

10.8           Each party is acting as an independent contractor and not as an agent of the other party.  Nothing contained in this Agreement will be construed to confer any authority upon either party to enter into any commitment or agreement binding upon the other party.

10.9           This Agreement, including its formation, all of the parties’ respective rights and duties in connection herewith and all disputes that might arise from or in connection with this Agreement or its subject matter, will be governed by and construed in accordance with the laws of the State of Florida, the United States of America, without giving effect to that State’s conflict of laws rules, and will be subject to the jurisdiction of courts located in Broward County, Florida, and their applicable courts of appeal, each party, including their principals and Guarantors, agreeing to such jurisdiction. However, at the discretion of the Licensor, any controversy, dispute or disagreement arising from this Agreement may be settled by arbitration in accordance with the International Rules of the American Arbitration Association. In such case, the decision of the arbitrator or arbitrators shall be binding and final, and may be entered as a judgment and enforced by any court having jurisdiction.  The prevailing party in any actions, whether in court or arbitration, shall be entitled to receive reimbursement for reasonable attorneys’ fees, court/arbitration costs, and disbursements incurred in connection with such controversy, dispute or disagreement.

10.10.           Licensee and its Guarantors shall establish an agent for process of service in the United States or such other jurisdiction as reasonably determined by Licensor, and shall provide current information of the name, address and telephone number of such agent to Licensor. Failure to maintain this agent for service of process, or to deliver current information to Licensor, shall be deemed a material breach of this Agreement.

**[Signatures on following page]**

In Witness Whereof, the parties have caused this Technology License Agreement, comprised of the Specific License Terms, the Standard Terms and Conditions, and all Exhibits, Addendums or Amendments hereto, to be executed by their duly authorized officers on the respective dates hereinafter set forth.

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| **Ceramac, Inc.** |  |  | **PowersourceSystems, Ltd** |  |
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|  |  |  |  |  |
| By:/s/ Muhammad AlMutairi |  |  | By: /s/ Gao Bing |  |
| Muhammad AlMutairi, CEO & Director |  |  | Gao Bing |  |
|  |  |  | Chairman and as Guarantor |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  | /s/ Mel Matters |  |
|  |  |  | Mel Matters |  |
|  |  |  | Managing Director and as Guarantor |  |
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|  |  |  | /s/ Gwen Mueller |  |
|  |  |  | Gwen Mueller |  |
|  |  |  | VP Technology and Production and as Guarantor |  |

**EXHIBIT A**

**License Phases**

This License is divided into two Phases, the Key Tasks of which are as follows:

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| **KEY TASKS** | **PHASE I**  **Development License** | **PHASE II**  **Production License** |
| Production Configuration Development | X |  |
| Materials Sourcing Analysis | X |  |
| Feedstock Analysis & Development | X |  |
| Product Costing Analysis | X |  |
| Market Research & Analysis | X |  |
| Complete prototype engine systems | X |  |
| Development and regular audit of  IP protection procedures | X | X |
| GWT represents CM in China to other potential  licensees and partners, as the parties determine | X | X |
| Production |  | X |
| Sales & Marketing |  | X |

**PHASE I OBJECTIVES:**

The objectives of Phase I are as follows:

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|  | · | To set up an appropriate legal structure for the program, including incorporating a dedicated company, registering patents, engaging appropriate legal counsel, and establishing the IP Protocols. These structures must be in place to CM ’s full satisfaction before CM provides PS with engine drawings. |

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|  | · | The prototype development of the following engine systems in order to engineer a robust design for quality production configured engines that meet or exceed the performance characteristics of the US prototypes: |

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|  | o | First, Engine A, including the CM Biomass-to-Power (CB2P) system, waste heat recovery, and/or solar thermal system; and then |

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|  | o | the Engine B for the specific purpose of distributed electric power generation, as well as to identify and develop a cost-effective and reliable fuel source for the Engine B; this will initially focus on bio-fuel alternatives but it is assumed that any Engine B product will have multi-fuel capability (“Mk5P”, and together with the Engine A, the “Engines”); |

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|  | · | To determine the processes, procedures and standards that will be necessary for the production of consistently high quality products. |

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|  | · | To determine the necessary materials and parts required for optimal production of the Engines, and whether these materials & parts can be reliably sourced either in China or via import. |

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|  | · | To research fuel systems for the Engines and to determine the most feasible, reliable and economic fuel for the China market including selecting an appropriate fuel processing system and/or technology to employ. With respect to the Mk5P, this is specifically focused on bio-fuels (with the assumption that the final product will have potential for multi-fuel use). |

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|  | · | To determine the most cost-effective production configuration for the Engines and to determine – through in-depth market research – whether that production configuration will be cost-effective for product launch onto the China market. |

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|  | · | To determine a manufacturing strategy for the final product, i.e., fully in-house, partially outsourced, licensed etc. Such strategy will be fully discussed with CM and subject to CM ’s reasonable satisfaction before entering into a Phase II License. |

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|  | · | To determine a marketing, distribution and sales plan for the product. |

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|  | · | To serve as CM ’s representative in China to perform diligence, attend meetings or conference call (when reasonable), and other reasonable tasks requested by CM pertaining to business development in China. |

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|  | · | Compile status reports and data to present to GWT and CM for evaluation |

The predominant objectives of Phase I are to verify the feasibility, reliability and cost of a*Chinese* *production version*of the Engines, and to develop a viable business model, as reasonably approved by CM , for entering into Phase II of this license arrangement.

In addition to the parties themselves, the core audience for presentation (and evaluation) of the initial Phase I objectives would include:

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|  | · | Chinese government agencies that can potentially assist in marketing & distribution as well as financial sponsorship |
|  | · | Potential partners, distributors and clients |

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|  | · | The Mandarin Oriental Hotel Group |
|  | · | Testing and certifying agents, etc., for technical review, evaluation as necessary |

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|  | · | CM will be involved and consulted with respect to all these presentations. |

**TRANSITION INTO PHASE II:**

At the end of Phase I, PS expects to be positioned to:

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|  | · | Produce reliable Engine systems powered by CM engine technology that can be integrated into, and showcased by, the Mandarin Oriental Great Wall Resort. |

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|  | · | Have a manufacturable and marketable product ready for volume production. |

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|  | · | Have a reliable and localized supply base for the Engine components. |

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|  | · | Have solid market-based ideas on additional prototype systems that can be spun off to generate more revenue streams for both PS and CM , however, as discussed above, these additional systems are not currently made part of the initial License. |

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|  | · | Have established the foundation for the further development of: |

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|  | o | Other applications based on the same engine profile, should such applications subsequently be added to the initial License ; |

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|  | o | An engine powering a system greater than 1MW (the “C1M”) to integrate into the Sunny Retreat Project which is a primary objective of PS ’s overall business plan. This application will be included into the initial Phase II License; however, additional Development Fees will be paid to CM in the instance that PS chooses to develop a prototype C1M (see Standard Terms and Conditions of this Agreement). |

The specific objectives of Phase II shall be discussed between the parties and added as an Addendum to this Agreement as such time that the parties reasonably agree that Phase I has been successfully completed. This Addendum shall also include Royalties payable to CM , Minimum Guarantees, and other provisions discussed in the License Agreement.

**EXHIBIT B**

**Intellectual Property Protocols**

Prior to delivery of Engines designs and drawings, PS shall establish appropriate intellectual property protocols (the “IP Protocols”), which shall be approved by CM and shall be amended from time to time in accordance with the requirements of CM and its legal counsel in China. Such IP Protocols shall include:

**Employee Protection**

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|  | · | Education: Licensee will train its workforce in IP protection, which will focus on concrete examples, such as the danger of discussing the business with friends outside the company. Licensee will reinforce this message regularly through training programs and written materials. |

|  |  |  |
| --- | --- | --- |
|  | · | Each and every employee must sign nondisclosure and non-compete agreements, which shall be translated for CM and delivered to CM . |

|  |  |  |
| --- | --- | --- |
|  | · | Employees will have access only to the information they need to perform their work. This includes implementing a comprehensive access control system: |

|  |  |  |
| --- | --- | --- |
|  | o | Controlling access to company IT Network, databases and printed documents |

|  |  |  |
| --- | --- | --- |
|  | o | Permitting only authorized persons to enter controlled areas and production facilities |

|  |  |  |
| --- | --- | --- |
|  | o | Controlling access to all the critical recording and display devices and setting up a system to prevent any unauthorized changes |

|  |  |  |
| --- | --- | --- |
|  | o | Protecting all the critical operating parameters such as temperatures and pressures |

|  |  |  |
| --- | --- | --- |
|  | o | Detecting and preventing the unauthorized removal of valuable assets |

|  |  |  |
| --- | --- | --- |
|  | o | Providing information to security officers to facilitate assessment and response |

**Suppliers, Contractors, Manufacturers and other Third Parties:**

|  |  |  |
| --- | --- | --- |
|  | · | PS will undertake an internal review to determine which components can and cannot be securely outsourced. PS shall not outsource any components without the written consent of CM . |

|  |  |  |
| --- | --- | --- |
|  | · | PS will strategically disburse outsourced components such that no vendor can assemble any part of the engine(s) on their own (unless required to properly facilitate parts manufacture and meet design intent i.e. pressed in bushings or piston rings) |

|  |  |  |
| --- | --- | --- |
|  | · | CM will provide PS with a limited number of code-stamped parts/components, such parts not to be produced in China without CM ’s consent. The actual component list to be provided as part of the final licensing agreement. |

|  |  |  |
| --- | --- | --- |
|  | · | Each party to whom PS provides Confidential Information regarding the Licensed Technology shall sign an agreement providing for all the IP protections set forth in this License Agreement, including ownership of Improvements and legal jurisdiction. Such agreements shall be reviewed by CM ’s legal counsel in China, and final copies of such agreements shall be provided to CM . |

**Patents**:

In addition to the foregoing, PS will assist CM in the following Patent items:

|  |  |  |
| --- | --- | --- |
|  | · | A quick and thorough patent search and registration process. |

|  |  |  |
| --- | --- | --- |
|  | · | PS will report to CM of any deficiencies in its Chinese patents and will work with CM to remedy and expand its patent rights in China. |

|  |  |  |
| --- | --- | --- |
|  | · | PS will retain legal counsel reasonably approved by CM   throughout the License process, and such counsel will, among other duties, police for any potential patent infringement  and report back to both parties |

|  |  |  |
| --- | --- | --- |
|  | · | PS will establish an Advisory relationship with the Ministry of Science & Technology’s IPR Center, and shall include CM in discussions, correspondence and other arrangements with the Ministry. |

**LicA#19**

EX-10.9

**Exhibit 10.9**

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

EXECUTION VERSION

**EVALUATION, OPTION AND LICENSE AGREEMENT**

This Evaluation, Option and License Agreement (the “Agreement”) is made as of December 19, 2018 (the “Effective Date”) by and between Veda Pharmaceuticals, Inc., a Delaware corporation, with its principal offices at c/o PHS Corporate Services, 1313 N. Market Street, Suite 5100, Wilmington, DE 19801 (“Veda”) and Matterhorn International Pharmaceutical Limited, with its principal offices at Lichtstrasse 35, CH-4056 Basel, Switzerland (“Matterhorn”). Veda and Matterhorn are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, each of Veda and Matterhorn are in the business of discovering, developing and commercializing pharmaceutical products;

**WHEREAS**, the Matterhorn’ Affiliate, Matterhorn Institutes for BioMedical Research, Inc. (“MBRI”), and Veda, contemporaneously with this Agreement, are entering into a Stock Purchase Agreement and associated investment agreements, dated as of the date hereof, pursuant to which MBRI will acquire a $10 million equity stake in Veda (the “SPA”);

**WHEREAS**, Veda and its Affiliates Control (as defined below) certain intellectual property rights with respect to the Compound (as defined below);

**WHEREAS**, Matterhorn wishes to have access to the Compound and certain other related materials and related intellectual property rights in order for Matterhorn and its Affiliates to evaluate the Compound and its possible use in the Field (as defined below) in combination with certain proprietary Matterhorn pharmaceutical products, and to obtain an option to license the Compound pursuant to and on the terms set forth in this Agreement; and

**WHEREAS**, in connection with the foregoing, Matterhorn desires to obtain from Veda, and Veda desires to grant to Matterhorn, the right to access the Compound and the license option set forth herein with respect to the Compound, subject to and in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements set forth below, the Parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

For purposes of this Agreement, the following definitions apply:

1.1 “Accounting Standards” means (a) with respect to Matterhorn, IFRS (International Financial Reporting Standards), as generally and consistently applied throughout Matterhorn’ organization and (b) with respect to Veda, U.S. GAAP, as generally and consistently applied throughout Veda’s organization.

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

1.2 “Acquirer” shall have the meaning given to it in Section 12.2.2(a).

1.3 “Acquiring Party” shall have the meaning given to it in Section 12.2.2(b).

1.4 “Acquisition Third Party” shall have the meaning given to it in Section 12.2.2(b).

1.5 “Acquisition Transaction” shall have the meaning given to it in Section 12.2.2(b).

1.6 “Act” shall mean the United States Food, Drug and Cosmetic Act of 1938, as amended from time to time, and its implementing regulations.

1.7 “Additional Indication” shall have the meaning given to it in Section 4.3(a).

1.8 “Additional Indication Notice” shall have the meaning given to it in Section 4.3(a).

1.9 “Affiliate” means, with respect to a Party, any Person that controls, is controlled by, or is under common control with that Party. For the purpose of this definition, “control” or “controlled” means, direct or indirect, ownership of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors in the case of a corporation or fifty percent (50%) or more of the equity interest in the case of any other type of legal entity; status as a general partner in any partnership; or any other arrangement whereby the Person controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity or the ability to cause the direction of the management or policies of a corporation or other entity. The Parties acknowledge that in the case of entities organized under the laws of certain countries where the maximum percentage ownership permitted by law for a foreign investor is less than fifty percent (50%), such lower percentage shall be substituted in the preceding sentence, provided that such foreign investor has the power to direct the management and policies of such entity. With respect to the definitions of Veda Patents and Veda Know-How, and with respect to the grant of license rights by Veda to Matterhorn under Section 4.1 in respect thereof, “Affiliates” of Veda shall exclude any Third Party that becomes an Affiliate due to such Third Party’s acquisition of Veda.

1.10 “Agreement” shall have the meaning given to it in the preamble.

1.11 “Alliance Manager” shall have the meaning given to it in Section 6.1.

1.12 “Applicable Laws” means all applicable laws, statutes, rules, regulations, codes, administrative or judicial orders, judgments, decrees, injunctions and/or ordinances of any Governmental Authority, and common law or other legal requirements of any kind, whether currently in existence or hereafter promulgated, enacted, adopted or amended.

1.13 “Veda” shall have the meaning given to it in the preamble.

1.14 “Veda Improvements” has the meaning set forth in Section 8.2.1.

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1.15 “Veda Indemnified Party” shall have the meaning given to it in Section 15.1.

1.16 “Veda Intellectual Property” shall mean the Veda’s rights in Veda Patents and Veda Know-How.

1.17 “Veda Know-How” shall mean any Know-How Controlled by Veda as of the Effective Date and/or during the Option Term that is necessary for the Development, Manufacture, use or Commercialization of the Compound or Product, including any applicable Veda Improvements.

1.18 “Veda Patents” shall mean the Patents set forth on Exhibit A hereto, together with any Patents included in the Veda Improvements.

1.19 “Bi-Annual Evaluation Report” shall have the meaning given to it in Section 2.3.1(c).

1.20 “BFP” means Berne Foreign PharmaceuticalCompany.

1.21 “BFP License Agreement” shall mean the License Agreement between BFP and Veda, dated November 29, 2017.

1.22 “Business Day” means a day other than a Saturday, Sunday, or any day on which commercial banks located in Cambridge, Massachusetts, Basel, Switzerland, or Tel Aviv, Israel are authorized or obligated by Applicable Law to close.

1.23 “Calendar Quarter” means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30, and December 31; provided, however, that the last Calendar Quarter of the Product Term will end upon the expiration or termination of this Agreement.

1.24 “Calendar Year” means a period of twelve (12) consecutive calendar months ending on December 31; provided, however, that the last Calendar Year of the Product Term will begin on January 1 of the Calendar Year in which this Agreement expires or terminates and end upon the expiration or termination of this Agreement.

1.25 “Claim” shall mean any action, appeal, petition, plea, charge, complaint, claim, suit, demand, litigation, arbitration, mediation, hearing, inquiry, investigation or similar event, occurrence, or proceeding.

1.26 “Clinical Evaluation Materials” shall have the meaning given to it in Section 2.1(a).

1.27 “Clinical Study” means any clinical testing of Product in human subjects, including any Phase I Clinical Study, Phase II Clinical Study, Phase III Clinical Study, or Registration or Pivotal Study.

1.28 “Commercialization” or “Commercialize” shall mean any and all activities directed to and including marketing, promoting, advertising, distributing, disposing, offering for sale, selling, Labeling and Packaging, final product release testing, exporting and importing of a pharmaceutical product for commercial sale (to the extent applicable).

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1.29 “Commercially Reasonable Efforts” means [**\*\*\***].

1.30 “Competing Program” shall have the meaning given to it in Section 12.2.2(a).

1.31 “Compound” shall mean Veda’s proprietary compound known as AL102 and described in Exhibit B, and any salt, free acid/base, solvate, hydrate, stereoisomer and polymorphic form thereof, and any prodrug, metabolite, conjugate or complex thereof.

1.32 “Compound Specifications” shall mean, with respect to the research grade Compound provided for the Evaluation Studies, those specifications set forth on Schedule 1.32 hereto.

1.33 “Confidential Information” shall mean the terms of this Agreement and all information or data of a proprietary or confidential nature which is owned or Controlled and provided or otherwise made available by or on behalf of one Party (“Disclosing Party”) to the other Party to this Agreement (the “Receiving Party”) either in connection with the discussions and negotiations pertaining to this Agreement or in the course of performing under this Agreement (or the Confidentiality Agreement). Confidential Information shall include, in the case of Veda, Veda Know-How and financial or other non-scientific or non-technical business information regarding Veda made available to Matterhorn in connection with this Agreement; and in the case of Matterhorn, any and all Know-How of Matterhorn relating to Matterhorn’ or Matterhorn’ collaborators’ products (i.e., other than Compounds and/or Products), whether commercialized or in development, or the Development, Manufacture or Commercialization of any of the foregoing, or related clinical or regulatory affairs; information generated in the Program relating to the Compound and/or Products; and financial or other non-scientific or non-technical business information regarding Matterhorn, its Affiliates, or their collaborators made available to Veda in connection with this Agreement. Confidential Information will be deemed not to include:

(a) information which is or becomes part of the public domain through no breach of this Agreement by the Receiving Party or any of its Affiliates;

(b) information which the Receiving Party can demonstrate by its written records was known by the Receiving Party or any of its Affiliates prior to the disclosure thereof by the Disclosing Party;

(c) information which is independently developed by the Receiving Party or any of its Affiliates, so long as such development does not result from use of Confidential Information of the Disclosing Party, and such independent development can be demonstrated by written records of the Party claiming such independent development or any of its Affiliates; and

(d) information that becomes available to the Receiving Party or its Affiliates on a non-confidential basis, whether directly or indirectly, from a Third Party who has the right to make such disclosure.

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Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

The fact that a particular item of information is not or has ceased to be Confidential Information by virtue of one or more of the exclusions specified above shall not relieve the Party who obtained or received such excluded item from that Party’s obligation of confidentiality and non-use (i) as to any other item of Confidential Information of the other Party or (ii) as to the relationship of such excluded item to any other item of Confidential Information of the other Party.

1.34 “Confidentiality Agreement” shall mean the Confidentiality Agreement (Mutual) between Veda and Matterhorn Institutes for BioMedical Research, Inc., dated as May 3, 2018.

1.35 “Control” or “Controlled” shall mean, with respect to any compound, material, information or intellectual property right, that the Party owns or has a license to such compound, material, information or intellectual property right and has the ability to grant to the other Party a license or a sublicense (as applicable under this Agreement) to such compound, material, information or intellectual property right as provided for herein without violating (a) the terms of any agreement or other arrangements with any Third Party existing at the time such Party would be first required hereunder to grant the other Party such license or sublicense or (b) any Applicable Laws with respect to such license or sublicense.

1.36 “CTA” means a Clinical Trial Application, filed with a Regulatory Authority other than the FDA.

1.37 “Damages” shall mean all damages, losses (including any diminution in value), liabilities, payments, amounts paid in settlement, obligations, fines, penalties, costs or expenses of any kind or nature whatsoever incurred or paid in connection with any Claim or threatened Claim (including reasonable fees and expenses of outside attorneys, accountants and other professional advisors and of expert witnesses and other costs of investigation, preparation and litigation in connection with such Claim or threatened Claim).

1.38 “Debtor” shall have the meaning given to it in Section 17.1(c).

1.39 “Development” or “Develop” shall mean all activities that relate to (a) obtaining or maintaining Regulatory Approval for a pharmaceutical product or (b) developing the process for the Manufacture of clinical and commercial quantities of a pharmaceutical product. This includes (i) the conduct of non-human animal studies, including preclinical studies and toxicology studies, and clinical studies of all phases and (ii) the preparation, submission, review and development of data or information in support of a submission to a Regulatory Authority to obtain or maintain Regulatory Approval of a pharmaceutical product, including the services of outside advisors in connection therewith, including its legal counsel and regulatory consultants, but excludes (x) Commercialization and (y) the Manufacture and accumulation of commercial inventory of a pharmaceutical product.

1.40 “Effective Date” shall have the meaning given to it in the preamble.

1.41 “EMA” shall mean the European Medicines Agency or any successors to its responsibilities with respect to pharmaceutical products such as the Products.

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1.42 “European Union” means the countries that are members of the European Union as of the Effective Date or that become members of the European Union thereafter, and includes, for the avoidance of doubt, any countries that as of the Effective Date, or at any point during the Product Term thereafter, cease being members of the European Union, but that remain subject to any Applicable Law of the European Union.

1.43 “Evaluation Committee” shall have the meaning given to it in Section 2.2.

1.44 “Evaluation Materials” shall mean the Nonclinical Evaluation Materials and the Clinical Evaluation Materials.

1.45 “Evaluation Studies” shall mean the studies described on Exhibit C attached hereto.

1.46 “Exclusivity Product” shall mean any compound having an IC50 for inhibition of BCMA shed by gamma secretase of no greater than 1 micromolar, as measured by effect on BCMA in KMS11 cell line models, or any pharmaceutical product containing such a compound.

1.47 “FDA” shall mean the United States Food and Drug Administration or any successors to its responsibilities with respect to pharmaceutical products such as the Products.

1.48 “Field” shall mean the diagnosis, prophylaxis, treatment, or prevention of multiple myeloma in humans.

1.49 “Final Evaluation Report” shall have the meaning given to it in Section 2.3.1(e).

1.50 “First Commercial Sale” means, with respect to any Product in the Field in any country in the Territory, the first sale for use or consumption by the general public of such Product in the Field in such country after Regulatory Approval of such Product in the Field in such country has been granted, or such marketing and sale is otherwise permitted, by the Regulatory Authority of such country. Sales or transfers of reasonable quantities of a Product for research or Development, including proof of concept studies or other clinical trial purposes, or for compassionate or similar use, shall not be considered a First Commercial Sale.

1.51 “Follow-On Press Release” shall have the meaning given to it in Section 13.2.

1.52 “GMPs” shall mean current Good Manufacturing Practices as defined from time to time by the Act and related regulations or any successor laws or regulations or the equivalent foreign Applicable Laws governing the manufacture, handling, storage and control of the Compound including as required in the United States and the European Union.

1.53 “Governmental Authority” means any multi-national, federal, state, local, municipal or other government authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, court or other tribunal, as well as any securities exchange or securities exchange authority).

1.54 “IND” means an Investigational New Drug Application filed with the FDA.

1.55 “Initial Press Release” shall have the meaning given to it in Section 13.2.

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Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

1.56 “Know-How” shall mean any proprietary or non-public technical, scientific or clinical information, in any tangible or intangible form, including know-how, information, ideas, inventions, works of authorship, trade secrets, technology, data (including pharmacological, toxicological and clinical test data), results, materials, expertise, trade secrets, practices, techniques, methods, processes, developments, specifications, formulations and formulae, including any intellectual property rights embodying any of the foregoing, but excluding Patents.

1.57 “Label” means, with respect to a Product, all labels and other written, printed, or graphic matter (a) on the Product containers or wrappers, or (b) accompanying the Product.

1.58 “Labeling and Packaging” means the final product labeling and packaging of the Product, including materials to be inserted such as patient inserts, patient medication guides, professional inserts and any other written, printed or graphic materials accompanying the Product.

1.59 “License” shall have the meaning given to it in Section 4.1.

1.60 “MAA” means a marketing authorization application filed for Regulatory Approval in the European Union of the applicable Product.

1.61 “Manufacture” or “Manufacturing” means all activities related to the manufacturing of a pharmaceutical compound or product, and/or any ingredient thereof, including manufacturing for clinical use or commercial sale, in-process and finished product testing, warehousing, storage and release of product, quality assurance activities related to manufacturing and release of product and ongoing stability tests and regulatory activities related to any of the foregoing.

1.62 [NOTE USED]

1.63 “NDA” shall mean, for a particular Product, its United States New Drug Application, filed with the FDA, as such application may be amended or supplemented from time to time, or an analogous application or filing with any Regulatory Authority outside of the United States (including any supra-national entity such as the European Union) for the purpose of obtaining approval to market and sell a drug product in such jurisdiction.

1.64 “Net Sales” means the net sales recorded by Matterhorn or any of its Affiliates or sublicensees (excluding distributors and wholesalers) for any Product sold to Third Parties other than such sublicensees as determined in accordance with Matterhorn’ Accounting Standards as consistently applied, less a deduction of [**\*\*\***] percent ([**\*\*\***]%) for direct expenses related to the sales of the Product, distribution and warehousing expenses and uncollectible amounts on previously sold products. The deductions booked on an accrual basis by Matterhorn and its Affiliates under its Accounting Standards to calculate the recorded net sales from gross sales are the following, applied without duplication:

(a) normal and customary trade and cash discounts;

(b) amounts repaid or credited by reasons of defects, rejections, recalls or returns;

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(c) rebates and chargebacks to customers and third parties (including Medicare, Medicaid, Managed Healthcare and similar types of rebates);

(d) amounts provided or credited to customers through coupons and other discount programs;

(e) delayed ship order credits, discounts or payments related to the impact of price increases between purchase and shipping dates or retroactive price reductions;

(f) fee for service payments to customers for any non-separable services (including compensation for maintaining agreed inventory levels and providing information); and

(g) other reductions or specifically identifiable amounts deducted for reasons similar to those listed above in accordance with Matterhorn’ Accounting Standards.

With respect to the calculation of Net Sales:

(i) Net Sales only include the value charged or invoiced on the first arm’s length sale to a Third Party and sales between or among Matterhorn and its Affiliates and Sublicensees shall be disregarded for purposes of calculating Net Sales;

(ii) If a Product is delivered to the Third Party before being invoiced (or is not invoiced), Net Sales will be calculated at the time all the revenue recognition criteria under Matterhorn Accounting Standards are met; and

(iii) In the event that the Product is sold in a finished dosage form containing the Compound in combination with one or more other active ingredients (a “Combination Product”), the Net Sales will be calculated by multiplying the Net Sales of the Combination Product by the fraction, A/(A+B) where A is the weighted (by sales volume) average sale price in the relevant country of the Product containing the Compound as the sole active ingredient in finished form, and B is the weighted average sale price (by sales volume) in that country of the product(s) containing the other component(s) as the sole active ingredient(s) in finished form. Regarding prices comprised in the weighted average price when sold separately referred to above, if these are available for different dosages from the dosages of Compound and other active ingredient components that are included in the Combination Product, then Matterhorn shall be entitled to make a proportional adjustment to such prices in calculating the royalty- bearing Net Sales of the Combination Product. If the weighted average sale price cannot be determined for the Product or other product(s) containing the single Compound or component(s), the calculation of Net Sales for Combination Products will be agreed by the Parties based on the relative value contributed by each component (each Party’s agreement not to be unreasonably withheld or delayed).

1.65 “Nonclinical Evaluation Materials” shall have the meaning given to it in Section 2.1(a).

1.66 “Matterhorn” shall have the meaning given to it in the preamble.

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1.67 “Matterhorn Group” shall mean, collectively, Matterhorn and its Affiliates and sublicensees (including distributors or commercial partners).

1.68 “Matterhorn Indemnified Party” shall have the meaning given to it in Section 15.2.

1.69 “Option” shall have the meaning given to it in Section 3.1.

1.70 “Option Exercise Date” shall have the meaning given to it in Section 3.2.

1.71 “Option Term” shall have the meaning given to it in Section 3.1.

1.72 “Other Information” shall mean (a) information relating to a disapproval or cancellation of Regulatory Approval of a Compound and/or Product by the relevant Regulatory Authority of any jurisdiction; (b) information on modifications required to be made in the contents of a Regulatory Approval of a Product or an application therefor in any jurisdiction in order to prevent, or to warn against risks of, death, bodily harm or other severe adverse event; (c) information on withdrawal of a Product from the marketplace in any jurisdiction; (d) information on important revisions of the warnings or precautions in the usage of a Product as set forth in the Label pursuant to a Regulatory Approval or an application therefor in any jurisdiction; and (e) any information about the Compound or Product which would reasonably be expected to impact the continued Development or Commercialization of a Product in any jurisdiction.

1.73 “Parties” shall have the meaning given to it in the preamble.

1.74 “Patents” shall mean all issued patents and patent applications, whether domestic or foreign, including all continuations, continuations-in-part, divisions, provisionals and renewals, any application for patent filed hereafter or patent issued hereafter in any jurisdiction claiming priority to any such application for patent, letters patent granted with respect to any of the foregoing, patents of addition, supplementary protection certificates, registration or confirmation patents and all reissues, re-examination and extensions thereof.

1.75 “Person” means any corporation, limited or general partnership, limited liability company, joint venture, trust, unincorporated association, governmental body, authority, bureau or agency, any other entity or body, or an individual.

1.76 “Pharmacovigilance Agreement” shall have the meaning given to it in Section 12.1.2.

1.77 “Phase I Clinical Studies” shall mean those studies that include the initial introduction of a drug into humans, to determine the metabolic and pharmacologic actions of the drug (as a single agent or in combination) in humans, as more fully defined in 21 C.F.R. §312.21(a), or its successor regulation, or the equivalent in any foreign country.

1.78 “Phase II Clinical Studies” shall mean early controlled human clinical studies conducted to obtain some preliminary data on the appropriate dose range and effectiveness of a drug (as a single agent or in combination) in a disease or condition under study, as more fully defined in 21 C.F.R. §312.21(b) or its successor regulation, or the equivalent in any foreign country.

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1.79 “Phase IIb Clinical Studies” shall mean controlled, multicenter Phase II Clinical Studies in patients with the disease or condition under study which are conducted after a proof of concept study to further evaluate efficacy and safety in the Field.

1.80 “Phase III Clinical Studies” shall mean expanded and controlled human clinical studies involving administration of a drug to sufficient numbers of human patients with the goal of establishing that a drug (as a single agent or in combination) is safe and efficacious for its intended use, and to be considered as a pivotal study for submission of an NDA, as more fully defined in 21 C.F.R. §312.21(c) or its successor regulation, or the equivalent in any foreign country.

1.81 “Pre-Acquisition Agreement” shall have the meaning given to it in Section 12.2.2(b).

1.82 “Product” shall mean any pharmaceutical product containing the Compound as the sole active ingredient, in all forms, presentations, formulations, and dosage forms.

1.83 “Product Specifications” means those Manufacturing, performance, quality- control release, and other specifications for Compound (including the Compound Specifications) or Product in the Territory, which are agreed by the Parties in writing, as such specifications may be amended from time to time pursuant to the terms of this Agreement.

1.84 “Product Term” shall mean the period beginning as of the Effective Date and extending until the earlier of (a) such time as no Product is being Developed or Commercialized by any member of the Matterhorn Group or (b) termination of this Agreement as provided herein (including pursuant to Section 3.1 or Article XIV).

1.85 “Program” shall mean all activities related to the Development and Commercialization of Compound or Products in the Territory in the Field performed by or on behalf of Veda (or its Affiliates) or Matterhorn (or its Affiliates) pursuant to this Agreement.

1.86 “Program Improvements” shall mean any and all Know-How, Patents and all other intellectual property developed by or on behalf of Matterhorn (or its Affiliates) or jointly by Matterhorn and Veda or any of their respective Affiliates, in connection with the Program.

1.87 “Program Transfer Provisions” shall have the meaning given to it in Section 14.2.5.

1.88 “Protective Action” shall have the meaning given to it in Section 9.2.1.

1.89 “Quality Agreement” shall have the meaning set forth in Section 3.3.

1.90 “Registration or Pivotal Study” shall mean a Phase III Clinical Study, a combined Phase II Clinical Study/Phase III Clinical Study, or any Phase II Clinical Study in lieu of a Phase III Clinical Study, or any well-controlled study intended to provide the substantial evidence of efficacy necessary and sufficient to support an NDA filing.

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1.91 “Regulatory Approval” shall mean: (a) in the United States, written notice of marketing approval by the FDA based on approval of an NDA and satisfaction of any related applicable FDA registration and notification requirements (if any) which are required before a product may be commercially sold in the United States; and (b) in any other country in the Territory, written notice of required marketing approval by the Regulatory Authority having jurisdiction in such country and satisfaction of related applicable registration and notification requirements (if any) which are required before a product may be commercially sold in such country (including, where commercially necessary, satisfactory Label and pricing approval, and, if commercially necessary or for commercial sale of a pharmaceutical, governmental or Third Party reimbursement approval and/or inclusion on any governmental formularies effective in such country).

1.92 “Regulatory Authority” shall mean, in a particular country or regulatory jurisdiction, any applicable Governmental Authority involved in granting Regulatory Approval or, to the extent required in such country or regulatory jurisdiction, pricing or reimbursement approval for a pharmaceutical product, including (a) the FDA, (b) the EMA, and (c) the European Commission, or the successor of any such Governmental Authority.

1.93 “Sales & Royalty Report” has the meaning set forth in Section 5.2.4.

1.94 “Senior Officers” means the Chief Executive Officer of Veda and the Global Head, BD&L, Matterhorn Institutes of Biomedical Research.

1.95 “SPA” shall have the meaning given to it in the recitals.

1.96 “Supply Agreement” has the meaning set forth in Section 3.3.

1.97 “Territory” shall mean the world.

1.98 “Third Party” shall mean any individual, estate, trust, partnership, joint venture, association, firm, corporation, company or other entity, other than Veda or Matterhorn or an Affiliate or an employee of Veda or Matterhorn.

1.99 “United States” or “U.S.” means the United States of America, including its territories and possessions.

1.100 “Valid Claim” shall mean any claim of (a) an issued and unexpired Patent that has not been held unenforceable, unpatentable or invalid by a final decision of a court or a Governmental Authority of competent jurisdiction (including any competent Patent office), from which no further appeal is possible or (b) a pending Patent application that has not been finally abandoned or finally rejected or expired and that has been pending for no more than [**\*\*\***] ([**\*\*\***]) years from the date of filing of the earliest Patent application to which such pending Patent application is entitled to claim priority.

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**ARTICLE II**

**MATERIALS TRANSFER AND EVALUATION STUDY**

Section 2.1. Materials Manufacture and Use.

(a) As soon as reasonably practicable after the later of the execution of this Agreement and the SPA, Veda will supply to Matterhorn such quantities of Compound, Product and other materials as are described in Exhibit C for purposes of conducting Evaluation Studies not comprising human clinical trials (the “Nonclinical Evaluation Materials”), together with such Veda Know-How as may reasonably be necessary in order for Matterhorn to conduct such Evaluation Studies, solely for use for the limited purpose and extent set forth in Section 2.1(c). Veda will use Commercially Reasonable Efforts to supply Matterhorn from time to time with such additional quantities of Nonclinical Evaluation Materials reasonably necessary to complete the nonclinical Evaluation Studies as Matterhorn may reasonably request. Compound supplied to Matterhorn as part of the Nonclinical Evaluation Materials will consist of the supplies of Compound which Veda currently has available to it and shall meet the applicable Compound Specifications for the intended use. All supply of Nonclinical Evaluation Materials pursuant to this Section 2.1 shall be invoiced on a per-shipment basis to Matterhorn at Veda’s Manufacturing Cost as reflected in Veda’s accounting records kept in accordance with its Accounting Standards, and invoiced amounts shall be paid to Veda within [**\*\*\***] of Matterhorn’ receipt of the applicable invoice. Veda Know-How to be provided to Matterhorn will include a Material Safety Data Sheet and relevant information available and known to Veda concerning the safety, handling, use, disposal and environmental effects of the Compound and Product. With respect to the conduct of any human clinical trials included in the Evaluation Studies, all Product supplied as part of the Evaluation Materials provided in connection therewith (the “Clinical Evaluation Materials”) will be Manufactured by or on behalf of Veda in accordance with Matterhorn’ specifications (as approved by Veda), the Supply Agreement and Quality Agreement, and Applicable Law, and invoiced and priced as further detailed in the Supply Agreement. Such materials shall be provided solely for use for the limited purpose and extent set forth in Section 2.1(c).

(b) Solely for use for the limited purpose and extent set forth in Section 2.1(c), Matterhorn may make (or direct Veda to make) the Evaluation Materials available to one or more of its Affiliates and service providers providing services in relation to the Evaluation Studies, and Matterhorn will continue to have primary responsibility and liability for compliance by any such Affiliate(s) and/or service providers, with all of Matterhorn’ obligations under, and its acts or omissions in relation to, this Agreement.

(c) Notwithstanding anything herein to the contrary, during the Option Term, Matterhorn will use (and will cause any Affiliate(s) and service providers provided with access to any Evaluation Materials in accordance with Section 2.1(b) to use) the Evaluation Materials and Veda Know-How solely for the limited and express purpose of performing the Evaluation Studies and for preparing for the subsequent Development of the Compound and Product following the exercise of the Option. No other rights, express or implied, are granted to Matterhorn with respect to the Evaluation Materials and/or Veda Know-How pursuant to this Article II.

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(d) In connection with the other activities contemplated by this Agreement, Matterhorn may also request in writing permission to perform further drug substance synthesis and drug product formulation research and development activities with respect to the Compound and Product (“CMC Development”) during the Option Period if Matterhorn anticipates potential significant clinical timeline delays following its exercise of the Option, and such permission will not unreasonably be withheld by Veda.

Section 2.2. Evaluation Committee.

2.2.1 Formation. Within [**\*\*\***] after the Effective Date, the Parties will  form an evaluation committee composed of three (3) representatives appointed by each of Veda or its Affiliates and Matterhorn or its Affiliates; provided that at least one (1) individual appointed by each Party is vested with the appropriate decision-making and resource- allocating authority, and the requisite experience, to participate in discussion of, and decide on, matters relating to the conduct of the Evaluation Studies (the “Evaluation Committee”). The chairperson of the Evaluation Committee will be one of [**\*\*\***] representatives. From time to time, each Party may substitute its representatives on the Evaluation Committee in its sole discretion, effective upon written notice to the other Party of such change.

2.2.2 Meetings. The Evaluation Committee will meet periodically during the Option Term (but no less frequently than [**\*\*\***]) to review and discuss matters relating to the conduct of the Evaluation Studies. All Evaluation Committee meetings may be conducted in person, by videoconference or by teleconference at such times and such Veda or Matterhorn locations as shall be determined by the Evaluation Committee chairperson; provided that in- person meetings of the Evaluation Committee shall be held at least [**\*\*\***] (unless otherwise agreed by the Parties) and will alternate between appropriate offices of each Party. The Parties shall each bear all expenses of their respective representatives relating to their participation on the Evaluation Committee. The members of the Evaluation Committee also may convene or be polled or consulted from time to time by means of telecommunications, video conferences, electronic mail or correspondence, as deemed necessary or appropriate. The Evaluation Committee may request other employees or consultants of Matterhorn or Veda or their Affiliates to attend its meetings to present information or participate in discussions on an ad hoc basis as it deems appropriate.

2.2.3 Duties of the Evaluation Committee. The Evaluation Committee will review and discuss the activities of the Parties with respect to the conduct of the Evaluation Studies, including review and discussion of (a) any reports and/or plans exchanged pursuant to Sections 2.3.1(c)-(g) and (b) any proposed updates to Exhibit C regarding the Evaluation Studies, including any updates required or recommended based on review and discussion of the materials described in the foregoing clause (a). For the avoidance of doubt, the plan for the Evaluation Studies as set forth in Exhibit C may be modified only by unanimous approval of the Evaluation Committee, acting reasonably and in accordance with this Section 2.2.

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Section 2.3. Performance Obligations.

2.3.1 Matterhorn Obligations.

(a) Matterhorn will commence the Evaluation Studies promptly after Matterhorn’ receipt of the amounts of Evaluation Materials specified in Exhibit C as necessary to commence such studies and will use Commercially Reasonable Efforts to complete the Evaluation Studies during the Option Term.

(b) Matterhorn will be responsible for compliance by itself and its Affiliates with all Applicable Laws with respect to the Evaluation Studies.

(c) Matterhorn shall provide the Evaluation Committee with reports not later than [**\*\*\***] following the end of every other Calendar Quarter, in reasonable detail and in a mutually agreed-upon format, regarding the progress and results of the Evaluation Studies (each, a “Biannual Evaluation Report”). Each Biannual Evaluation Report shall include at a minimum information regarding (i) the number of active sites in each Evaluation Study, (ii) the number of patients enrolled in each Evaluation Study, (iii) any safety issues or adverse experiences of which Matterhorn has been notified or become aware during the course of conducting the Evaluation Studies and (iv) a high level summary of any findings that Matterhorn has discovered in the immediately preceding Calendar Quarter as well as an updated information package as described on Exhibit F hereto with respect to such Calendar Quarter. After delivery of each Biannual Evaluation Report to Evaluation Committee, the Evaluation Committee will meet to discuss the results.

(d) Veda shall provide the Evaluation Committee with a report two times per year, in reasonable detail and in a mutually agreed-upon format, regarding safety and manufacturing developments arising in Veda’s Development efforts outside the Field that could potentially materially affect the Evaluation Studies.

(e) Notwithstanding any termination of this Agreement, within [**\*\*\***] after the earlier of [**\*\*\***] following the last visit of the last subject in the Evaluation Studies (each as specified in the plan for the Evaluation Studies set forth in Exhibit C, as may be amended and reviewed by the Evaluation Committee) or the end of the Option Term (i.e., if the Evaluation Studies are not completed), Matterhorn will provide the Evaluation Committee with a final written report summarizing in reasonable detail the results of, and the performance of the Compound in, the Evaluation Studies (the “Final Evaluation Report”).

(f) Notwithstanding the foregoing, the Biannual Evaluation Report and the Final Evaluation Report will not include any information that is primarily associated with any Matterhorn- or Third Party- proprietary compound or product that might be used in such studies in combination with the Compound and/or Product.

(g) During the Option Term, Matterhorn will prepare an initial Development plan for the activities to be conducted by or on behalf of Matterhorn with respect to the Program for the first twelve (12) months following Matterhorn’ exercise of the Option. Such initial Development plan will describe the specific tasks to be undertaken and objectives to be achieved by Matterhorn during such period. If Matterhorn exercises the Option, not later than [**\*\*\***] following the Option Exercise Date, Matterhorn will provide a draft to the Evaluation Committee for review and comment.

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2.3.2 Veda Rights and Obligations.

(a) Veda shall use Commercially Reasonable Efforts to provide reasonable support and assistance to Matterhorn with respect to its conduct of the Evaluation Studies during the Option Term as requested by Matterhorn, and at Matterhorn’ expense.

(b) During the Option Term, Veda may, but is not obliged to, continue Development of the Compound and/or Products, outside the Field. If Veda elects to perform such work, Veda will do so [**\*\*\***].

Section 2.4. Other Information.

(a) Prior to the commencement of any human clinical trial included in the Evaluation Studies, the Parties will enter into the Pharmacovigilance Agreement as set forth in Section 12.1.2.

(b) In addition to the reporting obligation set forth above, during the Option Term, Veda will promptly notify the Matterhorn if it becomes aware of any Other Information. If any such Other Information relates to fatal, life threatening or other serious adverse events (as defined in ICH-E2A, Section II.B.), Veda will promptly advise Matterhorn by telephone, telex or other instantaneous method of communication and shall within [**\*\*\***] thereafter provide written confirmation of such Other Information.

(c) Each Party will also inform the other within [**\*\*\***] of any information that might reasonably affect either Party’s efforts to obtain Regulatory Approval for the Compound and/or Product and/or might impact Matterhorn’ ability to Develop the Compound and/or Product as required by this Agreement.

**ARTICLE III**

**OPTION**

Section 3.1. Option Grant. Effective upon the later of the Effective Date and the execution of the SPA, Veda hereby grants to Matterhorn an exclusive option during the Option Term to obtain the License specified in Section 4.1 hereof on the terms and conditions specified in this Agreement (the “Option”), which may be exercised in accordance with Section 3.2. “Option Term” means the period commencing on the later of the Effective Date and the execution of the SPA, and ending on the date that is the earlier of (a) sixty (60) days following the last visit of the last subject in the Evaluation Studies (as specified in the plan for the Evaluation Studies set forth in Exhibit C, as may be amended and reviewed by the Evaluation Committee in accordance with Section 2.2), (b) termination of this Agreement and (c) thirty six months following the delivery of sufficient amounts of the Clinical Evaluation Materials to conduct the anticipated clinical studies; provided that to the extent any delays occur that result directly from Veda’s delay in providing Evaluation Materials reasonably requested by Matterhorn during the Option Term beyond the periods set forth in the plan for the Evaluation Studies set forth in Exhibit C, the Option Term shall be automatically extended for a time period equal to the aggregate amount of any such delays. If not earlier terminated, failure by Matterhorn to exercise the Option prior to the expiration of the Option Term will result in the termination of this Agreement (including the Option) on the first date following the expiration of the Option Term.

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Section 3.2. Option Exercise. At any time during the Option Term, Matterhorn may in its sole discretion exercise the Option by (a) delivery of written notification to Veda of its intent to exercise the Option (the “Option Exercise Notice”), and (b) payment of a one-time non- refundable, non-recoupable, non-creditable Option exercise fee of [**\*\*\***] dollars ($[**\*\*\***]) via wire transfer in immediately available funds to the account specified in writing by Veda, to be made no later than [**\*\*\***] after Matterhorn’ receipt of an invoice for the same, which will be transmitted to Matterhorn on or after Veda’s receipt of the Option Exercise Notice. Failure to pay the fee set forth in this Section 3.2 in a timely manner will be deemed to be a material breach of this Agreement. Upon receipt by Veda of the Option exercise fee in accordance with this Section 3.2, the date of the Option Exercise Notice shall thereafter be the “Option Exercise Date” under this Agreement.

Section 3.3. Quality Agreement and Supply Agreement. Within [**\*\*\***] after the Effective Date, the Parties shall negotiate in good faith and enter into a mutually agreed-upon Supply Agreement (“Supply Agreement”) and Quality Agreement (the “Quality Agreement”) with respect to Product to be Manufactured by or on behalf of Veda for the Clinical Studies as set forth in Article XVI.

Section 3.4. Effect of Expiration of Option Term Without Exercise. Upon the expiration of the Option Term without Matterhorn having exercised its Option:

(a) Effective as of the effective date of termination or expiration of this Agreement, Matterhorn hereby grants to Veda a worldwide, royalty-free, non-exclusive, irrevocable license (with right to sublicense) to use the information and data included in any Biannual Evaluation Report and/or Final Evaluation Report, solely to research, Develop, Manufacture, have Manufactured and Commercialize the Compound and/or Products; provided, however, that such license is limited to the data generated from the Evaluation Studies and does not include any other information relating to any other compound or product (other than the Compound and Product, e.g., any Matterhorn-proprietary or Third Party-proprietary compound or product) and does not include a license to any Patents or Patent applications Controlled by Matterhorn or any Matterhorn Affiliate;

(b) At Veda’s request, Matterhorn will return or cause to be returned to Veda all unused Compound and all physical embodiments of Veda Know-How, and any other Evaluation Materials provided by or on behalf of Veda to Matterhorn in connection with the Evaluation Studies (or, if Veda so requests in writing, destroy them or cause them to be destroyed) [**\*\*\***]. Matterhorn may keep one complete record of Veda Know-How as reasonably necessary to comply with Applicable Laws or its continuing obligations under this Agreement; and

(c) Matterhorn will grant the license set forth in Section 8.2.2, if applicable.

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**ARTICLE IV**

**LICENSE**

Section 4.1. License Grant. If Matterhorn exercises its Option within the Option Term, then, subject to the terms and conditions of this Agreement, and except with respect to the rights retained by BFP pursuant to the BFP License Agreement and the retained rights of Veda set forth in this Section 4.1, Veda hereby grants to Matterhorn, and Matterhorn hereby accepts, effective immediately upon the Option Exercise Date an exclusive (including as to Veda and its Affiliates) right and license or sublicense (as applicable) under the Veda Intellectual Property to research, Develop and Commercialize the Compound and/or Product, solely in the Field and in the Territory and (b) subject to Article XVI, Manufacture the Compound and/or Product, solely for use in the Field in the Territory ((a) and (b) collectively, the “License”). For the avoidance of doubt, Veda will retain the right to Manufacture the Compound and/or Product, on an exclusive basis for use outside of the Field worldwide, and on a non-exclusive basis for use within the Field in the Territory in accordance with the terms of this Agreement and the Supply Agreement, as necessary to comply with any obligations as set forth in Article XVI.

Section 4.2. Sublicensing. Matterhorn will have the right to sublicense its rights under the License, but solely: (a) to its Affiliates, (b) to its service providers, distributors, and/or vendors solely with respect to Development and Commercialization of the Products by or on behalf of Matterhorn and its Affiliates, or (c) subject to Veda’s prior written consent (not to be unreasonably withheld) to a Third Party in connection with a sublicense of Matterhorn’ rights to Develop and/or Commercialize the Compound and/or Product in one or more jurisdictions in the Territory, in each case: (i) in a manner which is consistent with the terms and provisions of this Agreement; (ii) where Matterhorn is and remains liable for the acts or omissions of any such sublicensee and remains responsible for its obligations under this Agreement; (iii) pursuant to a written agreement containing terms no less protective of Veda Intellectual Property and Veda’s Confidential Information as those contained herein; and (iv) where any such sublicense terminates upon any termination of the License.

Section 4.3. Right of First Negotiation for Additional Indications.

(a) During the Product Term, in the event that Veda intends to license to a Third Party rights to conduct, or Veda receives from a Third Party a proposed term sheet or agreement to license rights to conduct, Development or Commercialization activities with respect to the Compound in any indication outside of the Field and for which license rights have not been granted prior to the Option Exercise Date (each, an “Additional Indication”), then, prior to entering into negotiations with or offering to any Third Party any license or rights to Develop or Commercialize the Compound for any Additional Indication, Veda will deliver to Matterhorn notice of Veda’s intent to offer such a license or rights to a Third Party (the “Additional Indication Notice”) together with (a) any information or data relating to the Compound that had been provided to the relevant Third Party, and (b) any other information or data in Veda’s Control that would be important to Matterhorn with respect to its decision whether or not to exercise any of the rights granted to it in this Section 4.3; provided that Veda shall be under no obligation to provide any commercially sensitive information that it has not also provided to any such applicable Third Party. Such notice is not required to contain any information about the Third Party or the proposed arrangement other than specifying Veda’s intent to license or a Third Party’s desire to receive a license (as applicable) with respect to the Compound in an Additional Indication.

(b) [**\*\*\***].

(c) [**\*\*\***].

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(d) [**\*\*\***].

(e) Notwithstanding the foregoing, nothing in this Section 4.3 waives any rights under Section 12.2.1.

Section 4.4. Reservation of Rights. Except for the licenses and other rights expressly granted to Matterhorn herein, all right, title and interest in and to the Veda Patents and Veda Know-How (and all modifications, derivatives and improvements thereof), and any other rights of Veda and its Affiliates not expressly granted to Matterhorn hereunder (including, for clarity, all of the foregoing with respect to the Compound or Products outside of the Field, and with respect to compounds or products other than the Compound and Products in any field, subject to Section 12.2), shall remain solely with Veda, its Affiliates and its Third Party licensors, as applicable. To the extent any such rights vest in Matterhorn, then Matterhorn shall, and hereby does, irrevocably assign all such right, title and interest in and to the Veda Patents and Veda Know-How to Veda, and hereby acknowledges and agrees that any such rights are and shall remain owned solely by Veda; *provided, however*, that for the avoidance of doubt, Matterhorn will have no obligation to assign to Veda any intellectual property rights created, conceived of, or reduced to practice solely by Matterhorn, its Affiliates, or agents or jointly by Matterhorn, its Affiliates, and its agents together with Veda and its Affiliates and agents. Except as expressly provided in this Section 4.4 or elsewhere in this Agreement, neither Party will be deemed by this Agreement to have been granted any license or other rights to the other Party’s intellectual property rights, either expressly or by implication, estoppel or otherwise. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that the Development and Commercialization of the Compound and/or Product outside of the Field shall not be within the scope of the licenses or any other rights granted to Matterhorn hereunder (except as expressly provided in Section 4.3).

**ARTICLE V**

**CONSIDERATION**

As partial consideration for the rights and licenses granted to Matterhorn in this Agreement, Matterhorn’ Affiliate, MBRI, will enter into the SPA and Matterhorn will pay the following amounts:

Section 5.1. Milestone Payments.

5.1.1 Developmental Milestones. Matterhorn will notify Veda of the first achievement of any of the Milestone Events set forth below within [**\*\*\***] after their achievement. In addition to (and not in lieu of) royalty payments due under this Agreement, Matterhorn shall pay to Veda the following one-time, non-refundable, non-recoupable, non- creditable milestone payments no later than [**\*\*\***] after receipt of an invoice for the same, which will be issued following receipt of Matterhorn’ notice, via wire transfer in immediately available funds to the account specified in writing by Veda:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Milestone Event** |  | **Milestone Payment** | |  |
| [**\*\*\***] |  | $ | [**\*\*\*** | ] |
| [**\*\*\***] |  | $ | [**\*\*\*** | ] |
| [**\*\*\***] |  | $ | [**\*\*\*** | ] |

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5.1.2 Sales Milestones. Matterhorn will notify Veda of the first achievement of any of the Milestone Events set forth below in a given Calendar Year via the delivery of the relevant Sales & Royalty Report. In addition to (and not in lieu of) royalty payments due under this Agreement, Matterhorn shall pay to Veda the following one-time, non-refundable, non- recoupable, non-creditable milestone payments no later than [**\*\*\***] following receipt of an invoice for the same, which will be issued following receipt of Matterhorn’ Sales & Royalty Report, via wire transfer in immediately available funds to the account specified in writing by Veda:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Milestone Event** |  | **Milestone Payment** | |  |
| [**\*\*\***] |  | $ | [\*\*\* | ] |
| [**\*\*\***] |  | $ | [**\*\*\*** | ] |
| [**\*\*\***] |  | $ | [**\*\*\*** | ] |
| [**\*\*\***] |  | $ | [**\*\*\*** | ] |

5.1.3 General. For the avoidance of doubt, each milestone payment (in Section 5.1.1 and Section 5.1.2) shall be payable only on the first occurrence of the corresponding milestone event, no matter how many Products achieve the specified milestone event, and none of the milestone payments shall be payable more than once.

Section 5.2. Royalties.

5.2.1 Royalties and Royalty Term. Subject to the terms and conditions of this Agreement and in partial consideration of the License granted to Matterhorn, commencing on the First Commercial Sale of a particular Product in a country, Matterhorn will pay to Veda royalties equal to the applicable percentages of aggregate Net Sales of Products in the Territory as described in the table immediately below, on a Product-by-Product and country-by-country basis, until the later of (a) ten (10) years after the First Commercial Sale of such Product in such country, (b) the date of expiry of the last to expire Valid Claim of the Veda Patents covering (i.e., which would otherwise be infringed by) the manufacture, use, sale, importation or offer for sale in such country of such Product (including by reasons of extensions thereof under Applicable Laws, including patent term extensions, pediatric exclusivity or supplemental protection certificates or their equivalents in any country) and (c) the expiration of any regulatory or marketing exclusivity for such Product in such country, including but not limited to any data exclusivity (“Royalty Term”). Upon expiration of the Royalty Term as set forth in the immediately preceding sentence, the License will convert to a fully paid-up License, but solely as to the specific Product at issue and in the country at issue. For all Products, the royalty percentages will be equal to the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Aggregate Net Sales** |  | **Royalty Percentage** | |  |
| [**\*\*\***] |  |  | [**\*\*\***] | % |
| [**\*\*\***] |  |  | [**\*\*\***] | % |
| [**\*\*\***] |  |  | [**\*\*\***] | % |
| [**\*\*\***] |  |  | [**\*\*\***] | % |
| [**\*\*\***] |  |  | [**\*\*\***] | % |

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5.2.2 Payments to Third Parties

(a) The Parties acknowledge that certain intellectual property rights owned or controlled by Third Parties that have been previously identified by the Parties and listed in the Parties’ data room relating to this transaction (“Identified Potential Third Party Intellectual Property Rights”) may be relevant to the Development and/or Commercialization of Compounds and/or Products. In addition to any amounts set forth in Section 5.2.2(b), if Matterhorn determines that it is required to obtain a license to such Identified Potential Third Party Intellectual Property Rights to Develop and/or Commercialize the Compound and/or Product, Matterhorn may offset against the royalties otherwise payable to Veda pursuant to Section 5.2.1, an amount equal to [**\*\*\***]; *provided*, *however*, that (a) such offset is limited solely as to that portion of the royalties attributable to the Compounds and/or Product(s) at issue and in respect of the country(ies) at issue, the amount of any royalties and other payments paid by Matterhorn to the Third Party for such license to the extent that it relates to the Compound and/or Product; and (b) the provisions of this Section 5.2.2(a) will not have the effect of reducing the royalty percentage set forth above by more than [**\*\*\***]% ([***\*\*\****]).

(b) If a Third Party (other than as described in Section 5.2.2(a)) has or receives a Patent in any country that covers the Development, Manufacture or Commercialization of the Compound or Product anywhere in the Territory and Matterhorn reasonably determines after consultation with Veda that it is required to obtain a license to such Patent as to one or more Compounds and/or Products in one or more countries for a royalty or other payment to such Third Party (including, for example, that any Product at issue cannot be reasonably Manufactured differently so as to avoid the requirement), Matterhorn may offset against the royalties otherwise payable to Veda pursuant to Section 5.2.1, but solely as to that portion of the royalties attributable to the Compounds and/or Product(s) at issue and in respect of the country(ies) at issue, the amount of any royalties and other payments paid by Matterhorn to the Third Party for such license to the extent that it relates to the Compound and/or Product; provided, however, that all the offsets set forth in this Section 5.2.2(b) shall be subject to a cap as to any [**\*\*\***] of [**\*\*\***] percent ([**\*\*\***]%) in the aggregate of the royalties otherwise payable for the Product(s) at issue and in respect of the country(ies) at issue.

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5.2.3 BFP License Agreement. As between the Parties hereto, Veda will be responsible for payment of all royalties and any other payments, if any, due to BFP for any activities under this Agreement with respect to (a) the Veda Patents, (b) the License, or (c) the BFP License Agreement, and Veda will promptly pay all such amounts in accordance with the BFP License Agreement and will otherwise maintain the BFP License Agreement in full force and effect during the Term. Veda will notify Matterhorn within [**\*\*\***] if it becomes aware of any uncured material breach of the BFP License Agreement or alleged breach of the BFP License Agreement that it disputes or does not intend to cure in accordance with the terms of the BFP License Agreement.

5.2.4 Payment and Reports. Within [**\*\*\***] after each [**\*\*\***] during the Product Term following the First Commercial Sale of a Product and ending at the end of the Royalty Term, Matterhorn will provide to Veda a report in writing specifying the [**\*\*\***] to which such royalty payment applies and detailing the calculation of the royalties due to Veda for such [**\*\*\***] (the “Sales & Royalty Report”), and Veda will submit an invoice to Matterhorn with respect to the royalty amount shown therein. Matterhorn will pay such royalty amount within [**\*\*\***] after receipt of the invoice.

5.2.5 Foreign Exchange. Any sales incurred in a currency other than U.S. Dollars shall be converted to the U.S. Dollar equivalent using Matterhorn’ then-current standard exchange rate methodology for conversion of foreign currency sales to U.S. Dollars as applied in its external reporting.

5.2.6 Records. Each Party will keep, and will require any Affiliates and sublicensees selling Product to keep, for [**\*\*\***] from the date of each payment of royalties, complete and accurate records of Net Sales or Combined Net Sales of each Product or proprietary Matterhorn pharmaceutical product sold in combination therapy with a Product, as applicable, in sufficient detail to allow the royalties and sales milestones to be determined accurately. Each Party will have the right for a period of [**\*\*\***] after receiving any report or statement with respect to royalties due and payable and a period of [**\*\*\***] after receiving any report or statement with respect to any sales milestones due and payable to appoint an independent certified public accountant reasonably acceptable to the other Party to inspect the relevant records to verify such report or statement. Each Party will make its records and the records of its Affiliates and sublicensees available (including any Net Sales reports received from its sublicensees selling Products or proprietary Matterhorn pharmaceutical product sold in combination therapy with a Product, as applicable) for inspection by such independent certified public accountant during regular business hours at such place or places where such records are customarily kept, upon reasonable notice from the other Party, to verify the accuracy of the reports and payments. Such inspection right will not be exercised more than [**\*\*\***] in any calendar year. The Party requesting the audit will bear all costs and expenses associated with an audit conducted pursuant to this Section 5.2.6, provided, however, that if the designated auditor discovers an underpayment of [**\*\*\***] or more for any year between the amount the Party owing the other Party has paid to the other Party under this Agreement, and the amount of royalties actually owed to the other Party under this Agreement, then the Party being audited will bear all costs and expenses associated with such audit. Each Party agrees to hold in confidence all information concerning royalty payments and reports of the other Party, and all information learned in the course of any audit or inspection, except to the extent necessary for such

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Party to (a) reveal such information in order to enforce its rights under this Agreement, (b) in the case of Veda, provide information to BFP pursuant to the BFP License Agreement, (c) in the case of Matterhorn, provide information to its Affiliates, or (d) if disclosure is required by law. Neither Party will have any obligation to maintain records pertaining to such report or statement beyond said [**\*\*\***] period. The results of each inspection, if any, will be binding on both Parties. Each Party will include substantially the same audit rights in any sublicense it grants in order to verify the correctness of payments due hereunder.

Section 5.3. Taxes.

5.3.1 Generally. The Parties will make all payments under this Agreement without deduction or withholding for taxes except to the extent that any such deduction or withholding is required by law in effect at the time of payment.

5.3.2 Withholding. Any tax required to be withheld on amounts payable under this Agreement will be paid by the Party making the payment (“Paying Party”) on behalf of the Party receiving the payment (“Recipient Party”) to the appropriate Governmental Authority in a timely manner, and the Paying Party will furnish the Recipient Party with an official tax certificate or other evidence of such tax obligations together with proof of payment from the relevant Governmental Authority of all amounts deducted and withheld sufficient to enable the Recipient Party to claim such payment of such tax. Any such tax required to be withheld will be an expense of and borne by the Recipient Party. The Paying Party will provide Recipient Party with reasonable assistance and necessary documents to enable Recipient Party to recover such Tax as permitted by Law.

5.3.3 Indirect Tax. All payments are exclusive of value added taxes, sales taxes, consumption taxes and other similar taxes (the “Indirect Taxes”). If any Indirect Taxes are chargeable in respect of any payments, the paying Party shall pay such Indirect Taxes at the applicable rate in respect of such payments following receipt, where applicable, of an Indirect Taxes invoice in the appropriate form issued by the receiving Party in respect of those payments or supply exemption documentation. The Parties shall issue invoices for all amounts payable under this Agreement consistent with Indirect Tax requirements and irrespective of whether the sums may be netted for settlement purposes.

Section 5.4. Maximizing Sales of Product. In the event that Veda has a bona fide concern that Matterhorn’ actions that are detrimental to maximizing sales of the Product, Veda shall promptly notify Matterhorn of such concern and the Parties shall meet within [**\*\*\***] of such notice to discuss and address Veda’s concern.

Section 5.5. Financial Reporting. Within [**\*\*\***] after the end of each fiscal year of Veda, Veda shall deliver to MBRI (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and (iii) a statement of stockholders’ equity as of the end of such year; all such financial statements audited and certified by independent public accountants of nationally recognized standing. As soon as practicable but in any event within [**\*\*\***] after the end of each of the first three (3) quarters of each fiscal year of Veda, Veda shall deliver to MBRI unaudited statements of income and of cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of stockholders’ equity as of the end of such fiscal quarter, all prepared in

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accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP). The covenants set forth in this Section 5.5 shall terminate and be of no further force or effect upon the earliest to occur of (i) immediately before, but subject to, the consummation of the Company’s first underwritten public offering of its shares, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Securities Exchange Act of 1934, as amended, (iii) a Deemed Liquidation Event (as defined in the Certificate of Incorporation of the Company in effect from time to time); or (iv) such date that Matterhorn and its Affiliates no longer hold any of the shares purchased in the SPA.

**ARTICLE VI**

**ALLIANCE MANAGERS; REPORTING OBLIGATIONS**

Section 6.1. Alliance Managers. Promptly following the Effective Date, each Party shall appoint an appropriately qualified individual to serve as such Party’s alliance manager (“Alliance Manager”) under this Agreement. Such individuals shall serve as a single point of contact for all matters arising under this Agreement. Each Party may change its designated Alliance Manager from time to time upon written notice to the other Party.

Section 6.2. Reporting.

6.2.1 Within [**\*\*\***] after the Option Exercise Date, Matterhorn will provide Veda with a high level summary development plan setting forth the anticipated Development activities to be conducted by Matterhorn and its Affiliates and sublicensees related to the Compound and/or Products during the following 18 month period (the “Development Plan”). No later than [**\*\*\***] after each anniversary of the Option Exercise Date, until the First Commercial Sale of a Product, Matterhorn will update the Development Plan and provide, in reasonable detail, the anticipated Development activities conducted by Matterhorn and its Affiliates and sublicensees during the following [**\*\*\***] period. For clarity, the Development Plan is intended to outline anticipated activities, and the Parties acknowledge that actual Development of the Compounds and/or Product may differ from the Development Plan due to unforeseen or unknown developments or information.

6.2.2 On every six month anniversary of the Option Exercise Date until the First Commercial Sale of a Product, Matterhorn will provide to Veda a high level summary of all Development activities that Matterhorn and its Affiliates or their agents or sublicensees have conducted in the prior six month period (each, a “Development Report”). The Development Report will include sufficient information to reasonably determine if Matterhorn has fulfilled its obligations under Section 7.1 and Section 7.4 of this Agreement.

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**ARTICLE VII**

**PRODUCT DEVELOPMENT, CLINICAL TRIALS AND REGULATORY APPROVALS**

Section 7.1. Product Development.

7.1.1 Responsibilities. Following the exercise of the Option, Matterhorn will be responsible for conducting, [**\*\*\***], research and preclinical, clinical and other Development of any Compounds or Products in the Field in the Territory using Commercially Reasonable Efforts. Matterhorn (a) will determine the regulatory plans and strategies for any Compounds and/or Products in the Field in the Territory, (b) make all regulatory filings with respect to the Compounds and/or Products in the Field in the Territory, either itself or through its Affiliates, and its or their licensees and sublicensees, and (c) be responsible for obtaining and maintaining regulatory approvals throughout the world in the Field in the Territory in the name of Matterhorn or its Affiliates, and its or their licensees or sublicensees. Notwithstanding the foregoing, following the exercise of the Option, Matterhorn will use Commercially Reasonable Efforts to Develop and obtain Regulatory Approval for the Compound and/or Product in the Field in the Territory, it being understood that the use of Commercially Reasonably Efforts may not require Matterhorn to Develop, seek or obtain Regulatory Approval, or Commercialize Compounds and/or Products in all jurisdictions in the Territory.

7.1.2 Disputes. Without limiting Veda’s other remedies, if Veda notifies Matterhorn that it reasonably believes Matterhorn is not using Commercially Reasonable Efforts to Develop Products as required pursuant to Section 7.1.1: (a) the Senior Officers will meet within [**\*\*\***] of any such notice and, at such meeting, Veda will provide its rationale regarding why it believes Matterhorn’ efforts are not Commercially Reasonable Efforts and Matterhorn will provide its rationale regarding why it believes Matterhorn’ efforts are Commercially Reasonable Efforts, based on the facts then existing for the Program; and (b) the Parties will use good faith efforts for a period of up to [**\*\*\***] following such meeting to attempt to resolve any such disputes, following which the provisions of Section 17.3 may be invoked by either Party.

7.1.3 Records. During the Product Term, Matterhorn will prepare and maintain accurate records and books relating to the progress and status of its activities respect to the Development of the Compound and Product in the Field in the Territory.

Section 7.2. Trademarks. Matterhorn (or its designated Affiliate) will own any trademarks used in commercializing Products in the Field in the Territory by or on behalf of itself or its Affiliates. Neither Party will use the name, symbol, trademark, trade name or logo of the other Party or its Affiliates in any press release, publication or other form of public disclosure without the prior written consent of the other Party, except for those disclosures for which consent has already been obtained or in accordance with Section 13.2.

Section 7.3. Regulatory Activities; Responsibility and Ownership.

7.3.1 Veda owns and shall continue to own and control the IND and all non-U.S. equivalents that exist as of the Effective Date for the Compound (the “Existing Regulatory Filings”). Veda will promptly, but not earlier than [**\*\*\***] after the Effective Date, provide Matterhorn and/or the FDA with a letter of authorization for cross-reference of the Existing Regulatory Filings relating to the Compound and/or Products in the United States in the Field. Veda will also provide to Matterhorn (in the format and scope of data included, as agreed upon by the Parties) additional information and data deemed necessary to permit Matterhorn to submit its own regulatory filings (i.e., INDs or CTAs) for the Compound and/or Product in the Field in the Territory, and will provide any updates to such information to Matterhorn promptly during the Product Term. Veda

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shall, and hereby does, grant to Matterhorn a right of reference to and use of the Existing Regulatory Filings in the United States in connection with seeking and maintaining Regulatory Approval relating to the Compound and/or Products in the United States in the Field. During the Product Term, Veda will update the Existing Regulatory Filings as required by Applicable Law and maintain the Existing Regulatory Filings in full force and effect in the jurisdictions of their submission and provide a copy to Matterhorn of any sections of such Regulatory Filings (and any associated documentation, data and information) that may be reasonably applicable to Matterhorn. If requested by Matterhorn, Veda will use its Commercially Reasonable Efforts to make itself and its representatives reasonably available to answer questions from Matterhorn and/or the Regulatory Authorities in a timely manner relating to the Existing Regulatory Filings, and any data included in the Existing Regulatory Filings, and any updates thereto. To the extent that any Regulatory Authority raises concerns or questions to Veda relating to the Compound and/or Product that could reasonably affect the Development and/or Commercialization of the Compound and/or Product in the Field, Veda will promptly inform Matterhorn and provide a copy of any associated correspondence to Matterhorn for Matterhorn’ use in the Field. [**\*\*\***].

7.3.2 Matterhorn will be solely responsible for implementing all pre-Regulatory Approval regulatory plans and strategies for and preparing and submitting applications for all Regulatory Approvals for the Development and Commercialization of the Compound and/or Product in the Field in the Territory, including INDs and NDAs (and all non-U.S. equivalents), and will own all such associated regulatory filings in which Matterhorn and/or its Affiliates is the sponsor. To the extent that any Regulatory Authority raises concerns or questions to Matterhorn relating to the Compound and/or Product that could reasonably affect the Development and/or Commercialization of the Compound and/or Product outside the Field, Matterhorn will promptly inform Veda and provide a copy of any associated correspondence to Veda for Veda’s use outside the Field and Matterhorn shall otherwise provide Veda a copy of any correspondence with any Regulatory Authority related to the Compound and/or Product generated by Matterhorn as soon as reasonably practicable; provided, that in all such cases, Matterhorn shall have the right to redact from such document provided to Veda any portions thereof relating to any compound or material other than the Compounds and Products or to the extent such information or correspondence relates solely to the Field.

7.3.3 Veda will be solely responsible for implementing all pre-Regulatory Approval regulatory plans and strategies for and preparing and submitting applications for all Regulatory Approvals for the Development and Commercialization of the Compound and/or Product worldwide outside of the Field, including INDs and NDAs (and all non-U.S. equivalents), and will own all such associated regulatory filings in which Veda and/or its Affiliates is the sponsor. To the extent that any Regulatory Authority raises concerns or questions to Veda relating to the Compound and/or Product that could reasonably affect the Development and/or Commercialization of the Compound and/or Product in the Field, Veda will promptly inform Matterhorn and provide a copy of any associated correspondence to Matterhorn generated by Matterhorn. In no event will Veda provide, or be required to provide, any information or correspondence relating to any compound or material other than the Compounds and Products. [**\*\*\***].

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Section 7.4. Commercialization. Matterhorn (itself or through an Affiliate) will be responsible for Commercialization activities for Products in the Field in the Territory and [**\*\*\***] (although such activities may be performed through an Affiliate or Third Party). Matterhorn will use Commercially Reasonable Efforts to Commercialize Products in in the Field in the Territory.

**ARTICLE VIII**

**OWNERSHIP AND INTELLECTUAL PROPERTY**

Section 8.1. Ownership. Except as expressly provided in this Agreement, each Party shall retain and own all right, title and interest in and to all Intellectual Property Controlled by such Party or its Affiliates as of the Effective Date or acquired, in-licensed or generated, invented or discovered by such Party or its Affiliates outside the Program. As between the Parties, Veda is and will be sole owner of the Veda Intellectual Property that exists as of the Effective Date.

Section 8.2. Veda Improvements and Program Improvements.

8.2.1 Veda will own any inventions relating to the Compound and/or Product and its use created, conceived of, or reduced to practice solely or jointly by or on behalf of it or its Affiliates in the conduct of its own Development of the Compound and/or Product outside of the Program (“Veda Improvements”). All such Veda Improvements arising in the Option Term will be deemed to be Veda Intellectual Property and subject to the Option and license as set forth in this Agreement.

8.2.2 Matterhorn will own any Program Improvements, provided that, Matterhorn hereby grants to Veda and its Affiliates an exclusive, worldwide, fully paid and royalty free license and right (with the right to grant sublicenses through multiple tiers without the consent of or any accounting to Matterhorn) to practice such Program Improvements solely in connection with the research, Development and Commercialization of the Compound and/or Product after termination of this Agreement for any reason. Matterhorn will retain all other rights to such Program Improvements.

Section 8.3. Veda Patents.

8.3.1 Solely with respect to those Veda Patents of which Veda has control over maintenance and/or prosecution, as applicable, and subject in all cases to the terms and conditions of the BFP License Agreement:

(a) Veda shall have the right, but not the obligation, to (i) prosecute and maintain Veda Patents by duly filing all necessary papers and [**\*\*\***] required for such purpose by the Patent laws of the particular country in which such Veda Patent was granted, and (ii) obtain such Patent extensions or restorations of Patent terms as may become available from time to time in any country regarding Veda Patents. Veda will keep Matterhorn reasonably informed of the status of the prosecution and maintenance of the Veda Patents in the Territory and will provide copies of any correspondence received from patent agencies with respect to such Veda Patents. If either Party receives any information indicating or otherwise determines that the Veda Patents may be invalid or unenforceable, anywhere in the Territory, the Party receiving the information or otherwise making that determination will give the other Party prompt written notice of such information.

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(b) Veda shall bear the [**\*\*\***] responsibility for maintenance of issued Patents included within the Veda Patents. If Veda elects not to support (or to continue the support of) the preparation, filing or prosecution of one or more patent applications included in the Veda Patents or the maintenance of one or more issued Veda Patents (whether worldwide or on a country-by-country basis), Veda shall give prompt written notice to Matterhorn and Matterhorn may, at its election, assume title to and responsibility for (including responsibility for [**\*\*\***]) the preparation, filing and prosecution of the relevant patent application or the maintenance of the issued patent in one or more of such jurisdictions; provided that following receipt of Matterhorn’ election to assume title to such patents, (a) Veda shall promptly assign all of its right, title, and interest to such patent application and/or patents to Matterhorn or its designee; and (b) such patents will cease to be deemed Veda Patents for the purpose of this Agreement.

Section 8.4. Matterhorn Patents Included in Program Improvements. If Matterhorn elects not to support (or to continue the support of) the preparation, filing or prosecution of one or more patent applications included in the Program Improvements or the maintenance of one or more issued patents included in the Program Improvements (whether worldwide or on a country-by- country basis), Matterhorn shall give prompt written notice to Veda and Veda may, at its election, assume title to and responsibility for (including responsibility for all costs for) the preparation, filing and prosecution of the relevant patent application or the maintenance of the issued patent in one or more of such jurisdictions; provided that following receipt of Veda’s election to assume title to such patents, (a) Matterhorn shall promptly assign all of its right, title, and interest to such patent application and/or patents to Veda or its designee; and (b) such patents will cease to be deemed Program Improvements for the purpose of this Agreement.

**ARTICLE IX**

**INFRINGEMENT BY OR CLAIMS AGAINST THIRD PARTIES**

Section 9.1. Notices. Each Party will advise the other promptly upon its becoming aware of: (a) any unlicensed activities which such Party believes may be an actual or impending infringement in the Territory of any Veda Intellectual Property or otherwise with respect to the Compound or a Product or the Development, Manufacture or Commercialization thereof in the Field in the Territory; (b) any attack on or appeal of the grant of any Veda Patent; (c) any application for Patent by, or the grant of a Patent to, a Third Party in respect of rights which may be related to the Compound or a Product so as to potentially affect the Development, Manufacture or Commercialization thereof in the Field or which may claim the same subject matter as or conflict with any Veda Patent; or (d) any application made for a compulsory license under any Veda Patent. Matterhorn acknowledges and agrees that any such information may be shared with BFP in accordance with the BFP License Agreement and that BFP has certain rights and obligations thereunder with respect to enforcement of any such matters.

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Section 9.2. Control of Defense. Subject in all cases to the terms and conditions of the BFP License Agreement:

9.2.1 Prior to Option Exercise Date. Prior to the Option Exercise Date, Veda will have the right [**\*\*\***] to take whatever legal or other action is required in response to activities requiring notice under Section 9.1 (“Protective Action”) and will notify Matterhorn as promptly as practicable of its determination whether or not to take such action. If Veda engages in such Protective Action, Matterhorn will [**\*\*\***] cooperate fully with Veda in such action. Each Party, as well as BFP, may participate and be represented by counsel of its own selection [**\*\*\***] in such Protective Action (except as provided above), but Veda will have the right to control such action. Any recovery obtained by Veda as a result of such Protective Action, whether by judgment, award, decree or settlement, will be [**\*\*\***]. If Veda determines it will not engage in such Protective Action, and BFP does not elect to undertake such Protective Action pursuant to the terms of the BFP License Agreement, following the Option Exercise Date, Matterhorn shall thereafter have the right to take such Protective Action and will notify Veda as promptly as practicable of its determination whether or not to take such action, provided that Matterhorn shall first consult with Veda concerning the reasons Veda elected not to bring such action and shall consider those reasons in good faith in deciding whether to bring such action. Veda and BFP shall have the right to participate and be represented in any such suit by its own counsel [**\*\*\***].

9.2.2 Following Option Exercise Date. Following the Option Exercise Date, Matterhorn will have the right [**\*\*\***] to take Protective Action and will notify Veda as promptly as practicable of its determination whether or not to take such action. If Matterhorn engages in such Protective Action, Veda will [**\*\*\***] cooperate fully with Matterhorn in such action. Each Party, as well as BFP, may participate and be represented by counsel of its own selection [**\*\*\***] in such Protective Action (except as provided above), but Matterhorn will have the right to control such action. Any recovery obtained by Matterhorn as a result of such Protective Action, whether by judgment, award, decree or settlement, will be [**\*\*\***]. If Matterhorn notifies Veda that it will not engage in such Protective Action, Veda shall thereafter have the right to take such Protective Action and will notify Matterhorn as promptly as practicable of its determination whether or not to take such action, provided that Veda shall first consult with Matterhorn concerning the reasons Matterhorn elected not to bring such action and shall consider those reasons in good faith in deciding whether to bring such action. Matterhorn and BFP shall have the right to participate and be represented in any such suit by its own counsel [**\*\*\***].

9.2.3 Settlements. No settlement of any such action or proceeding which restricts the scope, or adversely affects the enforceability, of a Veda Patent in the Field may be entered into by Matterhorn without the prior written consent of Veda and BFP, which consent shall not be unreasonably withheld, delayed or conditioned, and further, no settlement of any such action or proceeding which pertains to the infringement of the Veda Patents by virtue of the Development or Commercialization of a Compound in the Field by a Third Party may be entered into by Matterhorn without the prior written consent of Veda or BFP, which consent shall not be unreasonably withheld, delayed or conditioned.

9.2.4 Withdrawal. After the Option Exercise Date, if either Party brings an action or proceeding under this Section 9.2 and subsequently ceases to pursue or withdraws from such action or proceeding, it shall within a reasonable period of time notify the other Party and the other Party (or, in the case of Matterhorn, BFP or Veda) may substitute itself for the withdrawing Party under the terms of this Section 9.2.

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**ARTICLE X**

**INFRINGEMENT OF THIRD PARTY RIGHTS**

Section 10.1. Third Party Claims, Infringement and Misappropriation. During the Product Term, Matterhorn and Veda will each promptly notify the other of (a) any Claim by a Third Party against Matterhorn or Veda, or any Affiliate or sublicensee of Veda or Matterhorn, alleging infringement of such Third Party’s intellectual property rights as a result of the Development, Manufacture or Commercialization of the Compound or a Product anywhere in the Territory; and (b) any information or notice that would reasonably indicate that the Compound could infringe any Third Party’s Patent rights or misappropriate any Third Party’s Know How. With respect to clause (a) of the prior sentence, the Parties will cooperate and use their good faith, commercially reasonable efforts to resolve such claimed infringement and will consult together as to the action to be taken and as to how the defense will be handled, with each Party entitled to participate in the defense and to be represented by counsel of its choice ([**\*\*\***]); provided, however, that if it appears reasonably likely that the claimed infringement will give rise to a Claim for indemnification hereunder, then the Party against whom such Claim for indemnification would be made will have the first right to defend against such Claim in accordance with Article XV below.

**ARTICLE XI**

**REPRESENTATIONS AND WARRANTIES**

Section 11.1. Representations and Warranties of Both Parties. Veda and Matterhorn each hereby represents and warrants to the other, as of the Effective Date of this Agreement (and it shall be a condition to exercise of the Option that, as of the date of exercise of the Option, each is able to confirm to the other) as follows:

(a) It is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite power and authority, corporate or otherwise, to conduct its business as now being conducted, to own, lease and operate its properties and to execute, deliver and perform this Agreement.

(b) Neither it, nor any of its employees or consultants who shall be undertaking any activities related to this Agreement or the subject matter thereof, has been debarred or is the subject of debarment or other disciplinary proceedings by the FDA or any Regulatory Authority in the Territory.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required to be obtained or made by or with respect to such Party in connection with its execution, delivery and performance of this Agreement.

(d) The execution, delivery and performance by it of this Agreement and the transactions contemplated thereby have been duly authorized by all necessary corporate action and stockholder action and will not (i) violate any Applicable Laws or (ii) result in a breach of or constitute a default under any material agreement, mortgage, lease, license, permit or other instrument or obligation to which it is a Party or by which it or its properties may be bound or affected.

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(e) This Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms and conditions, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws, from time to time in effect, affecting creditors’ rights generally and general principles of equity.

(f) It is not under any obligation to any Third Party, contractual or otherwise, that conflicts with the terms of this Agreement or that limits the rights of such Party to fulfill its obligations hereunder.

Section 11.2. Representations and Warranties of Veda. Veda hereby represents and warrants to Matterhorn, as of the Effective Date of this Agreement, as follows:

(a) Veda owns or has the lawful right to grant the License.

(b) Veda has received no notice of any Claim by any Third Party or any Veda employee that (a) such Third Party or employee has any rights to the Veda Intellectual Property or the Compound that prevent Veda from granting to Matterhorn the License; Manufacture or Commercialization of the Compound within the Field as contemplated hereby infringes any Third Party rights; or (c) the Veda Patents (to the extent representing issued Patents) are invalid or unenforceable.

(c) Product supplied by Veda hereunder (a) will meet the applicable Product Specifications for the intended use, (b) will not be adulterated or misbranded within the meaning of the Act, and (c) will be Manufactured in accordance with GMPs; provided, however, that Veda may supply Product not Manufactured in accordance with GMPs if specifically intended for non-human testing and as agreed to in writing by Matterhorn.

(d) Veda has provided to Matterhorn a redacted text of the BFP License Agreement. None of the terms redacted from the BFP License Agreement impair, or have the ability to impair, Veda’s ability to perform its obligations under this Agreement or Matterhorn’ rights under the License. Veda has not received any notice or other communication from BFP regarding any breach by Veda of its obligations under the BFP License Agreement.

(e) Other than the BFP License Agreement, to Veda’s knowledge as of the Effective Date, after reasonable inquiry of existing information reasonably available to Veda, there are no other agreements to which Veda is a Party or to which Veda is subject which impair, or have the ability to impair, Veda’s ability to perform its obligations under this Agreement or Matterhorn’ rights under the License.

(f) To Veda’s actual knowledge as of the Effective Date (without any inference or duty of investigation), there are no errors in the inventorship set forth in any of the Patent applications comprising Veda Patents.

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(g) To Veda’s actual knowledge as of the Effective Date (without any inference or duty of investigation), there is no litigation threatened, impending or existing relating to the Veda Intellectual Property.

(h) To Veda’s actual knowledge as of the Effective Date (without any inference or duty of investigation), and except for any items cited or referred to in any of the Veda Patents, there are no publications, issued Patents, published Patent applications or public disclosures that could reasonably be expected to provide a sufficient basis to render invalid or unenforceable any of the Veda Patents.

(i) To Veda’s actual knowledge as of the Effective Date (without any inference or duty of investigation), there are no Third Party Patents, published Patent applications, or publications not yet disclosed to Matterhorn that could reasonably be expected to impair Matterhorn’ rights under the License.

Section 11.3. MUTUAL LIMITATIONS ON WARRANTIES. EXCEPT AS SET FORTH IN SECTIONS 11.1 AND 11.2, OR OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO NON-INFRINGEMENT, VALIDITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR ANY WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

**ARTICLE XII**

**COVENANTS; EXCLUSIVITY**

Section 12.1. Covenants of the Parties.

12.1.1 Compliance with Laws. Throughout the Product Term, Veda and Matterhorn will comply in all material respects with all Applicable Laws, including the Act, concerning the Development, Manufacture and Commercialization of the Compound and the Products in the Field in the Territory.

12.1.2 Pharmacovigilance. Prior to the dosing of the first patient in any human clinical trial in the Program, the Parties will enter into a commercially reasonable pharmacovigilance agreement (the “Pharmacovigilance Agreement”), which will govern the exchange, sharing, and reporting of adverse event information. From the Effective Date until entry into the Pharmacovigilance Agreement, Veda shall retain sole responsibility for and be the primary contact for pharmacovigilance matters in respect of the Product outside the Field, subject to the terms of Section 2.4. After the Option Exercise Date and following entry into the Pharmacovigilance Agreement, Veda will allow Matterhorn to comply (and Matterhorn will be responsible for complying) with the adverse reaction reporting requirements of the Act, and other comparable Applicable Laws outside the United States, with respect to Compound or Products in the Field.

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12.1.3 Further Assurances. The Parties will execute and deliver any further or additional instruments or documents and perform any acts which may be reasonably necessary in order to effectuate and carry out the purposes of this Agreement.

Section 12.2. Exclusivity.

12.2.1 Non-Compete. During the period commencing on the Option Exercise Date and continuing until the end of the Product Term, except as explicitly contemplated in this Agreement with respect to the Compound and Products, (a) each Party agrees not to, and shall cause its Affiliates not to, directly or indirectly, alone or with any Third Party (including by license or assignment of Patents), research, Develop or Commercialize any Exclusivity Product in the Field in the Territory; and (b) Veda agrees not to, and shall cause its Affiliates not to, directly or indirectly, alone or with any Third Party (including by license or assignment of Patents), research, Develop or Commercialize the Compound and/or Product in the Field.

12.2.2 Acquired Programs.

(a) Notwithstanding anything to the contrary in this Agreement, in the event of an acquisition of a Party or its business after the Option Exercise Date by a Third Party (an “Acquirer”) whether by merger, asset purchase or otherwise and such Acquirer controls any program(s) that but for this Section 12.2.2, would violate Section 12.2.1 (each such program, a “Competing Program”), then the Acquirer and any Affiliate of the Acquirer that becomes an Affiliate of the acquired Party as a result of such acquisition (but excluding the acquired Party), shall not be subject to the restrictions in Section 12.2.1 as to any such Competing Programs in existence prior to the closing date of such acquisition, or for the subsequent Development and Commercialization of such Competing Programs (including new products from any such Competing Programs); provided, however, that no Know-How or Patents of the other Party are used by or on behalf of the Acquirer of the acquired Party (or any Affiliate of such Acquirer) in more than a *de minimis* fashion in connection with such subsequent Development and Commercialization of any Competing Programs.

(b) Notwithstanding anything to the contrary in this Agreement, in the event a Party or any of its Affiliates (the “Acquiring Party”) acquires or otherwise obtains rights to Develop or Commercialize any Exclusivity Product as the result of any license, merger, acquisition, reorganization, consolidation or combination with or of a Third Party or change of control of such Party or any other transaction (each, an “Acquisition Transaction”, and the Third Party involved in such transaction, the “Acquisition Third Party”) and, on the date of the completion of such Acquisition Transaction, such Exclusivity Product is being Developed or Commercialized in or by such Acquisition Third Party in a matter that, if done by such Party, would violate such Party’s exclusivity obligations in Section 12.2.1, then the Acquiring Party or such Affiliate will, within [**\*\*\***] after the closing of such Acquisition Transaction, provide written notice to the other Party that the Acquiring Party or such Affiliate has acquired rights to Develop or Commercialize a Exclusivity Product as a result of an Acquisition Transaction. Within [**\*\*\***] after the receipt of such notice, the Acquiring Party will (i) give notice of its intent to divest its rights to such Exclusivity Product, or (ii) cease the Development and Commercialization of such Exclusivity Product. Alternatively, the Parties may, upon mutual written agreement, elect to include such Exclusivity Product as if it were a “Product” for all purposes of this Agreement (including determination of Net Sales, milestone payments, and other payments, consistent with the terms of this Agreement, provided that any such payments will be payable on such Exclusivity Product in addition to being payable on all Products), which election will be effective retroactively to the date of the closing of such Acquisition Transaction. [**\*\*\***].

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**ARTICLE XIII**

**CONFIDENTIAL INFORMATION**

Section 13.1. Confidentiality.

13.1.1 General Obligations of Non-Use and Non-Disclosure. Each Party agrees that during the Product Term and at all times thereafter, it shall keep, and cause its Affiliates and sublicensees, if any, to keep confidential all Confidential Information of the other Party using not less than the efforts such Party uses to maintain in confidence its own proprietary industrial information of similar kind and value, and neither Party nor any of its Affiliates or sublicensees, if any, will use or disclose to any Third Party the Confidential Information of the other Party except as expressly permitted in this Agreement. The Parties acknowledge that Confidential Information may have been disclosed by either Party or its Affiliates to the other Party or its Affiliates pursuant to the Confidentiality Agreement. All information disclosed pursuant to the Confidentiality Agreement will be deemed Confidential Information of the Disclosing Party within the meaning of this Agreement and subject to the terms hereof.

13.1.2 Permitted Disclosures. Notwithstanding the foregoing, the Receiving Party may (a) disclose it to government agencies and others where such information may be required to be included in Patent applications or regulatory filings permitted under the terms of this Agreement; (b) provide it to Third Parties solely on a “need to know” basis under agreements including confidentiality and non-use provisions at least as restrictive as those in this Agreement for consulting, market research, Manufacturing, Development, and preclinical and clinical testing with respect to the Products in connection with performance under this Agreement; (c) prosecuting or defending litigation in relation to the Veda Intellectual Property or this Agreement, including responding to a subpoena in a Third Party litigation, provided it has used good faith and reasonable efforts to obtain a protective order for such Confidential Information or (d) publish it if and to the extent such publication has been approved in writing by the Disclosing Party. In each of the foregoing cases, the Receiving Party will use diligent efforts to limit the disclosure and maintain confidentiality to the extent possible and the Receiving Party shall remain responsible for any failure by any Person who receives Confidential Information pursuant to this Article XIII to treat such Confidential Information as required under this Article XIII. If and whenever any Confidential Information is disclosed in accordance with this Section 13.1.2, such disclosure shall not cause any such information to cease to be Confidential Information except to the extent that such disclosure results in a public disclosure of such information (otherwise than by breach of this Agreement). Where reasonably possible and subject to Section 13.1.3, the Receiving Party shall notify the Disclosing Party of the Receiving Party’s intent to make such disclosure pursuant to this Section 13.1.2 sufficiently prior to making such disclosure so as to allow the Disclosing Party adequate time to take whatever action it may deem appropriate to protect the confidentiality of the information.

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13.1.3 Required Disclosures. The Receiving Party will be entitled to disclose Confidential Information where such disclosure is reasonably necessary to enforce its rights pursuant to this Agreement or where demand for such disclosure is made on the Receiving Party pursuant to: (a) a valid order of a court or other Governmental Authority or (b) any other Applicable Laws; provided that if the Receiving Party intends to make such disclosure or receives such demand, the Receiving Party shall give the Disclosing Party prompt notice of such fact to enable the Disclosing Party to seek a protective order or other appropriate remedy concerning any such disclosure. The Receiving Party will fully co-operate with the Disclosing Party at the Disclosing Party’s expense in connection with the Disclosing Party’s efforts to obtain any such order or other remedy. If any such order or other remedy does not fully preclude disclosure, the Receiving Party will make such disclosure only to the extent that such disclosure is legally required.

13.1.4 Terms of this Agreement. The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. For the avoidance of doubt, this Section 13.1.4 shall in no way prevent a Party from disclosing the existence of this Agreement or any terms of this Agreement in order to seek legal advice whenever deemed appropriate by such Party or to enforce such Party’s rights under this Agreement, whether through arbitral proceedings, court proceedings or otherwise, or to defend itself against allegations or claims relating to this Agreement, or to comply with Applicable Law (except as provided in Section 13.3 below) when advised in a written opinion of outside counsel that terms of the Agreement are required to be disclosed to comply with Applicable Law.

13.1.5 Acknowledgment. Each Party hereby acknowledges that the Confidential Information of the other Party is highly valuable, proprietary and confidential and that any disclosure to any officer, employee, or agent of such Party or any of its Affiliates will be made only to the extent necessary to carry out its responsibilities under this Agreement and only if such officer, employee or agent is informed of the confidential nature thereof and shall have agreed to hold such information in confidence under confidentiality provisions at least as stringent as those provided in this Agreement.

13.1.6 Remedies. The Parties agree that the obligations of this Section 13.1 are necessary and reasonable in order to protect the Parties’ respective businesses, and that monetary damages alone may be inadequate to compensate a Party for any breach by the other Party of its covenants and agreements set forth herein. The Parties agree that any breach or threatened breach of this Section 13.1 may cause irreparable injury to the injured Party for which damages may not be an adequate remedy and that, in addition to any other remedies that may be available, in law and equity or otherwise, such Party will be entitled to seek equitable relief against the breach or threatened breach of the provisions of this Section 13.1.

13.1.7 Destruction or Return. Following termination or expiration of this Agreement for any reason and at the request of the other, each Party will destroy all physical records or embodiments of Confidential Information of the other Party or return such information to the other Party, at the returning Party’s expense, and an officer of such Party shall certify to the other Party that all such items have been so returned or destroyed; provided, however, that each Party will be entitled to maintain one copy of the Confidential Information of the other Party solely for the purpose of monitoring its continuing obligations hereunder.

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Section 13.2. Disclosure to Investors; Public Announcements. The Parties have agreed on an initial press release of the transaction contemplated by this Agreement which is attached hereto as Exhibit D-1 (the “Initial Press Release”) and a conditional follow-on press release for issuance following exercise of the Option hereunder which is attached hereto as Exhibit D-2 (the “Follow-On Press Release”). The Initial Press Release may be issued by Veda or Matterhorn after the Effective Date, and the Follow-On Press Release may be issued or used by Veda or Matterhorn solely after the Option Exercise Date. Other than the Initial Press Release, and, if applicable, the Follow-On Press Release, neither Party will originate any publicity, news release or public announcement, written or oral, whether to the public, the press, stockholders or otherwise, disclosing the performance under this Agreement or any of its specific terms and conditions without the prior written approval of the other Party, except such announcements, as in the opinion of the counsel for the Party making such announcement, are required by law. If a Party decides to make an announcement it believes to be required by Applicable Laws with respect to this Agreement, it will give the other Party such notice as is reasonably practicable and the Parties will work together in good faith to attempt to agree on the content of the disclosure. Notwithstanding the foregoing, Veda will also have the right to provide investors and potential investors in Veda with information regarding this Agreement and the terms thereof either (a) pursuant to confidentiality restrictions at least as stringent as those set forth herein which are binding on such Persons or (b) in disclosure documents filed in connection with a public offering or as a public company, provided that Matterhorn has approved such disclosure (such approval not to be unreasonably withheld or delayed) and Veda has made all permitted redactions under applicable regulatory requirements. Notwithstanding the foregoing, or anything in this Agreement to the contrary, nothing in this Agreement will prevent Veda or its designee from disclosing Program Improvements or from filing Patent applications which may include Program Improvements or Matterhorn’ Confidential Information.

Section 13.3. Securities Filings. Notwithstanding anything to the contrary in this Agreement, in the event either Party proposes to file with the Securities and Exchange Commission or the securities regulators of any state or other jurisdiction a registration statement or any other disclosure document which describes or refers to this Agreement under the Securities Act of 1933, as amended, the Securities Exchange Act, of 1934, as amended, any other securities Applicable Law or the rules of any national securities exchange, the Party shall notify the other Party of such intention and shall use reasonable efforts to provide such other Party with a copy of relevant portions of the proposed filing not less than [**\*\*\***] prior to (but in no event later than [**\*\*\***] prior to) such filing (and any revisions to such portions of the proposed filing a reasonable time prior to the filing thereof), including any exhibits thereto relating to this Agreement, and shall use reasonable efforts to obtain confidential treatment of any information concerning this Agreement that such other Party requests be kept confidential, and shall only disclose Confidential Information which is legally required to be disclosed. No such notice shall be required under this Section 13.3 if the substance of the description of or reference to this Agreement contained in the proposed filing has been included in any previous filing made by the either Party hereunder or otherwise approved by the other Party.

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**ARTICLE XIV**

**TERM AND TERMINATION**

Section 14.1. Term. This Agreement will remain in effect for the Product Term.

Section 14.2. Termination by Veda.

14.2.1 For Material Breach. Veda may terminate this Agreement immediately in the event of a material breach by Matterhorn or its Affiliates of this Agreement, provided that Matterhorn has received written notice from Veda of such breach, specifying in reasonable detail the particulars of the alleged breach, and such breach has not been cured within sixty (60) days after the date of the relevant notice. In the event that such a breach (other than the nonpayment of a material amount due where such amount is subject to a bona fide dispute between the Parties) may not be reasonably cured in sixty (60) days, then such cure period will be extended for an additional period during which Matterhorn is making good faith efforts to cure such breach.

14.2.2 For Patent Challenge. If Matterhorn (or any of its Affiliates) challenges or knowingly supports a Third Party in challenging (other than in response to a subpoena or court order), in a judicial or administrative proceeding, including by providing information, documents, or funding, the validity, scope or enforceability of or otherwise opposes any of the Veda Patents, this Agreement will continue in full force and effect; provided, however, that the milestone payments set forth in Section 5.1.1 and 5.1.2 for any unachieved milestones, and the royalties payable as set forth in Section 5.2, will be [**\*\*\***], and [**\*\*\***].

14.2.3 For Failure to Develop or Commercialize. Veda shall have the right to terminate this Agreement in its entirety in the event that Matterhorn fails to fulfill its obligations to Develop Compounds and/or Products in accordance with Section 7.1.1 or to Commercialize Products in accordance with Section 7.4, provided that Matterhorn has not cured such breach within four (4) months following written notice by Veda which notice shall be labeled as a “notice of material breach for failure to use Commercially Reasonable Efforts,” and in the case of an alleged breach of Section 7.4, identifies the countries in the Territory in which such breach has occurred. Any such termination of this Agreement shall become effective at the end of the applicable cure period, unless Matterhorn has cured any such breach or default prior to the expiration of such cure period. The cure period shall be tolled pending resolution of any bona fide dispute between the Parties as to whether any such material breach has occurred.

14.2.4 Consequences of Termination Pre-Option Exercise Date. If Veda terminates this Agreement pursuant to Section 14.2.1, or Section 14.2.3 before the Option Exercise Date, (a) all rights to Veda Intellectual Property granted to Matterhorn, and any other rights granted by Veda hereunder, will automatically terminate and (b) Veda will have the rights specified in Section 3.4.

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14.2.5 Consequences of Termination Post-Option Exercise Date. If Veda terminates this Agreement pursuant to Section 14.2.1 or Section 14.2.3 after the Option Exercise Date, the License granted to Matterhorn, and any other rights granted by Veda hereunder, will automatically terminate and the following obligations will apply (the “Program Transfer Provisions”):

(a) Matterhorn will promptly provide to Veda complete documentation of all preclinical and clinical data and all regulatory data, in each case regarding Compound or any Product and generated by or on behalf of Matterhorn, and Matterhorn shall grant and does hereby grant to Veda a worldwide, irrevocable, exclusive license (with the right to sublicense) for the use of all such data solely to research, Develop, Manufacture, have Manufactured and Commercialize Compound and Products whether within or outside the Field; provided, however, that Matterhorn will not be required to transfer or grant a license to any CMC, preclinical and clinical data and all regulatory data relating to any Matterhorn-or Third Party-proprietary compound or product or the combination of the Compound and/or Product with a Matterhorn- or Third Party-proprietary compound or product. For the avoidance of doubt, in no event will Matterhorn be required to transfer Regulatory Approvals for the Compound or Product or to otherwise maintain such Regulatory Approvals in force or effect other than with respect to an NDA in the United States or an equivalent marketing authorization elsewhere in the Territory, or to provide any information or data (or transfer any regulatory filings, regulatory correspondence, or Regulatory Approvals) relating to any compound or product other than the Compound and/or Product. If, at the time of termination, patients are enrolled in a Matterhorn-sponsored study or studies involving the Compound or any Product as single agent or in combination, and such patients are required for ethical or otherwise legal reasons to be offered continued treatment, both Parties will seek a joint solution to ensure that such patients continue to receive the necessary treatment, which may include the need for Matterhorn to maintain the sponsorship of such clinical study or studies until approval for an alternative access mechanism is obtained and/or such patients discontinue participation in the studies, whichever comes first.

(b) Where any Third Party rights have been obtained by Matterhorn or its Affiliates for purposes of the Program, and in each case solely for purposes of Developing, Manufacturing, having Manufactured and Commercializing Compound and any Products, Matterhorn will, if practical, provide Veda the opportunity to acquire a non-exclusive license under such Third Party rights where Controlled by Matterhorn, such terms, to the extent reasonably practicable, to be on the same financial terms as Matterhorn or its Affiliates have with respect to such Third Party rights.

(c) Matterhorn will offer to sell to Veda, [**\*\*\***], any supplies of Compound and any other inventories or supplies obtained by Matterhorn or its Affiliates for purposes of the Program. Veda will have [**\*\*\***] following the effective date of termination to notify Matterhorn in writing that it elects to purchase any such Compound or supplies.

(d) Matterhorn will make personnel (as well as the personnel of its Affiliates) reasonably available to Veda to effect an orderly transition to Veda of the information and rights contemplated above in this Section 14.2.5 for a period of up to [**\*\*\***] following the transfer of the documentation set forth in Section 14.2.5(a).

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(e) As to any Product which is being marketed under a trademark Controlled by Matterhorn or its Affiliates used exclusively with Products, Matterhorn will offer to grant (or cause its Affiliate to offer to grant) Veda a worldwide, exclusive license (with the right to sublicense) for the use of such trademark solely to make, have made, use, import, offer to sell, sell, and have sold such Products, on mutually agreeable terms. Veda will notify Matterhorn in writing prior to the effective date of termination if it elects (on a Product-by-Product basis, if applicable) to enter into a license with respect to such trademark.

Section 14.3. Termination by Matterhorn.

14.3.1 For Material Breach or Bankruptcy Event. Matterhorn may terminate this Agreement upon written notice to Veda (a) in its entirety or on a country-by-country basis for any reason, upon sixty (60) days’ written notice to Veda, (b) immediately in the event of a material breach by Veda or its Affiliates of this Agreement, provided that Veda has received written notice from Matterhorn of such breach, specifying in reasonable detail the particulars of the alleged breach, such breach is continuing for sixty (60) days after such notice and such breach has not been cured within such sixty (60) day period (except that, in the event such breach may not be reasonably cured in sixty (60) days, then such cure period will be extended for an additional period during which Veda is making good faith attempts to cure such breach); and (c) immediately in the event (i) that Veda becomes insolvent or is unable to pay its debts when due; (ii) Veda files a petition in bankruptcy, reorganization or similar proceeding, or, if such a petition is filed against Veda, such petition is not dismissed within [\*\*\*]; (iii) Veda discontinues its business; or (iv) a receiver is appointed or there is an assignment for the benefit of Veda’s creditors.

14.3.2 Consequences of Termination Pre-Option Exercise Date. If Matterhorn terminates this Agreement pursuant to Section 14.3.1(a) before the Option Exercise Date, Veda will have the rights specified in Section 3.4.

14.3.3 Consequences of Termination Post-Option Exercise Date. If Matterhorn terminates this Agreement pursuant to Section 14.3.1(a) after the Option Exercise Date, the Program Transfer Provisions will apply.

14.3.4 Certain Sell-Off Rights. For the avoidance of doubt, upon Matterhorn’ termination of this Agreement pursuant to Section 14.3.1(a), Matterhorn’ rights included in the relevant licenses granted by Veda to Matterhorn under this Agreement will immediately and automatically revert to Veda; provided, however, that Matterhorn will have [**\*\*\***] from Matterhorn’ termination of this Agreement to complete the sale of any Product then in inventory, subject to payment of royalties and milestone payments pursuant to Article V. Any such Compounds that are GMP shall be accompanied by a certificate of analysis, certificate of manufacturing, batch records and other such documentation, information materials as may be required under Applicable Laws to enable sale of such materials, including written certification that such materials were both (a) manufactured, and (b) stored and handled at all times following such manufacture, in accordance with GMP.

14.3.5 Certain Consequences of Termination. If Matterhorn terminates the Agreement pursuant to Section 14.3.1(b) or (c), then (a) Veda’s License grant to Matterhorn will convert to an irrevocable exclusive License, with the right to sublicense, and will survive termination, and (b) the obligations of the Parties under Article V will also survive such termination in addition to the other Sections identified in Section 14.5; provided, however, that if the facts that form the basis of the termination have, or are likely to have, a material adverse effect

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on the Development or Commercialization of the Compound or Products, Matterhorn may elect to pursue, through dispute resolution as contemplated by Section 17.3, a downward adjustment of the amount of any royalty or milestone payments otherwise due from Matterhorn to Veda under Article V following the effective date of such termination, with the intent of the Parties being that in this limited circumstance the arbitrator(s) will have the authority to lower such payment amounts (if the arbitrators determine that, in fact, any adjustment is warranted) to those which are determined by the arbitrator(s) to be reasonable (i.e., such as would have prevailed at the time of the original negotiation of this Agreement) in light of the facts leading to the termination and the economic expectations of Matterhorn in entering into this Agreement (with the Parties expressly acknowledging that any such adjustment will not, with reference to any other provision of this Agreement, be construed as consequential or otherwise impermissible damages); This provision is not intended as an exclusive remedy and Matterhorn will retain any other rights it may have under such circumstances under Applicable Law.

Section 14.4. Rights and Duties Upon Termination or Expiration. Upon the termination or expiration of this Agreement, each Party will have the right to retain all payments from the other Party properly made pursuant to this Agreement, and each Party shall pay to the other all sums accrued hereunder which are then due.

Section 14.5. Survival. Upon termination or expiration of the Product Term, except as specifically provided herein to the contrary, all rights and obligations of the Parties under this Agreement will cease, except for the following rights and obligations which will survive such termination or expiration:

(a) If termination occurs prior to Matterhorn’ exercise of the Option, (i) Section 2.3.1(e), and (ii) the rights and obligations of the Parties under Section 3.4, as well as those provisions identified in Section 14.5(d) to Section 14.5(g) below.

(b) If termination occurs after the License to Matterhorn becomes an irrevocable License pursuant to Section 14.3.5, Matterhorn’ rights to the License under Section 4.1 (as converted to an irrevocable License) and right to sublicense under Section 4.2, the Parties’ rights and obligations pursuant to Article V, Section IX, Article IX and Sections 12.2 and 17.1, as well as those provisions identified in Section 14.5(c) to Section 14.5(g) below.

(c) All obligations for record keeping and accounting reports and inspection rights described in Section 5.2.6.

(d) The Parties’ rights and obligations with respect to intellectual property as described in Section 8.1 and Section 8.2.

(e) The Parties’ rights and obligations (including with respect to any representations or warranties made herein) arising prior to the effective date of such termination, or as a result of such termination, or which may thereafter come into being as the result of the breach of any of the terms or conditions of this Agreement that survive the termination or expiration of this Agreement pursuant to this Section 14.5.

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(f) The Parties’ rights and immunities pursuant to the disclaimers set forth in Section 11.3.

(g) The Parties’ rights and obligations under the following additional provisions: Article I (Definitions); Section 5.3 (Taxes); Section 5.5 (Financial Reporting); Article XIII (Confidential Information); Article XIV (Term and Termination); Article XV (Indemnification and Limitation of Liability); Section 17.2 (Governing Law); Section 17.3 (Dispute Resolution); Section 17.7 (Notices); Section 17.13 (Interest on Late Payments); Section 17.15; (Headings and References); Section 17.16 (Construction) and Section 17.17 (No Strict Construction).

**ARTICLE XV**

**INDEMNIFICATION AND LIMITATION OF LIABILITY**

Section 15.1. Indemnification by Matterhorn. In addition to any other rights Veda may have at law or in equity, Matterhorn will indemnify, defend and hold harmless Veda and its Affiliates and their respective employees, officers and directors, and their successors and assigns (each, a “Veda Indemnified Party”), from and against any and all Damages which the Veda Indemnified Party may incur, suffer or be required to pay to the extent resulting from or arising out of Claims by Third Parties and not subject to indemnification by Veda pursuant to Section 15.2, arising out of or relating to: (a) the research, Development, Commercialization (including promotion, advertising, offering for sale, sale or other disposition), transfer, importation or exportation, manufacture, labeling, handling or storage, or use of, or exposure to, any Compound or any Product by or for Matterhorn or any of its Affiliates, distributors, sublicensees, agents and contractors, including claims and threatened claims based on product liability, bodily injury, risk of bodily injury, death or property damage, infringement or misappropriation of Third Party patents, copyrights, trademarks or other intellectual property rights (except to the extent such infringement or misappropriation results from a breach of Section 11.2), or the failure to comply with Applicable Laws related to the matters referred to in this subsection (a) with respect to any Compound or any Product; (b) the enforcement and defense of the Veda Patents by Matterhorn, its Affiliates, sublicensees, representatives and agents; (c) any breach of any representation, warranty or covenant of Matterhorn in this Agreement; and/or (d) the gross negligence, recklessness or willful misconduct of Matterhorn or its Affiliates or its or their respective directors, officers, employees and agents, in connection with Matterhorn’ performance of its obligations or exercise of its rights under this Agreement.

Section 15.2. Indemnification by Veda. In addition to any other rights Matterhorn may have at law or in equity, Veda will indemnify, defend and hold harmless Matterhorn and its Affiliates and their respective employees, officers and directors, and their successors and assigns (each, an “Matterhorn Indemnified Party”), from and against any and all Damages which the Matterhorn Indemnified Party may incur, suffer or be required to pay to the extent resulting from or arising out of Claims by Third Parties and not subject to indemnification by Matterhorn pursuant to Section 15.1, arising out of or relating to: (a) the research, Development, Commercialization (including promotion, advertising, offering for sale, sale or other disposition), transfer, importation or exportation, manufacture, labeling, handling or storage, or use of, or exposure to, any Compound or any Product by or for Veda or any of its Affiliates, distributors, sublicensees, agents

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and contractors outside of the Field, including claims and threatened claims based on product liability, bodily injury, risk of bodily injury, death or property damage, infringement or misappropriation of Third Party patents, copyrights, trademarks or other intellectual property rights, or the failure to comply with Applicable Laws related to the matters referred to in this subsection (a) with respect to any Compound or any Product; (b) based on any material breach of any representation, warranty or covenant of Veda in this Agreement; and/or (c) the gross negligence, recklessness or willful misconduct of Veda or its Affiliates or its or their respective directors, officers, employees and agents, in connection with Veda’s performance of its obligations or exercise of its rights under this Agreement.

Section 15.3. Conditions of Indemnification of Third-Party Claims. The obligations and liabilities of an indemnifying Party under Section 15.1 or 15.2 hereof with respect to Damages resulting from Claims by Third Parties will be subject to the following terms and conditions:

(a) Promptly after the delivery of a notice seeking indemnification in respect of a Claim and subject to Section 15.3(c), the indemnifying Party may elect, by written notice to the indemnified Party, to undertake the defense thereof, at the sole cost and expense of the indemnifying Party. If the indemnifying Party chooses to defend any Claim, the indemnified Party shall cooperate with all reasonable requests of the indemnifying Party and shall make available to the indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense.

(b) In the event that the indemnifying Party, within a reasonable time after receipt of a notice seeking indemnification, does not so elect to defend such Claim, the indemnified Party will have the right (upon further notice to the indemnifying Party) to undertake the defense, compromise or settlement of such Claim for the account of the indemnifying Party, subject to the right of the indemnifying Party to assume the defense of such Claim pursuant to the terms of Section 15.3(a) at any time prior to settlement, compromise or final determination thereof, provided, that the indemnifying Party reimburses in full all costs of the indemnified Party (including reasonable attorney’s fees and expenses) incurred by it in connection with such defense prior to such assumption.

(c) Notwithstanding anything in this Section 15.3 to the contrary, if the indemnifying Party assumes the defense of any Claim, any indemnified Party will be entitled to participate in the defense, compromise or settlement of such Claim with counsel of its own choice at its own expense, provided, however, if the representation by the indemnifying Party’s counsel would present a conflict of interest, then such indemnified Party shall be entitled to participate in the defense, compromise or settlement of such Claim with counsel of its own choice at the expense of the indemnifying Party.

Section 15.4. Insurance. Matterhorn shall, beginning with the initiation of the first Clinical Study for a Product, maintain at all times thereafter during the Product Term, and until the later of (a) [**\*\*\***] after termination or expiration of this Agreement or (b) the date that all statutes of limitation covering claims or suits that may be brought for personal injury based on the sale or use of a Product have expired, insurance relating to the Product from a recognized, creditworthy insurance company, on a claims-made basis, with endorsements for contractual liability and for clinical trial and product liability, that is comparable in type and amount to the insurance

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customarily maintained by Matterhorn with respect to similar prescription pharmaceutical products that are marketed, distributed and sold in the Territory or otherwise participate in a commercially reasonable comparable program of self-insurance; provided that if Matterhorn does not market, distribute and sell any such similar pharmaceutical products, such insurance or program of self-insurance shall be comparable in type and amount to the insurance customarily maintained by a company within the bio-pharmaceutical industry. Matterhorn shall name Veda as an additional insured on all related third party insurance policies relating to the Compound and/or Product. Within [**\*\*\***] following the initiation of the first clinical trial for a Product, and within [**\*\*\***] following any material change or cancellation in coverage, Matterhorn shall furnish to Veda a certificate of insurance evidencing third party insurance coverage as of such date (if applicable), and in the case of cancellation, provide a certificate evidencing that Matterhorn’ replacement coverage meets the requirements in the first sentence of this Section 15.4. The foregoing insurance requirement shall not be construed to create a limit on the Matterhorn’ liability hereunder.

Section 15.5. Settlements. No Person who has undertaken to defend a Claim under Sections 15.3(a) or 15.3(b) will, without written consent of all indemnified Parties, settle or compromise any Claim or consent to entry of any judgment, provided, however, that such consent will not be required if such settlement, compromise or judgment (a) includes as an unconditional term thereof the release by the claimant or the plaintiff of all indemnified Parties from all liability arising from events which allegedly gave rise to such Claim and (b) contains no restriction, limitation or prohibition of any kind on the manner in which any indemnified Party conducts its business. Any payment made by a Party to settle a Claim against it without obtaining consent of the indemnifying Party will be [**\*\*\***]. Notwithstanding the foregoing, the indemnifying Party will be liable under this Article XV for any settlement effected without its consent if the indemnifying Party has refused to acknowledge liability for indemnification hereunder and/or declines to defend the indemnified Party in any such Claim, action or proceeding and it is determined that the indemnifying Party was liable to the indemnified Party for indemnification related to such settlement.

Section 15.6. Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, MULTIPLE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, LOSS OF USE, DAMAGE TO GOODWILL, OR LOSS OF BUSINESS); PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT APPLY TO ANY BREACH BY A PARTY OF Article XIII OR Section 12.2 HEREOF, THE WILLFUL BREACH, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE BY A PARTY, OR FOR AMOUNTS SOUGHT BY THIRD PARTIES IN CLAIMS THAT ARE SUBJECT TO THE PARTIES’ RESPECTIVE INDEMNITY OBLIGATIONS UNDER THIS Article XV.

42

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**ARTICLE XVI**

**MANUFACTURING AND SUPPLY TERMS**

Section 16.1. Manufacture and Supply of Product. Veda (itself or through an Affiliate or a Third Party that is selected by Veda and acceptable to Matterhorn) (the “Approved Manufacturer”) shall have the exclusive right and responsibility to Manufacture and supply Product for Matterhorn’ requirements and use in Development in the Field in the Territory prior to exercise of the Option, including the Clinical Evaluation Materials, in accordance with the terms and conditions of this Article XVI, the Supply Agreement, and the Quality Agreement. To the extent that Matterhorn requires additional supply of Product following the exercise of the Option to prevent disruption of supply for subsequent clinical trials, the Parties will negotiate in good faith the terms of a mutually acceptable supply agreement.

Section 16.2. Pass-Through Costs. Veda shall have the right to invoice Matterhorn on a monthly basis for the costs associated with Development and contracting for Manufacture of the Compound and/or Product by any Approved Manufacturer.

**ARTICLE XVII**

**MISCELLANEOUS**

Section 17.1. Certain Events.

(a) It is the intention of Matterhorn and Veda that Matterhorn’ rights under this Agreement will remain in place if Veda files a petition in bankruptcy, is adjudicated as bankrupt or files a petition or otherwise seeks relief under any bankruptcy, insolvency or reorganization statue or proceeding, or a petition in bankruptcy is filed against it or is not dismissed within [\*\*\*], or it becomes insolvent or makes an assignment for the benefit of creditors or a custodian, receiver or trustee is appointed for it or a substantial portion of its business or assets or it admits in writing its inability to pay its debts as they become due. It is the intention of Matterhorn and Veda that Matterhorn’ exclusive rights and licenses to commercialize and market Products in the Field in the Territory continue, without impairment, if and after any bankruptcy event described in this Section 17.1(a).

(b) All rights and licenses granted under this Agreement by Veda to Matterhorn are, and will otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, licenses or other rights to “intellectual property” as defined under Section 101(52) of the Bankruptcy Code. Veda and Matterhorn agree that Matterhorn, as licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections under the Bankruptcy Code. Veda and Matterhorn further agree that, in the event of the commencement of a bankruptcy proceeding by or against Veda under the Bankruptcy Code, Matterhorn will be entitled, to the extent practicable, to a complete duplicate of all embodiments of such intellectual property, and such items, if not already in its possession, will be promptly delivered to Matterhorn upon (i) any such commencement of a bankruptcy proceeding unless Veda elects to continue to perform all of its obligations under this Agreement or (ii) if not delivered under (i) above, immediately upon the rejection of this Agreement by or on behalf of Veda.

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Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(c) If, under the Bankruptcy Code or successor similar law, a trustee in bankruptcy of Veda, or Veda, as debtor, desires to assign this Agreement to a Third Party in accordance with the Bankruptcy Code, the trustee or Veda, as the case may be (in either case, the “Debtor”), shall notify Matterhorn. The notice will set out the name and address of the proposed assignee, the proposed consideration for the assignment and all other relevant data about the proposed assignment. The giving of this notice will constitute the grant to Matterhorn of an option to have this Agreement assigned to Matterhorn or to Matterhorn’ designee for the consideration, or its equivalent in money, and upon the terms specified in the notice. The option may be exercised only by notice given by Matterhorn to the Debtor no later than [\*\*\*] after Matterhorn’ receipt of the notice from the Debtor unless a shorter period is deemed appropriate by the court in the bankruptcy proceeding. If Matterhorn does not exercise its option in a timely manner, then the Debtor may complete the assignment, but only if the assignment is to the entity named in the notice and for the consideration and upon the terms specified in the notice. Nothing in this Section 17.1 is intended to impair any rights which Matterhorn may have as a creditor in the bankruptcy proceeding.

Section 17.2. Governing Law. For all matters other than the scope and validity of Patents, this Agreement shall be deemed to have been made in the State of New York and its form, execution, validity, construction and effect shall be determined in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law thereof and the Parties agree to the personal jurisdiction of and venue in any federal court located in the Southern District of New York or state court located in New York County, New York. The application of the United Nations Convention for Contracts for the International Sales of Goods is hereby expressly excluded.

Section 17.3. Dispute Resolution. Any dispute, claim or controversy arising out of or relating to this Agreement will be resolved in accordance with Exhibit E attached hereto.

Section 17.4. Assignment and Binding Effect.

(a) This Agreement may not be assigned by either Party without the prior written consent of the other, except as otherwise permitted under this Section 17.4.

(b) Either Party may assign this Agreement to an Affiliate or to a Third Party without such prior written consent as part of a merger, consolidation, sale, or transfer of all or substantially all its assets relating to the Program, but only if the assignee (i) has or simultaneously acquires all of the necessary rights and other assets to perform such Party’s obligations under this Agreement and (ii) agrees that it will have no right to participate in any activity or require the other Party to perform any obligation under this Agreement that would require the other Party or its Affiliates to disclose Confidential Information to such Third Party (other than the information required to be disclosed pursuant to Section 5.2.4 or following any termination pursuant to Article XIV) and to waive any rights with respect thereto, unless the other Party consents to such assignment (such consent not to be unreasonably withheld or delayed); and provided, that, with respect to Matterhorn, such Third Party shall not be, at the time of such assignment, a licensee or sublicensee of any other Third Party’s Exclusivity Product.

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(c) No assignment under this Section 17.4 shall be effective unless the intended assignee executes and delivers to the Party which is not the assignor a writing whereby the assignee expressly undertakes to perform and comply with all of its assignor’s obligations hereunder (including, for clarity, any requirements for the assignor to exercise Commercially Reasonable Efforts with respect to any obligations hereunder). Notwithstanding such undertaking, such assignor shall continue to be primarily liable for such assignee’s performance hereof and compliance herewith.

(d) Any assignment in violation of this Section 17.4 shall be void and of no effect.

(e) This Agreement, and the rights and duties of the Parties therein contained, shall be binding upon, and shall inure to the benefit of, the Parties and their respective legal representatives, successors and permitted assigns.

Section 17.5. Independent Contractor Status. The relationship of the Parties hereto is that of independent contractors. Nothing in this Agreement will be construed to constitute, create, give effect or otherwise imply a joint venture, agency, partnership or other formal business organization or any employer/employee relationship of any kind between the Parties.

Section 17.6. Extension to Affiliates. Matterhorn will have the right to extend the rights, immunities and obligations granted in this Agreement to one or more of its Affiliates. All applicable terms and provisions of this Agreement will apply to any such Affiliate to which this Agreement has been extended to the same extent as such terms and provisions apply to Matterhorn. Matterhorn will remain primarily liable for any acts or omissions of its Affiliates.

Section 17.7. Notices. All notices, requests and other communications required or permitted to be given hereunder or with respect hereto will be in writing, and may be given by (a) personal service, (b) registered first-class United States mail, postage prepaid, return receipt requested, or (c) overnight delivery service, charges prepaid, and in each case addressed to the other Party at the address for such Party as set forth below, and shall be effective upon receipt in the case of clauses (a) or (c) above, and five (5) days after mailing in the case of clause (b) above.

If to Matterhorn, a copy to Matterhorn’ Alliance Manager by email and to:

Matterhorn International Pharmaceutical Ltd

[…]

Switzerland

With a required copy to:

Matterhorn Institutes for BioMedical Research, Inc.

[…] 02139 USA

Attn: General Counsel

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If to Veda, a copy to Veda’s Alliance Manager by email and to:

Veda Pharmaceuticals, Inc.

c/o PHS Corporate Services

[…] USA

The address of either Party set forth above may be changed from time to time by written notice in the manner prescribed herein from the Party requesting the change.

Section 17.8. Waivers. The waiver by either Party of a default or a breach of any provision of this Agreement by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach. The continued performance by either Party with knowledge of the existence of a default or breach will not operate or be construed to operate as a waiver of any default or breach. Any waiver by a Party of a particular provision or right will be in writing, will be as to a particular matter and, if applicable, for a particular period of time and will be signed by such Party.

Section 17.9. Entire Agreement. This Agreement (including the Exhibits hereto), together with the Confidentiality Agreement, Pharmacovigilance Agreement, Supply Agreement, and the Quality Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior agreements and negotiations, and may be modified only by written agreement executed by both Parties.

Section 17.10. Severability. If any provision in this Agreement is deemed to be, or becomes, invalid, illegal, void or unenforceable under Applicable Laws, then: (a) it will be deleted and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way, and (b) the Parties will use endeavor to substitute for the invalid, illegal or unenforceable provision a valid, legal and enforceable provision which conforms as nearly as possible with the original intent of the Parties.

Section 17.11. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument. A facsimile transmission of the signed Agreement will be legal and binding on both Parties.

Section 17.12. Force Majeure. Neither Party to this Agreement will be liable for failure or delay in the performance of any of its obligations hereunder (other than the failure to pay monies owed), if such failure or delay is due to causes beyond its reasonable control, including acts of God, earthquakes, fires, strikes, acts of war, or intervention of any Governmental Authority, but any such delay or failure will be remedied by such Party as soon as practicable after the removal of the cause of such failure or delay. Upon the occurrence of an event of force majeure, the Party failing or delaying performance will promptly notify the other Party in writing, setting forth the nature of the occurrence, its expected duration and how such Party’s performance is affected.

Section 17.13. Interest on Late Payments. If any Party fails to pay in full on or before the date due any royalty, fee or other amount that is required to be paid to the other Party under this Agreement, the paying Party will also pay to the other Party (or its designee), on demand, interest compounded daily on any such amount beginning [**\*\*\***] after such due date at an annual rate equal to the lowest prime rate as published by The Wall Street Journal (or, if The Wall Street Journal is not then published, such other financial periodical of general circulation in the United States) on or nearest to such due date plus [**\*\*\***] to be assessed from the date payment of the amount in question first became due.

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Section 17.14. Amendment. This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by both Parties that specifically refers to this Agreement.

Section 17.15. Headings and References. All section headings contained in this Agreement are for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

Section 17.16. Construction. Except where expressly stated otherwise in this Agreement, the following rules of interpretation apply to this Agreement: (a) “include”, “includes” and “including” are not limiting and mean include, includes and including, without limitation; (b) definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms; (c) references to an agreement, statute or instrument mean such agreement, statute or instrument as from time to time amended, modified or supplemented; (d) references to a Person are also to its permitted successors and assigns; (e) the terms “hereof,” “herein,” “herewith,” and “hereunder,” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; (f) references to an “Article”, “Section”, “Exhibit” or “Schedule” refer to an Article or Section of, or any Exhibit or Schedule to, this Agreement unless otherwise indicated; (g) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (h) the word “any” shall mean “any and all” unless otherwise indicated by context; and (i) all references to “dollars” or “$” herein shall mean U.S. Dollars.

Section 17.17. No Strict Construction. This Agreement has been prepared jointly and will not be strictly construed against either Party.

[*Remainder of page intentionally left blank*]

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**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| VEDA PHARMACEUTICALS, INC. | | |
|  |  | |
| By: |  | /s/ Ben Grand |
|  |  | Name: Ben Grand |
|  |  | Title: CEO |
|  | | |
| MATTERHORN INTERNATIONAL PHARMACEUTICAL LTD. | | |
|  |  | |
| By: |  | /s/ Nicola Zeller |
|  |  | Name: Nicola Zeller |
|  |  | Title: Authorized Signatory |
|  |  | |
| By: |  | /s/ Francoise Villeneuve |
|  |  | Name: Francoise Villeneuve |
|  |  | Title: Authorized Signatory |

[*Signature Page to Evaluation, Option and License Agreement*]

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**EXHIBIT A**

**VEDA PATENTS**

[\*\*\*]

A-1

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**EXHIBIT B**

**COMPOUND**

[\*\*\*]

B-1

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**EXHIBIT C**

**EVALUATION STUDIES**

[**\*\*\***]

C-1

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**EXHIBIT D-1**

**INITIAL PRESS RELEASE**

D-1-1

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

DRAFT PRESS RELEASE

CONFIDENTIAL, NOT FOR DISTRIBUTION

December 16, 2018

**Veda Pharmaceuticals Signs Deal to Develop and Commercialize AL102 in Combination**

**with BCMA Targeting Agents in Multiple Myeloma**

*- Licensing agreement includes equity investment and potential development, clinical,*

*regulatory and commercial milestones and tiered royalties*

*- Veda Retains Worldwide Rights to All Other Indications for AL102*

**Location., \*\*\*, 2018** — Veda Pharmaceuticals, Inc., a clinical-stage company developing medicines for cancers that are genetically identified, announced today that it entered into an option to license agreement with Matterhorn for its investigational agent AL102 in multiple myeloma. Under the terms of the deal, Veda will receive a $10 million equity investment from Matterhorn and is eligible to receive development, clinical, regulatory and commercial milestones along with tiered royalties on net sales of AL102.

Matterhorn will conduct certain studies to evaluate AL102 in combination with its B-cell maturation antigen (BCMA) therapies in multiple myeloma. Veda will provide the drug supply. All development costs associated with the above studies will be fully born by Matterhorn. Veda retains worldwide license rights for AL102 for all other indications.

“We are extremely pleased to enter this agreement with Matterhorn on AL102. Matterhorn has a strong commitment and expertise in oncology, and a proven record of success in drug development, making them an ideal strategic partner for AL102 in multiple myeloma,” said Ben Grand, PhD, chief executive officer at Veda. “This collaboration is important to Veda as it immediately strengthens our balance sheet, further validates our technology and accelerates the clinical development of AL102 as a combination therapy in hematologic cancers.”

AL102 is an oral small-molecule that inhibits gamma secretase, an enzyme which may be targeted to increase levels of BCMA, which is expressed in most multiple myeloma patients. BCMA is actively shed from multiple myeloma cells by gamma secretase, hence its inhibition by AL102 may increase BCMA levels on multiple myeloma cells. Therefore, AL102 is being studied to evaluate its clinical role in enhancing anti-BCMA therapies.

Veda is committed to developing new targeted therapies for genomically-defined cancers in patient populations with high unmet medical need. In addition to investigating AL102 as an anti-BMCA therapy in multiple myeloma, Veda is evaluating AL102 as an inhibitor of the Notch pathway in other hematologic cancers.

Multiple myeloma is a rare and aggressive blood cancer that accounts for approximately one percent of all cancers. In the U.S., there are nearly 90,000 people living with, or in remission from, multiple myeloma. Approximately, 26,850 Americans are diagnosed with multiple myeloma each year and 11,240 patient deaths are reported on an annual basis.

D-1-2

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**About Veda Pharmaceuticals**

Veda Pharmaceuticals, Inc. is a clinical-stage biopharmaceutical company dedicated to developing targeted cancer therapies for people living with genetically defined cancers. Veda is broadly developing its product candidates, AL101 and AL102, best-in-class gamma secretase inhibitors, with clinical and nonclinical studies underway in both solid tumors (AL101) and hematologic malignancies (AL102). The company’s lead agent, AL101, is currently in Phase 2 for adenoid cystic carcinoma patients with tumor bearing Notch activating mutations.

As a precision oncology company, Veda was founded in November 2017 with an experienced global management team and a strong investor base. For more information, visit www.Vedapharma.com.

**Forward Looking Statements**

This press release includes forward-looking statements. Because such statements deal with future events, they are subject to various risks and uncertainties and actual results could differ materially from Veda’s current expectations. Forward-looking statements are identified by words such as “anticipates,” “projects,” “expects,” “plans,” “intends,” “believes,” “may,” “estimates,” “targets,” “hopes,” and other similar expressions that indicate trends and future events. Factors that could cause Veda’s results to differ materially from those expressed in forward-looking statements include, without limitation, delays in receiving regulatory guidance for the development of BFP-906024, uncertainties inherent in the initiation of future clinical trials, availability of data from previous clinical trials, satisfactory quantities of clinical drug product, availability of patients who meet the clinical trial enrollment criteria, availability of sufficient funding for foreseeable and unforeseeable operating expenses and capital expenditure requirements, and other matters that could affect the availability or commercial potential of BFP-906024. Veda undertakes no obligation to revise or update forward-looking statements as a result of new information, since these statements may no longer be accurate or timely.

# # #

Contact:

Veda Pharmaceuticals

info@Vedapharma.com

D-1-3

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**EXHIBIT D-2**

**FOLLOW-ON PRESS RELEASE**

***TO COME***

D-2-1

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

**EXHIBIT E**

**DISPUTE RESOLUTION**

[**\*\*\***]

E-1

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

EXHIBIT F

INFORMATION PACKAGE FOR BIANNUAL EVALUATION REPORT

[**\*\*\***]

F-1

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Schedule 1.32

Compound Specifications

[\*\*\*]

F-2

Certain information marked as [\*\*\*] has been excluded from this exhibit because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Section 16.2

Pass-Through Costs

[\*\*\*]

**LicA#20**

LICENSING AGREEMENT

***Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to a confidentiality request. Omissions are designated [\*\*\*\*\*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission with the confidentiality request.***

Exhibit 10.19

**STANDARD RETAIL PRODUCT LICENSE AGREEMENT**

This is an Agreement between Beyond Brothers Inc., a Corporation organized under the laws of the state of MI, having its principal place of business at[...] MI  48334   (“Licensee”), and the Imaging Company, a Georgia corporation, having a principal place of business at[...], Georgia  30339 (“IMAGE”), as agent on behalf of the Collegiate Institutions (as defined below).

WHEREAS, the individual Collegiate Institutions have authorized IMAGE as agent to administer their respective trademark licensing programs; and

WHEREAS, certain Collegiate Institutions have authorized IMAGE to enter into this Agreement on their behalf to license the use of certain Licensed Indicia (as defined below); and

WHEREAS, Licensee desires to manufacture, advertise, distribute and sell certain Licensed Articles (as defined below) containing the Licensed Indicia, and certain Collegiate Institutions, through IMAGE, are willing, subject to certain conditions, to grant this license.

1.  DEFINITIONS

In addition to the terms defined elsewhere in the Agreement, as used in this Agreement, the following terms shall have the following respective meanings:

(a)

“Collegiate Institutions” means the individual colleges, universities and other institutions represented by IMAGE, including any additions or deletions that may be made from time-to-time by IMAGE.

(b)

“Licensed Indicia” means the names and identifying indicia of  the Collegiate Institutions including, without limitation, the trademarks, service marks, trade dress, team names, nicknames, abbreviations, city/state names in the appropriate context, slogans, designs, colors, uniform and helmet designs, distinctive landmarks, logographics, mascots, seals and other symbols associated with or referring to the respective Collegiate Institutions.  Licensed Indicia includes those shown in Appendix B, modifications of the Licensed Indicia approved for use by the Collegiate Institutions, and any other names or identifying indicia adopted and approved for use by the Collegiate Institutions.

(c)

“Licensed Articles” means the products listed in Appendix C which contain Licensed Indicia.

(d)

 “Authorized Brands” means any additional brand names or labels Licensee may use in association with the Licensed Articles.  Authorized Brands are listed in Appendix D.

(e)

 “Distribution Channels” means the channels of trade in which Licensee may advertise distribute and sell the Licensed Articles in the Territory.  The Distribution Channels authorized herein are indicated in Appendix D, which may also identify Distribution Channels that are not authorized in this Agreement.  Licensee shall not advertise, distribute or sell Licensed Articles to any third party that

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***Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to a confidentiality request. Omissions are designated [\*\*\*\*\*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission with the confidentiality request.***

Licensee knows or should reasonably know intends or is likely to advertise, redistribute or resell Licensed Articles outside the authorized Distribution Channels.

(f)

“Territory” means the United States of America, its territories and possessions, and United States military bases aboard.  Licensee shall not advertise, distribute or sell Licensed Articles outside the Territory, or to any person or entity that Licensee knows or should reasonably know intends or is likely to advertise, redistribute or resell Licensed Articles outside the Territory.

(g)

“Net Sales” means the total gross sales of all Licensed Articles distributed or sold at the greater of Licensee’s invoiced selling price or Licensee’s regular domestic wholesale warehouse price, including the royalty amount, less lawful quantity trade discounts actually allowed and taken as such by customers and shown on the invoice, less any credits for returns actually made as supported by credit memoranda issued to customers, less sales taxes, and less prepaid transportation charges on Licensed Articles shipped by Licensee from its facilities to the purchaser.   There shall be no other deductions allowed including, without limitation, deductions for direct or indirect costs incurred in the manufacturing, distributing, selling, importing or advertising (including cooperative and other advertising and promotional allowances) of the Licensed Articles, nor shall any deductions be allowed for non-collected or uncollectable accounts, commissions, cash or early payment discounts, close-out sales, distress sales, sales to employees, or any other costs.

(h)

“Premiums” means any products, including Licensed Articles, bearing any Licensed Indicia featured alone or in combination with the indicia of any third party, that Licensee sells or gives away for the purposes of (i) promoting, publicizing or increasing the sale of its own products or services; or (ii) promoting, publicizing or increasing the sale of the products or services of any third party.  Premiums include, without limitation, combination sales, incentives for sales force, and trade or consumer promotions such as sweepstakes.

2.  GRANT OF LICENSE

(a)

Grant:  Upon execution of this Agreement, and subject to its terms and conditions, the    Collegiate Institutions listed in Appendix A, through IMAGE, grant Licensee the [\*\*\*\*\*], revocable, nontransferable rights to manufacture, advertise, distribute and sell the Licensed Articles listed in Appendix C, containing the Licensed Indicia shown in Appendix B, under the applicable Authorized Brands and in the Distribution Channels indicated in Appendix D, in the Territory, during the Term.  Licensee shall exercise such rights in accordance with all IMAGE and Collegiate Institution guidelines, policies and requirements provided to Licensee, which shall be deemed part of the Agreement.

(b)

Rights Reserved:  Nothing in this Agreement shall be construed to prevent IMAGE or any Collegiate Institution from granting any other licenses or rights for use of the Licensed Indicia.  The Collegiate Institutions retain all rights to use and license their respective Licensed Indicia.

(c)

Term:  This Agreement shall begin effective as of last date of signature below and shall expire December 31, 2008, unless terminated sooner or renewed in the manner provided in this Agreement.

(d)

Renewal:  Upon expiration, if Licensee has complied with all terms and conditions of this Agreement during the proceeding Term or renewal period, Licensee shall be considered for renewal

2

***Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to a confidentiality request. Omissions are designated [\*\*\*\*\*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission with the confidentiality request.***

of this Agreement.  Renewal is at the discretion of the individual Collegiate Institutions in consultation with IMAGE.  Licensee recognizes and agrees that IMAGE and the Collegiate Institutions have no express or implied obligation to renew the Agreement.  IMAGE and the Collegiate Institutions will have no liability to Licensee for any expenses incurred by Licensee in anticipation of any renewal of the Agreement.

(e)

Limitations on License:  This license is subject to the following limitations and obligations, as well as other limitations and obligations set forth in the Agreement:

(1)

Licensee shall not use the Licensed Indicia for any purpose other than as authorized in this Agreement.  Any proposed additions to the Licensed Articles and/or new designs shall be submitted in writing or via MyiIMAGE to IMAGE and samples shall be submitted to IMAGE for prior approval, as provided in Section 10.  Licensee shall, upon notice by IMAGE, immediately recall any unauthorized products or designs from the marketplace, and destroy them or submit them to IMAGE, at IMAGE’s option and at Licensee’s expense.

(2)

Licensee shall not use any brand names other than Authorized Brands in connection with the manufacture, advertising, distribution and sales of the Licensed Articles.  IMAGE and the Collegiate Institutions shall have the right to remove or change any of the Authorized Brands during the Term.

(3)

Licensee shall advertise, distribute and sell Licensed Articles only in the authorized Distribution Channels.  IMAGE and the Collegiate Institutions shall have the right to determine whether a particular retail account falls within a particular Distribution Channel.  Unless specified in Appendix D, Licensee shall have no right to advertise, distribute or sell licensed articles directly to consumers.

(4)

Licensee must receive IMAGE’s prior written authorization to use any Distributor of any Licensed Article.  A “Distributor” shall mean any party whose business includes purchasing manufactured products from any other third party and shipping such products to retailers without changing such products.  Licensee will remain primarily obligated to IMAGE and the Collegiate Institutions under this Agreement notwithstanding IMAGE’s approval of a Distributor and Licensee shall ensure that nay approved Distributor complies with all applicable terms and conditions of the Agreement including, without limitation, providing such Distributor with instructions relating to the distribution of the Licensed Articles and the Distribution Channels for the Licensed Articles.  If an approved Distributor engages in conduct that would be a default under the Agreement if Licensee engaged in such conduct, Licensee shall be deemed in default and shall fully cooperate with IMAGE to ensure that such conduct ceases promptly.

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(5)

Licensee shall not provide any method of application of Licensed Indicia for any third party unless IMAGE authorizes Licensee to provide said application under the terms of an authorized manufacturer’s or supplier’s agreement.

(6)

Licensee shall not contract with any domestic or foreign third party for the production of Licensed Articles or application of Licensed Indicia by that party (“Manufacturer”) without IMAGE’s prior written authorization.  In the event that Licensee desires to have a Manufacturer producer one or more Licensed Article, or any component thereof, Licensee shall provide IMAGE with the name, address, telephone number and principal contact of the proposed Manufacturer.  IMAGE must approve any Manufacturer, and the Manufacturer must execute and authorized manufacturer’s or supplier’s agreement provided by IMAGE prior to use the Licensed Indicia.  In addition, Licensee shall take the steps necessary to ensure the following:  Manufacturer shall produce the Licensed Articles only as and when directed by Licensee, which remains fully responsible for ensuring that the Licensed Articles are manufactured in accordance with the terms herein including approval, labor code requirements and royalty payment; Manufacturer shall not advertise, distribute or sell Licensed Articles to any person or entity other than Licensee; and Manufacturer shall not delegate in any manner whatsoever its obligations with respect to the Licensed Articles.  Licensee’s failure to comply with this Section may result in termination of this Agreement and/or confiscation and seizure of Licensed Articles.  IMAGE and the individual Collegiate Institutions hereby reserve the right to terminate the engagement of any Manufacturer at any time.

(7)

Licensee shall comply, and ensure that all Manufacturers comply, with labor code and monitoring requirements as established by the respective Collegiate Institutions and as set forth in the Imaging Company Special Agreement Regarding Labor Codes of Conduct, which is incorporated herein by reference.  IMAGE shall give Licensee reasonable written notice of any changes in labor code requirements.  Licensee, upon receipt of the notice, is responsible for complying with the new labor code requirements.

(8)

Any Licensed Articles manufactured at a location outside of the United States shall be taken into the possession of Licensee prior to being distributed or sold in the Territory.

(9)

Licensee shall have no right to delegate any responsibility to any Sublicensee of any Licensed Article without the prior written approval of IMAGE.  A “Sublicensee” shall mean any third party that manufactures any Licensed Article, ships such product to retailers, and invoices retailers directly.

(10)

Licensee shall not use any of the Licensed Articles as Premiums unless Licensee receives prior written authorization through IMAGE pursuant to a separate agreement with IMAGE.  Licensee shall not provide Licensed Articles as premiums to any third party whom Licensee knows or should reasonably know intends to use the Licensed Articles as Premiums.

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(11)

Licensee is not permitted, without the applicable Collegiate Institution’s prior written authorization, to promote or market a Licensed Article by means of a direct mailing or any other direct solicitation to a list of alumni, students, parents, athletic contributors, faculty or staff, or other group associated with the Collegiate Institution, regardless of how Licensee acquires such list.

(12)

The National Collegiate Athletic Association (NCAA) rules prohibit the use of the name or likeness of any person who has current or remaining collegiate athletic eligibility on or in connection with the sale or promotion of any commercial product or service.  In conducting activity under this Agreement, licensee shall not encourage or participate in any activity that would cause an athlete or a Collegiate Institution to violate any such rule of the NCAA or other governing body of any intercollegiate athletic conference.

3.  MARKETING EFFORTS / PERFORMANCE

(a)

Marketing Efforts:  Licensee recognizes that marketing efforts for Licensed Articles are important to the success of this program and Licensee, if requested, will assist IMAGE with such efforts by its participation.

(b)

Performance:  With respect to each of the Collegiate Institutions listed in Appendix A, Licensee shall manufacture, distribute, sell and maintain inventory of sufficient quantities of Licensed Articles to meet the reasonable market demand in the Distribution Channels.

4.  SELECTION OF COLLEGIATE INSTITUTIONS

Prior to execution of this Agreement, Licensee requested a license for certain Collegiate Institutions.  Appendix A lists those Collegiate Institutions that have approved Licensee’s request for a license.  Licensee may from time-to-time request the addition of Collegiate Institutions to this Agreement, as provided in Section 5(d).

5.  MODIFICATION OF APPENDICES

(a)

The Collegiate Institutions and their royalty charges listed in Appendix A, the Licensed Indicia shown in Appendix B, the Collegiate Institution policies including those in Appendix B-1, the Licensed Articles listed in Appendix C, the Authorized Brands and Distribution Channels indicated in Appendix D, and labor code requirements may be changed by IMAGE when and if such changes are directed by IMAGE and the Collegiate Institutions.

(b)

Through periodic advisory bulletins or notices, including, without limitation, notification through online publications (e.g., MyIMAGE) or via email, IMAGE will give Licensee written reasonable notice of any changes to appendices or policies.  Licensee, upon receipt of the bulletins or notices, is responsible for distributing them promptly to the appropriate party(s) and complying with the modified appendices and policies.

(c)

Licensee recognizes and agrees that certain changes to appendices A,B, B-1, C, or D may affect Licensee’s right regarding certain Collegiate Institutions, Licensed Indicia, Licensed Articles, Authorized Brands or Distribution Channels.  Licensee agrees that such rights shall cease on the

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effective date of the notice of such changes, in accordance with the terms of the notice.  In such event, those provisions of Section 17 regarding disposal of inventory shall become effective for the affected Collegiate Institutions, Licensed Indicia, Licensed Articles, authorized Brands or Distribution Channels unless Licensee obtains written permission from the affected Collegiate Institutions concerned to continue to use the Licensed Indicia, or to manufacture, advertise, distribute or sell the Licensed Articles.

(d)

Upon notification by IMAGE of the addition of a Collegiate Institution to the IMAGE program, or at any other time, Licensee may request in writing or through MyIMAGE the addition of Collegiate Institutions to the Agreement.  Any such addition will require an addendum to Appendix A.  Such addendum will be fully executed only upon Licensee’s completion of product and design approval requirements, as provided in Section 10.

6.  PAYMENTS

(a)

Rate:  Licensee agrees that it shall pay to IMAGE the applicable royalty charges set forth adjacent to the respective Collegiate Institutions listed in Appendix A.   Unless otherwise specified, the royalties paid (“Royalty Payments”) shall be based upon Net Sales, as defined in Section 1(g), of all Licensed Articles sold during the Term and any renewal, and during any period allowed pursuant to Section 17.

(b)

For purposes of determining the Royalty Payments, sales shall be deemed to have been made when Licensed Articles are billed, invoiced, shipped, or paid for, whichever occurs first.

(c)

Advance Payments:  Upon execution of this Agreement by Licensee, and on an annual basis, including renewal, Licensee shall pay IMAGE, as a nonrefundable payment, the Advance Payments set forth in Appendix A.  On an annual basis, including renewal, the Advance Payments will be prorated, where applicable, as per IMAGE’s written instructions.  Licensee may apply the Advance Payments as particular account is exempt.

7.  ROYALTY STATEMENT AND PENALTIES

(a)

On or before the twentieth (20th) day of each month, Licensee shall submit to IMAGE, in a format provided or approved by IMAGE, a full and complete statement, certified by an officer of the Licensee to be true and accurate, showing the quantity, description, and Net Sales (including itemization of any permitted deductions and/or exemptions) of the Licensed Articles distributed and /or sold during the preceding month, listed (d) by Collegiate Institution, (ii) by Licensed Article, (iii) by applicable Authorized Brand, and (iv) by Distribution Channel.  Such report shall include any additional information kept in the normal course of business by the Licensee which appropriate to enable an independent determination of the amount due hereunder with respect to each Collegiate Institution.  All Royalty Payments then due IMAGE shall be made simultaneously with the submission of the statements.  If no sales or use of the Licensed Articles were made during any reporting period for one or more Collegiate Institutions, Licensee shall provide IMAGE a written statement to that effect as part of the report.

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(b)

Licensee shall pay IMAGE an additional charge of one and one-half percent (1.5%) per month, compounded on a monthly basis, or the maximum rate allowed by law, if lower, on any payment due under the Agreement that remains unpaid after such payment becomes due.

(c)

IMAGE’s receipt or acceptance of any statements or Royalty Payments, or the cashing of any royalty checks, shall not preclude IMAGE from questioning the correctness thereof at any time.  Upon discovery of any verifiable inconsistency or mistake in such statements or payments, Licensee shall immediately rectify such inconsistency or mistake.

(d)

Licensee shall,unless otherwise directed in writing by IMAGE, send all payments and statements to IMAGE at the address set forth in the heading of this Agreement, or transmit the same via electronic format approved by IMAGE.

8.  OWNERSHIP OF LICENSED INDICIA AND PROTECTION OF RIGHTS

(a)

Licensee acknowledges and agrees that the respective Collegiate Institutions own each of their respective Licensed Indicia, modifications of the Licensed Indicia, as well as any other Licensed Indicia adopted for use by the Collegiate Institutions, that each of the Licensed Indicia is valid, and that each Collegiate Institution has the exclusive right to use each of its Licensed Indicia subject only to limited permission granted to Licensee to use the Licensed Indicia pursuant to this Agreement.  Licensee acknowledges the validity of the state and federal registrations each Collegiate Institution owns, obtains or acquires for its Licensed Indicia.  Licensee shall not, at any time, file any trademark application with the United States Patent and Trademark Office, or with any other governmental entity for the Licensed Indicia, regardless of whether such Licensed Indicia is shown in Appendix B.  Licensee shall not use any of the Licensed Indicia or any similar mark as, or as part of, a trademark, service mark, trade name, fictitious name, company or corporate name anywhere in the world.  Any trademark or service mark registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be immediately transferred to the applicable Collegiate Institution without compensation.

(b)

Licensee shall not oppose or seek to cancel or challenge, in any forum, including, but not limited to, the United States Patent and Trademark office, any application or registration of the Licensed Indicia of any Collegiate Institution.  Licensee shall not object to, or file any action or lawsuit because of, any use by the Collegiate Institutions of their Licensed Indicia for any goods or services, whether such use is by the Collegiate Institutions directly or through licensees or authorized users.

(c)

Licensee recognizes the great value of the good will associated with the Licensed Indicia and acknowledges that such good will belongs to the Collegiate Institutions, and that such Licensed Indicia have inherent and/or acquired distinctiveness.  Licensee shall not, during the term of this Agreement or thereafter, dispute or contest the property rights of the Collegiate Institutions, dispute or contest the validity of this Agreement, or use the Licensed Indicia or any similar mark in any manner other than as licensed hereunder.

(d)

Licensee agrees to assist IMAGE in the protection of the rights of the Collegiate Institutions in and to the Licensed Indicia and shall provide, at reasonable cost to be borne by IMAGE and/or the Collegiate Institutions, any evidence, documents, and testimony concerning the use by Licensee of the Licensed

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Indicia, which IMAGE may request for use in obtaining, defending, or enforcing rights in any Licensed Indicia or related applications or registrations.  Licensee shall notify IMAGE in writing of any infringements by others of the Licensed Indicia of which it is aware.  IMAGE and the applicable Collegiate Institution shall have the right to determine whether any action shall be taken on account of any such alleged infringements.  Licensee shall not institute any suit or take any action on account of any such alleged infringements without first obtaining the written authorization of IMAGE and the Collegiate Institutions.  Licensee agrees that it is not entitled to share in any proceeds received by IMAGE or any Collegiate Institution (by settlement or otherwise) in connection with any formal or informal action brought by IMAGE, Collegiate Institutions or other entity.

(e)

Nothing in this Agreement give Licensee any right, title, or interest in the Licensed Indicia except the right to use the Licensed Indicia in accordance with the terms of this Agreement.  Licensee’s use of the Licensed Indicia shall inure to the benefit of the respective Collegiate Institutions.

(f)

(1)  Acknowledgement:  Licensee acknowledges that any original designs, artwork or other compilations (“Works”) created by it pursuant to this Agreement that contain the Licensed Indicia are “compilations” or “supplementary works” as those terms are used in Section 101 of the Copyright Act, and that the Works will be, and will be treated as having been, specially ordered or commissioned for use as a compilation or supplementary work rendered for, at the instigation and under the overall direction of the Collegiate Institutions; and therefore that all the work on and contributions to the Works by Licensee, as well as the Works themselves, are and at all time shall be regarded as “work made for hire” by the Licensee for the Collegiate Institutions.  Without limiting the foregoing acknowledgment or subsequent assignment, Licensee further acknowledges that any rights that Licensee might have under this Agreement do not in any way dilute or affect the interests of the Collegiate Institutions in the Licensed Indicia or any derivatives thereof; nor permit Licensee to copy or use the Works or the Licensed Indicia, except as expressly permitted under this Agreement; nor to affix a copyright or trademark notice to any product bearing the Works or the Licensed Indicia, except as expressly permitted under this Agreement.

(2)  Assignment:  Without curtailing or limiting the foregoing acknowledgment, Licensee assigns, grants and delivers (and agrees further to assign, grant and deliver) exclusively to the respective Collegiate Institutions, all right, titles and interests of every kind and nature whatsoever in and to the Works, and all copies and versions, including all copyrights and all renewals.  Licensee further agrees execute and deliver to IMAGE and the Collegiate Institutions such other and further instruments and documents as IMAGE or the particular Collegiate Institutions from time-to-time reasonably may request for the purpose of establishing, evidencing and enforcing or defending the complete, exclusive, perpetual and worldwide ownership by such respective Collegiate Institutions of all right, titles and interests of every kind and nature whatsoever, including all copyrights, in and to the Works, and Licensee appoints IMAGE as agent and attorney-in-fact, with full power of substitution, to execute and deliver such documents or instruments as Licensee may fail or refuse promptly to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

(g)

Licensee acknowledges that its breach or threatened breach of this Agreement will result in immediate and irremediable damage to IMAGE and/or the Collegiate Institutions and that money damages alone would be inadequate to compensate IMAGE and/or the Collegiate Institutions.  Therefore, in the event of a breach or threatened breach of the Agreement by Licensee, IMAGE and/or

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the Collegiate Institutions may, in addition to other remedies, immediately obtain and enforce injunctive relief prohibiting the breach or threatened breach or compelling specific performance.  In the event of any breach or threatened breach of this Agreement by Licensee or infringement of any rights of the Collegiate Institutions, if IMAGE and/or the Collegiate Institutions employ attorneys or incur other expenses, Licensee shall reimburse IMAGE and/or the Collegiate Institutions for their reasonable attorney’s fees and other expenses.

9.  DISPLAY AND APPROVAL OF LICENSED INDICIA

(a)

Licensee shall use the Licensed Indicia properly on all Licensed Articles, as well as labels, containers, packages, tags and display (collectively “Packaging”), and in all print and online advertisements and promotional literature, and television and radio commercials promoting Licensed Articles (collectively “Advertising Materials”).  On all visible Packaging and Advertising Materials, the Licensed Indicia shall be emphasized in relation to surrounding material by using a distinctive type face, color, underlining, or other technique approved by IMAGE and the Collegiate Institutions.  Any use of any Licensed Indicia shall conform to the requirements as specified in Appendix B. Wherever appropriate, the Licensed Indicia shall be used as a proper adjective, and the common noun for the product shall be used in conjunction with the Licensed Indicia.  The proper symbol to identify the Licensed Indicia as a trademark (i.e., the ® symbol if the Licensed Indicia is registered in the United States Patent and Trademark Office or the ™ symbol if not so registered) and/or copyright legend (i.e., © [Date][Collegiate Institution]) shall be placed adjacent to each Licensed Indicia.  Except when otherwise expressly authorized in writing by IMAGE, Licensee shall not use on any one Licensed Article or it’s Packaging the Licensed Indicia of more than one Collegiate Institution.

(b)

IMAGE will provide to Licensee guidance on the proper use of the Licensed Indicia.  A true representation or example of any proposed use by Licensee of any of the Licensed Indicia listed, in any visible or audible medium, and all proposed Licensed Articles, Packaging and Advertising Materials containing or referring to any Licensed Indicia, shall be submitted at Licensee’s expense to IMAGE for written approval prior to such use, as provided in Section 10.  Licensee shall not use any Licensed Indicia in any form or in any material disapproved or not approved by IMAGE.

(c)

Licensee shall display on each Licensed Article or its Packaging and Advertising Materials the trademark and license notices required by IMAGE’s written instructions n effect as of the date of manufacture.

10.  PROCEDURE FOR APPROVAL

(a)

Licensee understands and agrees that it is an essential condition of this Agreement to protect the standards and good reputations of the Collegiate Institutions, and agrees that the Licensed Articles, Packaging, Advertising Materials and /or designs containing the Licensed Indicia shall be of high and consistent quality, subject to the prior written approval and continuing supervision and control of IMAGE and the Collegiate Institutions.  Licensee shall submit all Licensed Articles, Packaging, Advertising Materials and/or designs containing the Licensed Indicia to IMAGE in a timely fashion to ensure that IMAGE and the Collegiate Institutions have adequate time to review such materials prior to

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the date of their proposed use by Licensee, and Licensee must receive prior written quality control approval by IMAGE as provided herein.

(b)

Prior to the manufacture, use, distribution or sale of any Licensed Article, Packaging, Advertising Materials and /or designs containing the Licensed Indicia, Licensee shall submit to IMAGE for approval, at Licensee’s expense and in the format required by IMAGE, at least one sample of each proposed Licensed Article, Packaging, Advertising Materials and/or design for each Collegiate Institution and one sample for IMAGE as the same would be manufactured, used, distributed or sold.  If IMAGE approves in writing or via MyIMAGE the proposed Licensed Article, Packaging, Advertising Materials and/or design, the same shall be accepted to serve as an example of quality for that Licensed Article, Packaging, Advertising Materials and/or design, the same shall be accepted to serve as an example of quality for that Licensed Article, Packaging, Advertising Materials and/or design, and production quantities may be manufactured by Licensee in strict conformity with the approved sample.  All approvals provided herein are effective only for the Term or renewal period in which Licensee has submitted and IMAGE has approved the Licensed Articles, packaging, Advertising Materials and/or designs, unless Licensee is otherwise notified in writing by IMAGE.  Licensee shall not depart from the approved quality standards in any material respect without the prior written approval of IMAGE.   Licensed Articles, Packaging, Advertising Materials and/or designs not meeting those standards, including seconds, irregulars, etc., shall not be distributed or sold under any circumstances without IMAGE’s prior written authorization.

(c)

Licensee may only use the Licensed Indicia as shown in Appendix B and approved in the manner set forth herein.  Licensee may not modify the Licensed Indicia without the prior written approval of IMAGE as provided in Section 10(b) above.  The use of the Licensed Indicia in conjunction with original artwork supplied by the Licensee requires the express approval of IMAGE as provided in Section 10(b) above.  Licensee may submit sketches of proposed artwork for preliminary approval before submitting finished samples.

(d)

The descriptions of the Licensed Articles are set out in Appendix C.  Licensee agrees to adhere strictly to the description of each Licensed Article.

(e)

At time of renewal, or upon request by IMAGE at any other time, in addition to any other requirement, Licensee shall submit to IMAGE such number of each Licensed Article, Packaging, Advertising Materials and/or design manufactured, used, distributed or sold under the Licensed Indicia as may be necessary for IMAGE to examine and test to assure compliance with the quality and standards for Licensed Articles, packaging, Advertising Materials and/or designs approved herein.  Each item shall be shipped in its usual container or wrapper, together with all labels, tags, and other materials usually accompanying the item.  Licensee shall bear the expense of manufacturing and shipping the required number of Licensed Articles, Packaging, Advertising Materials and/or designs to the destination(s) designated by IMAGE.

(f)

If IMAGE notifies Licensee of any defect in any Licensed Article, Packaging, Advertising Materials and/or designs or of any deviation from the approved use of any of the Licensed Indicia, Licensee shall have fifteen (15) days from the date of notification from IMAGE to correct every noted defect or deviation.  Defective Licensed Articles, Packaging, Advertising Materials and/or designs in Licensee’s inventory shall not be used, distributed or sold and shall, upon request by IMAGE, be

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immediately recalled from the marketplace and destroyed or submitted to IMAGE, at IMAGE’s option and at Licensee’s expense.  However, if it is possible to correct all defects in the Licensed Articles, Packaging, Advertising Materials and/or designs in Licensee’s inventory, said items may be distributed or sold after all defects are corrected to the satisfaction of IMAGE, which shall be indicated in writing.  IMAGE and/or its authorized representatives shall have the right at reasonable times without notice to inspect Licensee’s plants, warehouses, storage facilities and operations related to the production of Licensed Articles.

(g)

Licensee shall comply with all applicable laws, regulations, standards and procedures relating or pertaining to the manufacture, use, advertising, distribution or sale of the Licensed Articles.  Licensee shall comply with the requirements, including reporting requirements, of any regulatory agencies (including, without limitation, the United States Consumer Product Safety Commission, Federal Trade Commission, or Food and Drug Administration) which shall have jurisdiction over the Licensed Articles.  Both before and after Licensed Articles are put o the market, Licensee shall follow reasonable and proper for testing Licensed Articles for compliance with laws, regulations, standards and procedures, and shall permit IMAGE and/or its authorized representatives, upon reasonable notice, to inspect its and its Manufacturer’s testing, manufacturing and quality control records, procedures and facilities and to test or sample Licensed Articles for compliance with this Section.  Licensed Articles found by IMAGE at any time not to comply with applicable laws, regulations, standards and procedures shall be deemed disapproved, even if previously approved by IMAGE, and shall not be shipped and/or shall be subject to recall unless and until Licensee can demonstrate to IMAGE’s satisfaction that such Licensed Articles have been brought into full compliance.

(h)

Licensee shall inform IMAGE in writing of any complaint regarding the Licensed Articles promptly upon Licensee’s receipt of such complaint.

(i)

Any unauthorized or unapproved use by Licensee of any Licensed Indicia of any Collegiate Institution shall constitute grounds for immediate termination of this Agreement and also may result in action against Licensee for trademark infringement and/or unfair competition, other applicable claims, and collection of monetary damages.

11.  DISPLAY OF OFFICIAL LABEL

(a)

Licensee shall, prior to advertising, distribution or sale of any Licensed Article, affix to each Licensed Article, it Packaging and Advertising Materials an “Officially Licensed Collegiate Products” tag or label in the form prescribed by IMAGE (“Official Label”).  In addition, Licensee shall affix Licensee’s Authorized Brand(s) to each Licensed Article, its Packaging and Advertising Materials.  It is acceptable for Licensee’s Authorized Brands(s) to appear on the Official Label subject to prior written approval b IMAGE.  Licensee shall obtain Official Labels from the supplier(s) authorized by IMAGE to provide those labels.

(b)

Licensee is responsible for affixing the Official label to each Licensed Article, its Packaging and Advertising Materials.  Licensee shall not provide Official Labels to any third party for any purpose whatsoever, without prior written approval by IMAGE.

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(c)

Licensee agrees to defend, indemnify and hold harmless IMAGE, the Collegiate Institutions, and those Indemnified parties set forth in Section 14(a) from all liability claims, costs or damages, including, but not limited to any liability for the conversion or seizure of any of the Licensed Articles not containing the Official Label and/or Licensee’s Authorized Brand(s) as required by this Section.  This provision is in addition to and in no way limits Section 14.

(d)

Licensee’s purchase and use of the Official Label is contingent upon the Licensee maintaining its rights under this Agreement.  Upon termination or expiration of this Agreement, subject to those provisions of Section 17 regarding disposal of inventory, Licensee must return all Official Labels to IMAGE for destruction.  Licensee agrees that there will be no financial reimbursement to the Licensee by IMAGE, its agents, employees, or business partners for any unused Official Labels.

12.  NO JOINT VENTURE OR ENDORSEMENT OF LICENSEE

Nothing in this Agreement shall be construed to place the parties in the relationship of partners, joint ventures or agents, and Licensee shall have no power to obligate or bind IMAGE or any Collegiate Institution in any manner whatsoever.  Neither IMAGE nor any Collegiate Institution is in any way a guarantor of the quality of any product produced by Licensee.  Licensee shall neither state nr imply, directly or indirectly, that the Licensee or its activities, other than under this license, are supported, endorsed or sponsored by IMAGE or by any Collegiate Institution and, upon the direction of IMAGE, shall issue express disclaimers to that effect.

13.  REPRESENTATIONS

Licensee represents, warrants and agrees that the Licensed Articles, Packaging, Advertising Materials and/or designs shall (i) be of good quality in design, material and workmanship and suitable for their intended purpose, (ii) not cause harm when used with ordinary care, and (iii) not infringe or violate the rights of any third party.  Licensee further represents, warrants and agrees that all work on and contribution to the Works shall be by bona fide “employees” of Licensee working “within the scope of employment” as those terms are used in 17 U.S.C. § 101, et. seq.  Each party represents and warrants that it has the right and authority to enter into and perform under this Agreement.

14.  INDEMNIFICATION AND INSURANCE

(a)

Licensee is solely responsible for, and will defend, indemnify and hold harmless IMAGE, the Collegiate Institutions, and their respective officers, agents, and employees (collectively “Indemnified Parties”) from any claims, demands, causes of actions or damages, including reasonable attorney’s fees, arising out of (i) any unauthorized use of or infringement of any patent, copyright, trademark or other proprietary right of a third party by Licensee in connection with the Licensed Articles, packaging, Advertising Materials and/or designs covered by this Agreement, (ii) defects or alleged defects or deficiencies in said Licensed Articles, Packaging, Advertising Materials and/or designs or the use thereof, (iii) false advertising, fraud, misrepresentation or other claims related to the Licensed Articles, Packaging, Advertising Materials and/or designs not involving a claim of right to the Licensed Indicia, (iv) the unauthorized use of the Licensed Indicia or any breach or alleged breach by Licensee of any of its representations, warranties, covenants or obligations contained in the Agreement, (v) libel or slander against or invasion of the right of privacy, publicity or property of, or violation or misappropriation of any other right of any third party, and/or (vi) agreements or

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alleged agreements made or entered into by Licensee to effectuate the terms of this Agreement.  The indemnifications hereunder shall survive the expiration or termination of this Agreement.

(b)

Prior to the first sale or distribution of any Licensed Article, or use of the Licensed Indicia, Licensee shall obtain from an insurance carrier having a rating of at least A-7 by the A.M. Best & Co. or other rating satisfactory to IMAGE, and thereafter maintain, Commercial General Liability insurance, including product, advertising and contractual liability insurance. Licensee’s insurance coverage shall provide adequate protections for the Indemnified Parties as additional insured parties on Licensee’s policy against any claims, demands, or causes of action and damages, including reasonable attorney’s fees, arising out of any of the circumstances described in Section 14(a) above. Such insurance policy shall not be canceled or materially changed in form without at least thirty (3) days written notice to IMAGE.  Prior to the first sale or distribution of any Licensed Article, or use of the Licensed Indicia, Licensee shall furnish IMAGE a certificate of such insurance and endorsements in the form prescribed by IMAGE.  Licensee agrees that such insurance policy or policies shall provide coverage of one million dollars ($1,000,000) for personal and advertising injury, bodily injury and property damage arising out of corrective action that Licensee will be required to take for such failure to perform or breach commensurate with the scope and history of Licensee’s past performance.  Such action may include, without limitation, requiring Licensee to adopt remedial accounting and reporting measures; requiring Licensee to conduct an internal audit; requiring Licensee to train its personnel or permitting IMAGE to assist therein at Licensee’s expense; and requiring Licensee to discontinue the manufacture, advertising, distribution and sale of certain products bearing the Licensed Indicia. Additionally, in the event any default by Licensee results in damages to IMAGE or the Collegiate Institutions in an amount that would be difficult or impossible to ascertain (including, without limitation, sales of products bearing the Licensed Indicia that have not been approved pursuant to Section 10, ales of Licensed Articles without labeling as required in Section 11, etc.), then IMAGE and the Collegiate Institutions shall be entitled to receive compensation for damages in an amount to be determined by IMAGE in consultation with the Collegiate Institutions.  The amount of such compensation payable pursuant to this provision shall not be less than an amount equivalent to the greater of the Advance Payment or $100, per occurrence, for each affected Collegiate Institution; provided, however, that nothing contained herein shall limit IMAGE’s or the Collegiate Institution’s rights under this Agreement, in law, in equity or otherwise, including, without limitation, the amount of damages IMAGE or the Collegiate Institutions may be entitled to.  If damages are assessed against the Licensee pursuant to this provision, then Licensee’s ability to continue to operate under this Agreement shall be contingent upon payment of such damages in the time allowed IMAGE and the Collegiate Institutions.

(c)

In addition to the right to require corrective action for default as set forth in Section 16(a), IMAGE and the individual Collegiate Institutions shall have the right to terminate this Agreement without prejudice to any other rights under this Agreement, in law, in equity or otherwise, upon written notice to Licensee at any time should any of the following occur, which shall also be deemed defaults under the Agreement:

a.

Licensee has not begun the bona fide manufacture, distribution, and sale of Licensed Articles within one (1) month of the date of approval of the samples of Licensed Articles.

b.

Licensee fails to continue the bona fide manufacture, distribution, and sale of Licensed Articles during the Term.  If, during any calendar quarter of the Term, Licensee fails to see any of the Licensed Articles or fails to see any Licensed Articles for a particular Collegiate

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***Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to a confidentiality request. Omissions are designated [\*\*\*\*\*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission with the confidentiality request.***

Institution, IMAGE may terminate this Agreement with respect to said Licensed Article or Collegiate Institution.

c.

Licensee fails to make any payment due or fails to deliver any required statement.

d.

The amounts stated in the periodic statements furnished pursuant to Section 7 are significantly or consistently understated.

e.

Licensee fails to generate royalties during the Term or any annual period, including renewal period, that meet or exceed the amount of the Advance Payments and Minimum Guarantee amounts as provided in Section 6 and Appendix A.

f.

Licensee fails to make available its premises, records or other business information for any audit or to resolve any issue raised in connection with any audit, as required in Section 15.

g.

Licensee fails to pay its liabilities when due, or makes any assignment for the benefit of creditors, or files any petition under federal or state bankruptcy statue, or is adjudicated corrective action that Licensee will be required to take for such failure to perform or breach commensurate with the scope and history of Licensee’s past performance.  Such action may include, with limitation, requiring Licensee to adopt remedial accounting and reporting measure; requiring Licensee to conduct an internal audit; requiring Licensee to train its personnel or permitting IMAGE to assist therein at License’s expense; and requiring Licensee to discontinue the manufacture, advertising, distribution and sale of certain products bearing the Licensed Indicia.  Additionally, in the even any default by Licensee results in damages to IMAGE or the Collegiate Institutions in an amount that would be difficult or impossible to ascertain (including, without limitation, sales of products bearing the Licensed Indicia that have not been approved pursuant to Section 10, sales of Licensed Articles without labeling as required in Section 11, etc.), then IMAGE and the Collegiate Institutions shall be entitled to receive compensation for damages in an amount to be determined by IMAGE in consultation with the Collegiate Institutions.  The amount of such compensation payable pursuant to this provision shall not be less than an amount equivalent to the greater of the Advance Payment or $100, per occurrence, for each affected Collegiate Institution; provided, however, that nothing contained herein shall limit IMAGE’s or the Collegiate Institutions’ rights under this Agreement, in law, in equity or otherwise, including, without limitation, the amount of damages IMAGE or the Collegiate Institutions may be entitled to.  If damages are assessed against the Licensee pursuant to this provision, then License’s ability to continue to operate under this Agreement shall be contingent upon payment of such damages in the time allowed by IMAGE and the Collegiate Institutions.

(d)

In addition to the right to require corrective action for default as set forth in Section 16(s), IMAGE and the individual Collegiate Institutions shall have the right to terminate this Agreement without prejudice to any other rights under this Agreement, in law, in equity or otherwise, upon written notice to Licensee at any time should any of the following occur, which shall also be deemed defaults under the Agreement:

a.

Licensee has not begun the bona fide manufacture, distribution, and sale of Licensed Articles with one (1) month of the date of approval of the samples of Licensed Articles.

b.

Licensee fails to continue the bona fide manufacture, distribution, and sales of Licensed Articles during the Term.  If, during any calendar quarter of the Term, Licensee fails to sell any of the Licensed Articles or fails to sell any Licensed Articles for a particular Collegiate

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Institution, IMAGE may terminate this Agreement with respect to said Licensed Article or Collegiate Institution.

c.

Licensee fails to make any payment due or fails to deliver any required statement.

d.

The amounts stated in the periodic statements furnished pursuant to Section 7 are significantly or consistently understated.

e.

Licensee fails to generate royalties during the Term or any annual period, including renewal period, that meet or exceed the amount of the Advance Payments and Minimum Guarantee amounts as provided in Section 6 and Appendix A.

f.

Licensee fails to make available its premises, records or other business information for any audit or to resolve any issue raised in connection with any audit, as required in Section 15.

g.

Licensee fails to pay its liabilities when due, or makes any assignment for the benefit of creditors, or files any petition under any federal or state bankruptcy statute, or is adjudicated bankrupt or insolvent, or if any receiver is appointed for its business or property, or if any trustee in bankruptcy shall be appointed under the laws of the United States government or the several states.

h.

Licensee attempts to grant or grants a sublicense or attempts to assign or assigns any right or duty under this Agreement to any person or entity without the prior written authorization of IMAGE.

i.

Licensee distributes or sells any Licensed Articles outside the authorized Distribution Channels for such Licensed Articles, or distributes or sells any Licensed Articles to any third party that Licensee knows or should reasonably know intends to distribute or sell such Licensed Articles outside the authorized Distribution Channels for such Licensed Articles.

j.

Licensee distributes or sells any Licensed Articles outside the Territory or distributes or sells any Licensed Articles to a third party that Licensee knows or should reasonably know intends to distribute or sell such Licensed Articles outside the Territory.

k.

If an entity acquires in a single transaction or through a series of transactions more than fifty percent (50%) ownership or controlling interest in Licensee.

l.

Licensee or any related entity manufactures, distributes or sells any product infringing or diluting the trademark, property or any other right of any Collegiate Institution or any other party.

m.

Licensee fails to deliver to IMAGE and maintain in full force and effect the insurance referred to in Section 14(b).

n.

IMAGE, a Collegiate Institution, or any governmental agency or court of competent jurisdiction finds that the Licensed Articles are defective in any way, manner or form.

o.

Any monitoring agency authorized by a Collegiate Institution determines that Licensee is in violation of the labor code adopted by that Collegiate Institution, and Licensee fails to effectively remediate said violation for that Collegiate Institution within a period that is reasonable with respect to the nature and extent of the violation.

p.

Licensee commits any act or omission that damages or reflects unfavorably, embarrasses or otherwise detracts from the good reputation of any Collegiate Institution.

q.

Licensee manufactures, distributes or sells Licensed Articles of quality lower than the samples approved, or manufactures, distributes, sells or uses Licensed Articles or Licensed Indicia in a manner not approved or disapproved by IMAGE.

r.

Licensee fails to affix to each Licensed Article, its Packaging and Advertising Materials an Official Label and Authorized Brand in the manner provided in Section 11.

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s.

Licensee commits a default under any other provision of this Agreement, and fails to cure such default within fifteen (15) days of written notice from IMAGE.

t.

IMAGE shall have the right to terminate this Agreement upon written notice to Licensee without cause with respect to a particular Collegiate Institution in the event that said Collegiate Institution directs IMAGE to terminate this Agreement on an annual basis or otherwise.  This termination shall be without prejudice to any other rights IMAGE may have, whether under the provisions of this Agreement, in law, in equity or otherwise.

(e)

The entire unpaid balance of all Royalty Payments and other amounts owing and due under this Agreement shall immediately become due and payable upon termination.

17.  EFFECT OF EXPIRATIN OR TERMINATION; DISPOSAL OF INVENTORY

(a)

Effect of Expiration or Termination: After expiration or termination of this Agreement for any reason, Licensee shall immediately discontinue the manufacture, advertising, use, distribution and sale of all Licensed Articles, Packaging and Advertising Materials, the use of all Licensed Indicia, and all similar marks, except as provided in Section 17(b), or unless expressly authorized in writing by IMAGE or the applicable Collegiate Institution.  Until payment to IMAGE of any monies due it, IMAGE shall have a lien on any units of Licensed Articles not then disposed of by Licensee and on any monies due Licensee from any jobber, wholesaler, distributor, or other third parties with respect to sales of Licensed Articles.

(b)

Disposal of Inventory:  After expiration or termination of this Agreement for any reason, Licensee shall have no further right to manufacture, advertise, use, distribute or sell Licensed Articles, Packaging or Advertising Materials utilizing the Licensed Indicia, but may continue to distribute its remaining inventory of Licensed Articles in existence at the time of expiration or termination for a period of sixty (6) days; provided, however, that Licensee has delivered all statements (including Final Statement) and payments then due, that during the disposal period Licensee shall deliver all statements and payments due in accordance with Section 7, that Licensed Articles are sold at Licensee’s regular Net Sales price and within the Distribution Channels, and that Licensee shall comply with all other terms and conditions of this Agreement.  Notwithstanding the foregoing, Licensee shall not manufacture, advertise, use, distribute, or sell any Licensed Articles, Packaging or Advertising Materials after the expiration or termination of this Agreement because of: (i) departure of Licensee from the quality an style approved by IMAGE under this Agreement, (ii) failure of Licensee to obtain product or design approval, or (ii) a default under Section 16.

18. FINAL STATEMENT

Upon expiration or termination of this Agreement for any reason, or at any other time upon request by IMAGE or the Collegiate Institutions Licensee shall furnish to IMAGE at statement showing the number and description of Licensed Articles on hand or in process.  Following such expiration or termination, including inventory disposal period, if allowed, IMAGE may request Licensee to either (i) surrender unsold Licensed Articles, Packaging and Advertising Materials, as well as dies, molds and screens used to manufacture such Licensed Articles and Packaging, or (ii) destroy all such remaining unsold materials certifying their destruction to IMAGE and specifying the number of each destroyed.  IMAGE and/or its authorized representatives reserve the right to conduct physical inventories to ascertain or verify Licensee’s compliance with the foregoing.

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19.  SURVIVAL OF RIGHTS

The terms and conditions of this Agreement necessary to protect the rights and interests of IMAGE and the Collegiate Institutions, including, without limitation, Licensee’s obligations under Sections 8, 13, 14, and 15, shall survive the termination or expiration of this Agreement.  The terms and conditions of this Agreement providing for any other activity following the effective date of termination or expiration of this Agreement shall survive until such time as those terms and conditions have bee fulfilled or satisfied.

20. NOTICES

All notices and statements to be given and all payments to be made, shall be given or made to the parties at their respective addresses set forth herein, unless notification of a change of address is given in writing.  Unless otherwise provided in the Agreement, all notices shall be sent be certified mail, return receipt requested; facsimile, the receipt of which is confirmed by confirmation document; email, confirmed by email receipt confirmation notice; or nationally recognized delivery service that provides evidence of delivery, and shall be deemed to have been given at the time they are sent.

21.  CONFORMITY TO LAW AND POLICY

(a)

Licensee shall comply with such guidelines, policies, and requirements as IMAGE may give written notice from time-to-time including, without limitation, guidelines, policies and/or requirements contained in periodic IMAGE bulletins or notices.

(b)

Licensee undertakes and agrees to obtain and maintain all applicable permits and licenses at Licensee’s expense.

(c)

Licensee shall pay all federal, state and local taxes due on or by reason for the manufacture, distribution or sale of the Licensed Articles.

22.  SEVERABILITY

The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23.  NON-ASSIGNABILITY

This Agreement is personal to Licensee. Neither this Agreement nor any of Licensee’s rights shall be sold, transferred or assigned by Licensee without IMAGE’s prior written approval, and no rights shall devolve by operation of law or otherwise un any assignee, receiver, liquidator, trustee or other party.  Subject to the foregoing, this Agreement shall be binding upon any approved assignee or successor of Licensee and shall inure to the benefit of IMAGE, its successors and assigns.

24.  ENTIRE AGREEMENT / NO WAIVER

Unless otherwise specified herein, this Agreement or any renewal, including appendices,  constitutes the entire agreement and understanding between the parties and cancels, terminates, and supersedes any prior agreement

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or understanding, written or oral, relating to the subject matter hereof  between Licensee, IMAGE and the Collegiate Institutions.  There are no representations, promises, agreements, warranties, covenants or understandings other than those contained herein.  None of the provisions of this Agreement may be waived or modified, except expressly in writing signed by both parties. However, failure of either party to require the performance of any term in this Agreement or the waiver by either party of any breach shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

25.   COLLECIATE INSTITUTIO RIGHT TO ENFORCE

Each Collegiate Institution is entitled to enforce its rights in the licensed Indicia and the terms of this Agreement directly against the Licensee; and each Collegiate Institution is entitled to all the rights and remedies available under this Agreement.

26.  MISCELLANEOUS

When necessary for appropriate meaning, a plural shall be deemed to be the singular and singular shall be deemed to be the plural.   The attached appendices are an integral part of this Agreement.  Section headings are for convenience only and shall not add to or detract from any of the terms or provisions of this Agreement.  This Agreement shall be governed by and construed in accordance with the laws of the state Georgia, which shall be the sole jurisdiction for any disputes.  This Agreement shall not be binding on IMAGE until signed by IMAGE as agent on behalf of the Collegiate Institutions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the last date of signature below.

<https://www.sec.gov/Archives/edgar/data/868756/000105291808000381/ex1019.htm>

SIGNATURE BLOCK [...]

18

***Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to a confidentiality request. Omissions are designated [\*\*\*\*\*]. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission with the confidentiality request.***

**Appendix  A**

Beyond Brothers Inc.

[\*\*\*\*\*]

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**Account #67903   Check#\_\_\_\_\_\_\_\_\_\_  Date \_\_\_\_\_\_\_\_\_   Amount \_\_\_\_\_\_\_\_\_\_\_  Class \_\_\_\_\_\_\_\_\_\_\_\_\_**

19

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**Appendix  C**

**Beyond Brothers Inc.**

**Licensed Article                                                    Specifications (materials, content, other pertinent information)**

Products/  **(Caskets, Urns, Vaults)**

**LicA#21**

 LICENSING AND DISTRIBUTION AGREEMENT DATED AS OF APRIL 10, 2022 BY AND BETWEEN ADVANCED NEW TECHNOLOGIES, INC. AND NEWMANCONSULTING LLC

LICENSING AND DISTRIBUTION AGREEMENT

This Agreement is made and entered into effective as April 10, 2022 (the “Effective Date”), by and between Newman Consulting LLC, with offices located at […] KS 66047, a company organized and existing under the laws of Kansas (“NEWMAN”), and SCIENCESCAPE, INC, a subsidiary of Advanced New Techologies, Inc., a Nevada corporation, with offices located in […], Fla., (“ANT”).

BACKGROUND

WHEREAS, ANT is a public company and is seeking life sciences assets, in the Territory (as defined below);

WHEREAS, NEWMAN owns or has certain rights relating to regulated pet nutrition Products (as defined below);

WHEREAS, NEWMAN desires to license ANT as an exclusive licensee of the Products for distribution in the Territory in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, NEWMAN wishes to grant to ANT exclusive, sub-licensable license to NEWMAN’s Intellectual Property for the exclusively licensed Territories, Trade Marks (TM), and all technical knowhow in the Fields of Use including animal nutrition, animal supplements and animal health, to enable it to commercialize the product in the Territory;

WHEREAS, ANT wishes to pay a licensing fee, royalty on net income and grant equity to NEWMAN in exchange for this license;

WHEREAS, ANT and NEWMAN agree that this Agreement shall supersede and be controlling over any and all prior agreements, written or oral, between the parties.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

TERMS

ARTICLE 1. DEFINITIONS. IN ADDITION TO THE TERMS DEFINED IN THIS AGREEMENT, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THIS SECTION 1:

1.1 “Actively Promote Sales” means to actively engage a third party, orally or in writing, to obtain a sale of the Product.

1.2 “Customer” or “Customers” shall refer to the end user or end users of the Products.

1.3 “Field of Use” shall refer to use of the Product for animal nutrition, animal supplements and animal health.

1.4 “Products” shall refer to the products listed on Appendix 2.

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ANT and NEWMAN License and Distribution Agreement - April 2022

1.5 “Regulatory Approvals” shall refer to governmental and regulatory agency permits, licenses, authorizations, registrations and/or approvals necessary for the marketing, distribution and sale of the Product into and within the Territory.

1.6 “Territory” shall refer to the geographical area listed on Appendix 3.

1.7 “Trademarks” shall refer to any trademark used by NEWMAN in connection with the Product, whether derived from common law use, from registration or from statutory protection against unfair competition, including without limitation those rights to NEWMAN’s corporate name, other trade names, model names and trademarks.

ARTICLE 2. LICENSE GRANT, APPOINTMENT, AND SCOPE OF AUTHORITY.

2.1 Subject to the terms and conditions of this Agreement, NEWMAN hereby appoints ANT as an exclusive Distributor of the Product for the Territory in the Field of Use. As such, ANT shall have the authority to market and sell the Product in the Territory in the Field of Use. Furthermore, ANT may only Actively Promote Product for the Field of Use. ANT hereby accepts such appointment and agrees to use its best efforts to maximize sales of the Product in the Territory in the Field of Use. ANT acknowledges that ANT’s right to distribute is for the Territory in the Field of Use only.

2.2 NEWMAN herby grants to ANT the following exclusive, licenses and rights for certain Territories:

(a) NEWMAN hereby grants to ANT an exclusive, sub-licensable license to NEWMAN’s Intellectual Property, TradeMarks (TM), and all technical knowhow in the Fields of Use to enable it to file for regulatory approvals, sublicense, manufacture, distribute, market and commercialize the product in the specified Territory. Furthermore, in the event NEWMAN ceases to exist NEWMAN will enable transfer of intellectual property for the product to ANT to enable ANT to be an independent legal manufacturer of the product. NEWMAN’s exclusive license to ANT will include all Registered TM in the Licensed Territory and wherever the patents and trademarks have been filed in the Licensed Territory, and related technical knowhow for the Products and marketing and other technical documents.

(b) NEWMAN grants to ANT exclusive, sub-licensable rights to NEWMAN’s IP, TradeMark (TM), and all technical knowhow to sublicense, manufacture, distribute, market and commercialize the product in all Licensed Territories.

(c) In the event ANT makes changes to the initial Intellectual Property and technical knowhow then ANT will own the new Intellectual Property for all changes and enhancements ANT makes is still obligated to Newman for any royalties, as described in this Agreement.

(d) ANT agrees to pay for its pro-rata share of intellectual property expenses. As a result, ANT will retain ownership of that pro-rata percentage.

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ANT and NEWMAN License and Distribution Agreement - April 2022

2.3 As a Distributor ANT may appoint sub-distributors, sub-agents or other persons (collectively, “Sub-Distributors”) to perform its obligations under this Agreement, in whole or in part. ANT agrees that it will obligate all of its Sub-Distributors to be bound by all of the terms, conditions and restrictions to which ANT is bound under this Agreement, and ANT agrees to cause all such Sub-Distributors to comply with such terms, conditions and restrictions. Sub-Distributors may not market or sell the Products outside of the Distribution Territory or outside of the Field of Use. Neither a Sub-distributor nor ANT may sell to a country or party, wherein the sale to said country or party is in violation of a law, regulation or executive order of the United States of America.

ARTICLE 3. ANT RESPONSIBILITIES.

3.1 During the term of this Agreement, ANT shall (at its expense except as otherwise provided for in this Agreement):

(a) use its best efforts to vigorously develop business in the Territory and to promote the sale of the Product in the Field of Use in the Territory;

(b) promptly notify NEWMAN of any and all inquiries and requests regarding Product from potential or prospective Customers who are located outside of the Territory; and

(c) assume all future patent costs and fees associated with the Product in the Territory.

ARTICLE 4. PRICE AND PAYMENT.

4.1 Within 30 days of ANT completing its reverse stock split, ANT shall grant to NEWMAN 300,000 shares of Common Stock in ANT.

4.2 In addition, NEWMAN shall receive a percentage of the royalties received from sublicensing on the following schedule.

(a) 90% of net royalties received for continuing sales and initial payments up to net sales of $100 Million/calendar year

(b) 95% of net royalties received for continuing sales above $100 Million per calendar year

(c) 90% of any lump up-front payment sub-licensing fees

(d) Options to purchase 200,000 shares of ANT Common Stock when net sales exceed $100 Million.

4.3 ANT shall pay to NEWMAN verified non-refundable royalties from sublicenses within 30 days of receipt.

4.4 In other Territories that NEWMAN can enter, ANT shall pay royalties on the same schedule as in Section 4.2(a)(b)(c).

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ANT and NEWMAN License and Distribution Agreement - April 2022

ARTICLE 5. COMPLIANCE WITH LAWS.

5.1 NEWMAN shall obtain and maintain all licenses, permits and other governmental approvals necessary to permit the sublicensing or purchase of and payment for Products by ANT hereunder and to otherwise permit ANT’s performance hereunder. ANT shall comply with any and all governmental laws and regulations which may be applicable to ANT by reason of its execution of this Agreement.

5.2 ANT acknowledges that the Product and associated documentation may be subject to United States export control laws and regulations. ANT further acknowledges that technical data contained in any of the foregoing may be subject to export and re-export restrictions imposed by applicable law. ANT confirms and agrees that the Product will only be sublicensed or exported to the Territory. ANT will not export or re-export Product, directly or indirectly, in violation of applicable laws of the Territory, of the United States or any other applicable law.

5.3 ANT shall not, and shall ensure that none of its officers, directors, employees or agents, offer, pay, promise to pay, or authorize the payment of any money, or offer, gift, promise to give, or authorize the giving of anything of value to (i) any official from government, hospital or other, political party or official thereof or any candidate for political office or (ii) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any official, to any political party or official thereof, or to any candidate for political office, for purposes of (1) influencing any act or decision of such official, political party, party official or candidate in its or his official capacity, as the case may be; (2) inducing such official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such official, party, official or candidate; or securing any improper advantage for ANT or any other party; or (3) inducing such official, party, official, or candidate to use its or his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist ANT in obtaining or retaining business for or with, or directing business to, any person.

5.4 ANT shall notify NEWMAN of the existence and content of any provision of law in the Territory or any other applicable law which conflicts with any provision of this Agreement at the time of its execution or anytime thereafter. Without limiting any of the foregoing, ANT and NEWMAN warrant, covenant and agree that they will comply with all applicable laws of the Territory and of the U.S., including but not limited to the U.S. Foreign Corrupt Practices Act [(15 U.S.C. §§ 78dd-1, et seq.) (“FCPA”)].

ARTICLE 6. NEWMAN RESPONSIBILITIES.

6.1 NEWMAN shall provide ANT or its sub-licensees, with sales, marketing and technical information applicable to the Products, as requested by ANT, all in reasonable quantities as determined by NEWMAN.

6.2 NEWMAN will provide the assistance and participation of Dr. Marion Schmidt of NEWMAN to provide technical support for technology transfer process, regulatory, quality and commercialization.

6.3 In any Territory that ANT or its agent previously paid for and prospectively pays for any patent application, extension or any invoice related to any NEWMAN intellectual property in any field of use, then ANT agrees that NEWMAN retains all right, title, and interest in all of the intellectual property underlying the payment made for that Territory in perpetuity but NEWMAN shall assign the ownership of the intellectual property to ANT upon request from ANT.

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ANT and NEWMAN License and Distribution Agreement - April 2022

ARTICLE 7. WARRANTY.

7.1 Subject to the terms and conditions hereof, NEWMAN warrants to the Customer that the Product provided under this Agreement: (i) complies with the specifications for such Product, and (ii) will be manufactured consistent with any applicable Good Manufacturing Practice regulations promulgated by the bodies responsible for regulatory oversight whether that be AACO, NASC, or other authorities.

7.2 Section 7.1 above sets forth the sole warranty made by NEWMAN with respect to the Product and its delivery to ANT. The parties to this Agreement acknowledge and agree that other than the foregoing, no other warranty, whether expressed, implied or by applicable law, shall be effective with respect to the Product or their delivery, and NEWMAN SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCT OR ANY OTHER MATTER CONTEMPLATED BY THIS AGREEMENT.

ARTICLE 8. INDEMNIFICATION AND INSURANCE.

8.1 ANT shall indemnify and hold NEWMAN harmless from and against any and all third party claims, losses, demands, actions, suits, damages, liabilities, costs and expenses, including reasonable attorney’s fees, incurred by NEWMAN or by Dr Marion Schmidt, by reason of (a) the negligence or misconduct and intentional misconduct of ANT or its employees or agents, (b) any misrepresentations or omissions by ANT or its employees or agents relating to the Product, or (c) a breach by ANT of any provision of this Agreement or the failure of ANT to perform its obligations under this Agreement, or (d) manufacturing recalls, product defaults or errors of omission.

8.2 NEWMAN shall indemnify and hold ANT harmless from and against any and all third party claims, losses, demands, actions, suits, damages, liabilities, costs and expenses, including reasonable attorney’s fees, incurred by ANT by reason of (a) the negligence or misconduct of NEWMAN or its employees or agents, (b) any misrepresentations or omissions by NEWMAN or its employees or agents relating to the Product, or (c) a breach by NEWMAN of any provision of this Agreement or the failure of NEWMAN to perform its obligations under this Agreement.

ARTICLE 9. CONFIDENTIALITY.

9.1 The term “Confidential Information” means all inventions, technical information, processes, trade secrets, know-how, designs, formulations, certificates of analysis, specifications, plans, drawings, blueprints, samples, models, prototypes, catalogs, service manuals, data sheets, sales, service and technical bulletins, customer lists, sales and marketing programs, price lists, cost data, sales aids (such as videos and recordings) and all other publications and information, whether or not reduced to writing, relating to the design, manufacture, use, marketing or sale of the Product, as well as any other information relating to the business of NEWMAN which may be divulged to or otherwise obtained by ANT in the course of its performance of this Agreement and which is generally not known in the trade. “Confidential Information” shall not include any information disclosed by NEWMAN hereunder which ANT can demonstrate by reasonable documentary evidence (a) is already known to ANT and which ANT had in its possession in written or physical embodiment prior to the disclosure, unless such Confidential Information was previously disclosed by NEWMAN, or (b) is rightfully received by ANT in the routine course of business from a third party who is not in breach of any confidentiality obligation by disclosing such information.

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ANT and NEWMAN License and Distribution Agreement - April 2022

9.2 ANT shall hold the Confidential Information in strict confidence and shall not use or disclose or distribute it except as required to perform its obligations under this Agreement. ANT agrees not to reverse engineer any Confidential Information or the Product. Without limiting the foregoing, ANT agrees that the Confidential Information shall be disclosed only to such of its employees and sales or service representatives or other persons as have a need to know such Confidential Information for a use expressly contemplated by this Agreement, and only to such employees, sales or service representatives or other persons who have been informed of the obligations contained in this Article 12 and have agreed in writing to be bound by such obligations. ANT will be responsible and liable for any breach of these obligations that is committed by any such employee, sales or service representative, sub-ANT or other person as if the breach had been committed by ANT.

9.3 The terms of this Article 9 shall survive expiration or termination of this Agreement for a period of five (5) years immediately following such expiration or termination. Notwithstanding anything in this Agreement to the contrary, each party’s rights, duties and obligations, whether arising under this Agreement or at law, with respect to any Confidential Information that constitutes a ‘trade secret’ shall continue until such Confidential Information is no longer considered a trade secret under applicable law (other than as the result of breach or expiration or termination of this Agreement or any other confidentiality obligation).

9.4  ANT shall return to NEWMAN all Confidential Information, including all copies thereof, upon expiration or termination of this Agreement or upon NEWMAN’s request, whichever event shall occur first.

9.5 ANT shall bind in writing its employees, officers, sales, technical, maintenance and service representatives, and other third parties (if any) to whom Confidential Information is disclosed as permitted hereunder, to the terms and conditions contained herein.

9.6 The Parties agree that this Agreement does not prohibit the disclosure of Confidential Information where applicable law requires, including, but not limited to, disclosure in response to subpoenas and/or orders of a governmental agency or court of competent jurisdiction and any disclosures necessary to comply with applicable securities laws. In the event NEWMAN or ANT is required to disclose Confidential Information in accordance with the previous sentence, that party shall immediately, and in no event later than five (5) days prior to such required disclosure, notify the other party in writing, and cooperate with in seeking to limit the disclosure of such Confidential Information in accordance with public law.

9.7 ANT hereby acknowledges and agrees that in the event of any violation of this Article 9, NEWMAN shall be authorized and entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief, as well as an equitable accounting of all profits and benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any and all other rights and remedies to which NEWMAN shall be entitled at law or equity under this Agreement.

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ANT and NEWMAN License and Distribution Agreement - April 2022

ARTICLE 10. TERM AND TERMINATION.

10.1 The term of this Agreement shall commence on the Effective Date and, subject to earlier termination pursuant to its terms, shall remain in full force and effect for an initial term of twenty (20) years. At the end of the initial ten (10) year term, the term of this Agreement shall be extended for another ten (10) year term in all areas where the ANT is already operating. This Agreement may be terminated prior to the expiration of the initial or any renewal term by prior written notice from one party to the other party as follows:

(a) By NEWMAN, effective immediately upon written notice, in the event that ANT materially breaches any of its obligations after a thirty (30) day cure period after notice under Article 3 or Article 9;

(b) By NEWMAN, effective immediately upon written notice, in the event that ANT defaults under any of its monetary obligations under this Agreement and fails to remedy such monetary default within sixty (60) business days after receiving written notice thereof;

(c) By NEWMAN, if ANT fails to maintain a current account status or to furnish reasonable financial information on request within thirty (30) calendar days after receiving written demand thereof;

(d) By either party, in the event the other party is in breach of this Agreement (other than a breach with respect to which the termination rights are otherwise expressly addressed in this Section 10.1 or elsewhere in this Agreement) and fails to cure such breach within forty five (45) calendar days after receiving written demand therefor;

(e) By either party effective immediately, if the other party becomes the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceedings or makes any assignment or other arrangements for the benefit of creditors;

(g) (e) By either party effective immediately, if ANT fails to execute its reverse stock split, or fails to obtain regulatory approval to operate.

10.2 Upon expiration or termination of this Agreement, any and all balances owed by ANT to NEWMAN that are then outstanding shall become immediately due and payable without further notice or demand. In addition, upon expiration or termination of this Agreement, ANT shall return all catalogs, price lists, drawings, instruction sheets, advertising and other promotional materials and all of NEWMAN’s supplies of every kind and character, and all other documents relating to the business of NEWMAN which may be in the possession or under the control of ANT, including without limitation any and all Confidential Information. In the event that NEWMAN terminates this Agreement, NEWMAN shall return the 300,000 shares of Common Stock of ANT to ANT for cancellation and the 200,000 options to purchase Common Stock shall immediately expire as be deemed un-exercisable.

10.3 The clauses of this Agreement that are intended to survive its expiration or termination, including without limitation Articles 9, 10 and 11 and any and all obligations including any enforcement actions that arise prior to expiration or termination, shall survive expiration or termination of this Agreement.

ARTICLE 11. MISCELLANEOUS.

11.1 ANT represents and warrants that: (i) it is not currently and will not in any way whatsoever during the term of this Agreement be contractually restricted or prohibited from entering into this Agreement and performing its obligations herein contained, and (ii) its execution of this Agreement, and its performance of its obligations herein contained, do not and will not constitute a default or an event that, with or without notice or lapse of time or both, would be a default, breach or violation of any agreement, contract, instrument or arrangement to which it is a party or by which it is bound.

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ANT and NEWMAN License and Distribution Agreement - April 2022

11.2 This Agreement may not be assigned by NEWMAN, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of ANT.

11.3 This Agreement constitutes the entire agreement between the parties, and it supersedes any and all prior and contemporaneous oral or written agreements, understandings, conditions and warranties, between the parties hereto on the subject matter hereof. Except as otherwise expressly contemplated herein, this Agreement may be modified or amended only by a writing signed by both of the parties hereto. There are no conditions to this Agreement which are not set forth herein.

11.4 Notification required or permitted hereby shall be given in writing and shall be deemed given only upon transmission by confirmed e-mail on the first business day after transmission thereof or five (5) business days after being sent postage pre-paid by registered or certified airmail, return receipt requested, or on the date of delivery by private international courier upon proof thereof, and (in each case) addressed to the party to be given notification at the address listed in conjunction with that party’s name as set forth in Appendix 1.

11.5 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY U.S.A., WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS. THIS AGREEMENT AND ANY AND ALL SALES OF PRODUCT BY NEWMAN TO ANT SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF PRODUCT.

11.6 Any dispute, controversy or claim arising out of or relating to this Agreement, its interpretation or enforcement, or the breach, expiration, termination or invalidity hereof, shall be adjudicated in English in U.S. Federal District Court for the State of New Jersey.

11.7 Except as otherwise expressly provided in this Agreement, the rights and remedies provided each of the parties herein shall be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either party of its right to terminate this Agreement or to enforce any provision of this Agreement for any default or violation by the other party shall not prejudice such party’s right of termination or enforcement for such or any other default or violation.

11.8 If, by reason of any cause beyond the reasonable control of either party hereto, including, but not limited to, strikes, failure of major subcontractors, fire, hurricane, flood or other acts of nature or acts of God, accidents, war, acts of terrorism, civil unrest, embargo or other governmental act, regulation or request, or other legal restrictions, such party is delayed in its performance, in whole or in part, of its obligations under this Agreement (other than monetary obligations), then such party shall be excused from such performance and such nonperformance will not make the party liable to the other party. The party delayed shall, as promptly as reasonably possible, notify the other party of the reasons for the delay and its estimated duration.

11.9 In the event a court of competent jurisdiction determines any one or more of the provisions contained in this Agreement to be invalid, illegal or unenforceable, this Agreement shall be construed so that the remaining provisions contained herein shall not in any way be affected thereby but shall remain in full force and effect, and any such invalid, illegal or unenforceable provision(s) shall be deemed, without further action by any person or entity, to be modified or limited to the minimum extent necessary to render the same valid and enforceable in such jurisdiction.

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ANT and NEWMAN License and Distribution Agreement - April 2022

11.10 This Agreement shall not take effect unless and until both parties have signed it. However, this Agreement may be executed in any number of counterparts, each of which when so executed shall constitute an original, and all of which shall be deemed one and the same instrument, and which counterparts may be exchanged as an attachment to an email or by facsimile transmission.

11.11 This Agreement has been expressed in English at the wish of the parties. The parties confirm and agree that the English-language version of this Agreement shall govern and control any translation of this Agreement into any other language.

11.12 ANT may change the name of its Company and ticker symbol or assign the agreement to a subsidiary at any time subject to Board of Directors and/or shareholder approval if required. The terms of this Agreement will remain in full force and effect upon any name change or assignment to a subsidiary.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

NEWMAN LLC Advanced New Techologies, Inc.

(“NEWMAN”) (“ANT”)

By: Marion Schmidt By: Robert Giacometti

Title: CEO Title: CEO

Date: April xx, 2022 Date: April xx, 2022

4/11/2022 4/12/2022

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ANT and NEWMAN License and Distribution Agreement - April 2022

Appendix 1

Contact Information

If to NEWMAN:

Marion Schmidt

CEO

If to ANT:

Robert Giacometti

Chief Executive Officer

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ANT and NEWMAN License and Distribution Agreement - April 2022

Appendix 2

Products

Intellectual Property – Product commonly known as DUOS

Abstract

Invention disclosed to patent attorney for utility patent on the line of dosage form products comprised of a hot extruded outer flexible, cellular non-GMO, non-nutritive fibrous matrix dental crust/mantle providing mechanical cleansing action and hyper-salivation and an inner core that is cold formed and cold extruded in the center to preserve material containing various nutraceuticals or drugs.

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ANT and NEWMAN License and Distribution Agreement - April 2022

Appendix 3

Territory

1. Exclusive License for, Sublicense, Manufacture and Distribution of both NEWMAN and ANT made product

a. United States of America, Canada and Mexico

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ANT and NEWMAN License and Distribution Agreement - April 2022

Appendix 4

Current Intellectual Property and Patent Ownership.

Country Patent or patent application Note

Patent filed on July 16, 2020 through

USA

Filing receipt received (document follows on next page)

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**LicA#23**

SIEGER group.htm SOFTWARE LICENSE AGREEMENT, DATED NOVEMBER 15, 2021, BETWEEN COMPROGRAMPRODUCTION SINGLE MEMBER S.A. AND SIEGER

GROUP, INC

**Exhibit 10.1**

**Software License Agreement**

THIS SOFTWARE LICENSE AGREEMENT (the “Agreement”) dated this 15th day of November 2021 (the “Execution Date”)

BETWEEN:

COMPROGRAMPRODUCTION SINGLE MEMBER S.A.

VAT number: […] / Tax Authority: FAE Piraeus

(the “Vendor”)

OF THE FIRST PART

-AND-

SIEGER GROUP, INC.

a Nevada corporation

EIN (Employer Identification Number): […]

(the “Licensee”)

OF THE SECOND PART

BACKGROUND:

The Vendor wishes to license computer software to the Licensee and the Licensee desires to purchase the software license under the terms and conditions stated below.

IN CONSIDERATION OF the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

License

I. Under this Agreement the Vendor grants to the Licensee an exclusive and non-transferable license (the “License”) to use Seatrix artificial intelligence software managing shipping crews (the “Software”).

2. “Software” includes the executable computer programs and any related printed, electronic, and online documentation and any other files that may accompany the product.

3. Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with the Vendor. Intellectual property rights include the look and feel of the Software. This Agreement constitutes a license for use only and is not in any way a transfer of ownership rights to the Software.

4. The Software may be loaded onto no more than one computer. A single copy may be made for backup purposes only.

5. The rights and obligations of this Agreement are personal rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. The Licensee may not make available the Software for use by one or more third parties.

6. The License is exclusive to the Licensee. The Vendor hereby agrees that the Licensee shall be the sole holder of the License to utilize or resell the Software for its clients.

7. The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.

8. Failure to comply with any of the terms under the License section will be considered a material breach of this Agreement.

License Fee

9. The purchase price shall be 7,000,000 shares of restricted common stock of the Licensee.

Limitation of Liability

10. The Software is provided by the Vendor and accepted by the Licensee “as is”. Liability of the Vendor will be limited to a maximum of the original purchase price of the Software. The Vendor will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Licensee arising out of the use or failure to use the Software.

11. The Vendor makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements of the Licensee.

Page 2 of 6

12. The Vendor does not warrant that use of the Software will be uninterrupted or error-free. The Licensee accepts that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

Warrants and Representations

13. The Vendor warrants and represents that it is the copyright holder of the Software. The Vendor warrants and represents that granting the license to use this Software is not in violation of any other agreement, copyright or applicable statute.

Acceptance

14. All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee (“Acceptance”) upon execution of this Agreement.

User Support

15. Vendor shall provide any and all technical support to ensure the Software is fully operational and completely up to date. In the event that Vendor requires access for general maintenance of the Software or ancillary hardware, Licensee shall reasonably provide access to its systems and facilities such that Vendor can properly service the same.

Term

16. The term of this Agreement will begin on January 1, 2022 and is perpetual.

Termination

17. This Agreement will be terminated and the License forfeited where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement On termination of this Agreement for any reason, the Licensee will promptly destroy the Software or return the Software to the Vendor.

Force Majeure

18. The Vendor will be free of liability to the Licensee where the Vendor is prevented &om executing its obligations under this Agreement in whole or in part due to Force Majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Vendor has taken any and all appropriate action to mitigate such an event.

Page 3 of 6

Governing Law

19. The Parties to this Agreement submit to the jurisdiction of the courts of the State of Nevada for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of the State of Nevada.

Miscellaneous

20. This Agreement can only be modified in writing signed by both the Vendor and the Licensee.

21. This Agreement does not create or imply any relationship in agency or partnership between the Vendor and the Licensee.

22. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

23. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties’ intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

24. This Agreement contains the entire agreement between the parties. All understandings have been included in this Agreement. Representations which may have been made by any party to this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.

25. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the Vendor’s successors and assigns.

Notices

26. All notices to the parties under this Agreement are to be provided at the following addresses, or at such addresses as may be later provided in writing:

[…], : […]

[…] : […]

Page 4 of 6

[THIS SPACE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE TO FOLLOW]

Page 5 of 6

[SIEGER Group, Inc. - COMPROGRAMProduction Single Member SA.

Licensing Agreement- Signature Page]

IN WITNESS WHEREOF, Licensee has caused this Agreement to be executed by one of its duly authorized officers and Licensee has individually executed this Agreement, each intending to be legally bound, as of the date first above written.

SIEGER GROUP, INC.

By: /s/ Stavros Melniki November 15th, 2021

Stavros Melniki Date

Title: Chief Executive Officer

SEATRIX

SOFTWARE PRODUCTION

SINGLE MEMBER S.A.

By: /s/ Stavros Melniki November 15th, 2021

Stavros Melniki Date

Principal

Page 6 of 6

**LicA#23**

EX-10.1

**Exhibit 10.1**

**SECURITIES PURCHASE AGREEMENT**

This SECURITIES PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of February 27, 2024, by and among Omicure Inc., a Delaware corporation (the “**Company**”), and the Investors identified on **Exhibit A** attached hereto (each an “**Investor**” and collectively the “**Investors**”).

**RECITALS**

A. The Company and the Investors are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the provisions of Section 4(a)(2) of the 1933 Act (as defined below) and/or Rule 506 of Regulation D promulgated by the SEC (as defined below);

B. Each Investor, severally and not jointly, wishes to purchase from the Company, and the Company wishes to sell and issue, upon the terms and subject to the conditions stated in this Agreement, shares (the “**Shares**”) of the Company’s Class A Common Stock, par value $0.01 per share (the “**Common Stock**”) and pre-funded warrants to purchase Common Stock (the “**Pre-Funded** **Warrants**”) in the form of **Exhibit B** attached hereto; and

C. Contemporaneously with the sale of the Shares and the Pre-Funded Warrants, the Company and the Investors (as defined below) will execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit C** (the “**Registration Rights Agreement**”), pursuant to which the Company will agree to provide certain registration rights under the 1933 Act and applicable state securities laws in respect of the Shares, the shares of Common Stock issuable upon exercise of the Pre-Funded Warrants (the “**Warrant Shares**” and together with the Shares and the Pre-Funded Warrants, the “**Securities**”) and any other securities of the Company now owned or hereafter acquired by any of the Investors.

In consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions**. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

“**Additional Financing**” has the meaning set forth in Section 7.14.

“**Additional Financing Deadline**” has the meaning set forth in Section 7.14.

“**Affiliate**” means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is controlled by, or is under common Control with such Person. For the avoidance of doubt, with respect to any Investor that is an investment fund or other investment vehicle, such Investor shall be deemed not to be an Affiliate of (i) any portfolio company of such Investor or its Affiliates or (ii) any limited partner of any such Investor or its Affiliates.

“**ATM Notice**” has the meaning set forth in Section 7.13(a).

“**ATM Offering**” has the meaning set forth in Section 7.12(c).

“**ATM Shares**’ has the meaning set forth in Section 7.13(a).

“**Average Price**” has the meaning set forth in Section 7.13(a).

“**BB**” means 667, L.P. and Barnes Brothers, L.P., collectively.

“**Board**” means the board of directors of the Company.

“**Business Day**” means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

“**Bylaws**” means the Second Amended and Restated By-laws of the Company, as in effect of the date hereof.

“**Call Right Financing**” has the meaning set forth in Section 7.14.

“**Call Right Pro Rata Share**”with respect to any Investor means the percentage determined by dividing (A) the number of shares of Common Stock (including all shares of Common Stock issuable or issued upon exercise of the Pre-Funded Warrants) issued to such Investor in connection with the transactions contemplated by this Agreement by (B) the total number of shares of Common Stock issued in connection with the transactions contemplated by this Agreement (including all shares of Common Stock issued or issuable upon exercise of the Pre-Funded Warrants).

“**Certificate of Incorporation**” has the meaning set forth in Section 4.3.

“**Closing**” has the meaning set forth in Section 3.1.

“**Closing Date**” has the meaning set forth in Section 3.1.

“**Closing Securities**” means the Shares and the Pre-Funded Warrants sold at Closing.

“**Company**” has the meaning set forth in the first paragraph.

“**Common Stock**” has the meaning set forth in the recitals to this Agreement.

“**Company’s Knowledge**” means the actual knowledge of the Company’s executive officers (as defined in Rule 405 under the 1933 Act) of the Company after due inquiry.

“**Control**” (including the terms “controlling,” “controlled by” or “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Disqualification Event**” has the meaning set forth in Section 4.24.

“**DTC**” has the meaning set forth in Section 7.1.

“**EDGAR system**” has the meaning set forth in Section 4.9.

“**Election Meeting**” has the meaning set forth in Section 7.9(d).

“**Entity**” means any corporation (including any non-profit corporation), partnership (including any general partnership, limited partnership or limited liability partnership), joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity, and each of its successors.

“**Environmental Laws**” has the meaning set forth in Section 4.15.

“**Evergreen Cap**” has the meaning set forth in Section 7.7.

“**Expected Sale Date**” has the meaning set forth in Section 7.12(a)(ii).

“**GAAP**” has the meaning set forth in Section 4.17.

“**Governmental Body**” means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, bureau, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any taxing authority); or (d) self-regulatory organization.

“**Intellectual Property**” has the meaning set for in Section 4.14.

“**Investor Covered Person**” means, with respect to each Investor, any other Person that is a beneficial owner of such Investor’s securities for purposes of Rule 506(d) under the 1933 Act.

“**Investor Designee**” has the meaning set forth in Section 7.9(b).

“**IT Systems and Data**” has the meaning set forth in Section 4.34.

“**Lead Investors**”means BB and Salinger.

“**Material Adverse Effect**” means any event, circumstance, development, condition, occurrence, state of facts, change or effect that, individually or in the aggregate with any other event, circumstance, development, condition, occurrence, state of facts, change or effect, has or would reasonably be expected to have a material adverse effect on (i) the assets (including intangible assets), liabilities (actual or contingent), results of operations, financial condition or business of the Company and its subsidiaries taken as a whole as currently conducted or as currently proposed to be conducted, (ii) the legality or enforceability of any of the Transaction Documents or (iii) the ability of the Company to perform its obligations under the Transaction Documents, including preventing or materially delaying or materially impairing such performance, except that for purposes of Section 6.1(h) of this Agreement, in no event shall general financial, credit, capital market or regulatory conditions or any changes therein (provided, however, that such effects do not affect the Company and its subsidiaries taken as a whole disproportionately as compared to the Company’s competitors) constitute a “Material Adverse Effect.”

“**Material Contract**” means any contract, instrument or other agreement to which the Company is a party or by which it is bound that has been filed or was required to have been filed as an exhibit to the SEC Filings pursuant to Item 601(b)(4) or Item 601(b)(10) of Regulation S-K.

“**Nasdaq**” means the Nasdaq Capital Market.

“**New Securities**” means, collectively, equity securities of the Company, whether or not currently authorized, as well as options or warrants to purchase such equity securities, or securities of any type whatsoever that are convertible or exchangeable into or exercisable for such equity securities, other than (i) any shares of capital stock or options to purchase shares of capital stock, or other equity-based awards (including restricted stock units), issued or granted to employees (or prospective employees who have accepted an offer of employment), directors or consultants of the Company or any of its subsidiaries, pursuant to any Company stock-based compensation plan or arrangement; (ii) any securities issued by the Company upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of capital stock and are outstanding as of the Closing Date or issued pursuant to this Agreement, provided that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Closing Date or as provided in this Agreement; (iii) any securities issued by the Company as full or partial consideration in connection with a merger, acquisition, consolidation or purchase of all or substantially all of the securities or assets of a corporation or other entity approved by the Board; (iv) any securities issued by the Company in connection with a transaction with an unaffiliated third party approved by the Board that includes a bona fide commercial relationship with the Company (including any joint venture, marketing or distribution arrangement, strategic alliance, collaboration agreement or corporate partnering, intellectual property license agreement or acquisition agreement with the Company); and (v) any securities issued by the Company to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board.

“**Offer Notice**” has the meaning set forth in Section 7.12(a)(ii).

“**Participation Period**” has the meaning set for in Section 7.12(a)(i).

“**Person**” means an individual, Entity or Governmental Body.

“**Pre-Funded Warrants**” has the meaning set forth in the recitals to this Agreement.

“**Principal Trading Market**” means the Trading Market on which the Common Stock is primarily listed on and quoted for trading, which, as of the date of this Agreement and the Closing Date, shall be the Nasdaq Capital Market.

“**Pro Rata Share**” with respect to any Investor means the percentage determined by dividing (A) the number of shares of Common Stock (including all shares of Common Stock issuable or issued upon exercise of the Pre-Funded Warrants and upon conversion or exercise of any other outstanding securities of the Company convertible or exercisable in exchange for shares of Common Stock) owned beneficially by such Investor immediately following the Closing by (B) the total number of shares of outstanding Common Stock (including all shares of Common Stock issued or issuable upon exercise of the Pre-Funded Warrants and upon conversion or exercise of any other outstanding securities of the Company convertible or exercisable in exchange for shares of Common Stock) and all shares reserved for future issuance pursuant to any equity incentive or similar plan) immediately following the Closing.

“**Public Disclosure**” has the meaning set forth in Section 9.7.

“**Qualified Investor**” means any Investor that, together with its Affiliates, continues to own at least 50% of the Closing Securities originally purchased by it (which in the case of the Pre-Funded Warrants shall be calculated by reference to the number of Warrant Shares originally issuable upon exercise thereof without regard to any exercise limitations in the Transaction Documents and shall include any Warrant Shares issued upon exercise thereof that continue to be beneficially owned by such Investor or its Affiliates), as adjusted for stock splits, recapitalizations and other similar events.

“**Registration Rights Agreement**” has the meaning set forth in the recitals to this Agreement.

“**Regulatory Authorities**” has the meaning set forth in Section 4.31(i).

“**Salinger**” means Salinger BioCapital, L.P.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**SEC Filings**” has the meaning set forth in Section 4.8.

“**Securities**” has the meaning set forth in the recitals to this Agreement.

“**Shares**” has the meaning set forth in the recitals to this Agreement.

“**Side Letter**” means the letter agreement intended to be entered into between the Company and each of the Lead Investors in the form of **Exhibit D** attached hereto.

“**Short Sales**” means all “short sales” as defined in Rule 200 of Regulation SHO under the 1934 Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“**Trading Market**” means whichever of the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market on which the Common Stock is listed or quoted for trading on the date in question.

“**Transfer Agent**” has the meaning set forth in Section 7.1.

“**Transaction Documents**” means this Agreement, the Registration Rights Agreement, the Pre-Funded Warrants, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated thereunder and hereunder.

“**Warrant Shares**” has the meaning set forth in the recitals to this Agreement.

“**1933 Act**” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“**1934 Act**” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

2. **Purchase and Sale of the Closing Securities**. On the Closing Date, upon the terms and subject to the conditions set forth herein, the Company will issue and sell, and each Investor will purchase, severally and not jointly, the number of Shares and the Pre-Funded Warrants to purchase the number of Warrant Shares set forth opposite the name of such Investor under the heading “Number of Shares” and “Number of Warrant Shares underlying Pre-Funded Warrants”, respectively, on **Exhibit A** attached hereto. The Pre-Funded Warrants shall have an exercise price equal to $0.01 per Warrant Share.

**3. Closing.**

3.1 Upon the satisfaction or waiver of the conditions set forth in Section 6, the closing of the purchase and sale of the Closing Securities (the “**Closing**”) shall occur remotely via exchange of executed documents and funds as promptly as practicable (but in no event later than the second Business Day following the satisfaction or waiver of the last to be satisfied or waived of the conditions) (the “**Closing Date**”).

3.2 On or before the Closing Date, each Investor shall deliver or cause to be delivered to the Company, via wire transfer of immediately available funds pursuant to the wire instructions delivered to such Investor by the Company prior to the Closing Date, an amount equal to the purchase price to be paid by the Investor for the Closing Securities to be acquired by it as set forth opposite the name of such Investor under the heading “Aggregate Purchase Price of Securities” on **Exhibit A** attached hereto.

3.3 At the Closing, the Company shall deliver or cause to be delivered to each Investor a number of Shares and a Pre-Funded Warrant, registered in the name of the Investor (or its nominee in accordance with its delivery instructions), equal to the number of Shares and, in the case of the Pre-Funded Warrant, to purchase up to the number of Warrant Shares set forth opposite the name of such Investor under the headings “Number of Shares” and “Number of Warrant Shares underlying Pre-Funded Warrants”, respectively, on **Exhibit A** attached hereto, against payment of the purchase price therefor. The Shares shall be delivered via a book-entry record through the Transfer Agent and, as soon as practicable thereafter, the Company shall provide a copy of the records of the Transfer Agent showing the Investor as the owner of the Shares on and as of the Closing Date. The Company shall serve as the Warrant Agent for the Pre-Funded Warrants.

4. **Representations and Warranties of the Company**. The Company hereby represents and warrants to the Investors as of the date hereof and as of the Closing Date that, except as described in the SEC Filings (excluding (i) any exhibits to the SEC Filings and (ii) any risk factor disclosures and any disclosure of risks included in any “forward-looking statements” disclaimer contained in the SEC Filings), each of which qualify these representations and warranties in their entirety:

4.1 **Organization, Good Standing and Qualification**. The Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own or lease its properties. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification or leasing necessary unless the failure to so qualify has not had and would not reasonably be expected to have a Material Adverse Effect. Each subsidiary of the Company has been duly incorporated or organized and is validly existing and in good standing (or such equivalent concepts to the extent they exist under the law of such jurisdiction) under the laws of the jurisdiction of its incorporation or organization, and has all requisite power and authority to carry on its business as now conducted and to own or lease its properties. Each of the Company’s subsidiaries is duly qualified to do business and is in good standing (or such equivalent concept to the extent it exists under the law of such jurisdiction) in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification necessary unless the failure to so qualify has not had and would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any subsidiary is in violation nor default of any of the provisions of its respective certificate of incorporation, bylaws or other organizational or charter documents.

4.2 **Authorization**. The Company has the requisite corporate power and authority and has taken all requisite corporate action necessary for, and no further action on the part of the Company, its officers, directors and stockholders is necessary for, (i) the authorization, execution and delivery of the Transaction Documents, (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance) and delivery of the Securities. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally and to general equitable principles.

4.3 **Capitalization**.

(a) The Company is authorized under its Amended and Restated Certificate of Incorporation, as amended (the “**Certificate of Incorporation**”) to issue 200,000,000 shares of Common Stock, 100,000,000 shares of Class B common stock, par value $0.01 per share and 50,000 shares of preferred stock, par value $0.01 per share. The Company’s disclosure of its issued and outstanding capital stock in its most recent SEC Filing containing such disclosure was accurate in all material respects as of the date indicated in such SEC Filing. Since the date indicated in such SEC Filing, there has not been any change in the Company’s capital stock, other than as a result of the exercise of stock options or the award of stock options, stock appreciation rights, restricted stock or restricted stock units in the ordinary course of business pursuant to the Company’s equity plan described in the SEC Filings. All of the issued and outstanding shares of the Company’s capital stock have been duly authorized and validly issued and are fully paid and nonassessable; none of such shares were issued in violation of any preemptive rights; and such shares were issued in compliance in all material respects with applicable state and federal securities law and any rights of third parties. No Person is entitled to preemptive or similar statutory or contractual rights with respect to the issuance by the Company of any securities of the Company, including, without limitation, the Securities. Except for stock options, stock appreciation rights, restricted stock and restricted stock units approved pursuant to Company equity plan described in the SEC Filings, warrants described in

the SEC Filings, the promissory note issued to G42 Investments AI Holding RSC Ltd described in the SEC Filings, and other agreements described in the SEC Filings, or as otherwise set forth in this Agreement, as of the date hereof there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company is or may be obligated to issue any equity securities of any kind, except as contemplated by this Agreement. There are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. Except as provided in the Investor Rights Agreement, dated as of June 29, 2015, among the Company, Omicure Holdings LLC and other stockholders party thereto from time to time, the Common Stock Purchase Agreement, dated as of May 31, 2022, by and between the Company and G42 Investments and the Common Stock and Warrant Purchase Agreement, dated as of July 22,2022, by and among the Company, […], LLC and […] Pharma, LLC, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person that have not otherwise been satisfied in full or waived.

(b) The issuance and sale of the Securities hereunder will not obligate the Company to issue shares of Common Stock or other securities to any other Person (other than the Investors) and, will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security.

(c) The Company does not have outstanding stockholder purchase rights or a “poison pill” or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.4 **Valid Issuance**. The Shares and Pre-Funded Warrants are duly authorized and, when issued, delivered and paid for in accordance with the applicable Transaction Documents, will be validly issued, fully paid and nonassessable and free and clear of all liens, encumbrances, rights of refusal of any kind and restrictions (other than those created by the Investors), except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws. The Warrant Shares have been duly and validly authorized and reserved for issuance and, upon exercise of the Pre-Funded Warrants in accordance with their respective terms, including the payment of any exercise price therefor, will be validly issued, fully paid and nonassessable and will be free and clear of all liens, encumbrances, rights of refusal of any kind and restrictions (other than those created by the Investors), except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws. No further approval or authorization of any stockholder, the Board or others is required for the issuance and sale of the Securities.

4.5 **Consents**. Subject to the accuracy of the representations and warranties of each Investor set forth in Section 5 hereof, the execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, Governmental Body, agency, or official, including, without limitation, any consent, action by, or approval of stockholders of the Company, other than (a) filings that have been made pursuant to applicable state securities laws, (b) post-sale filings pursuant to applicable state and federal securities laws, (c) filings pursuant to the rules and regulations of Nasdaq and (d) filing of the registration statement, following demand by an Investor pursuant to the Registration Rights Agreement as required to be filed by the Registration Rights Agreement, each of which the Company has filed or undertakes to file within the applicable time, as applicable. Subject to the accuracy of the representations and warranties of each Investor set forth in Section 5 hereof, the Company has taken all action necessary to exempt (i) the issuance and sale of the Securities and (ii) the other transactions contemplated by the Transaction Documents from the provisions of any stockholder rights plan or other “poison pill” arrangement, any anti-takeover, business combination or control share law or statute binding on the Company or to which the Company or any of its assets and properties is subject that is or could reasonably be expected to become applicable to the Investors as a result of the transactions contemplated hereby, including without limitation, the issuance of the Securities and the ownership, disposition or voting of the Securities by the Investors or the exercise of any right granted to the Investors pursuant to this Agreement or the other Transaction Documents.

4.6 **Use of Proceeds**. The net proceeds of the sale of the Securities hereunder shall be used by the Company for the direct and indirect costs related to the development of TTP 399, working capital and general corporate purposes.

4.7 **No Material Adverse Change**. Since September 30, 2023, there has not been:

(a) any change in the consolidated assets, liabilities, financial condition or operating results of the Company from that reflected in the financial statements included in the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, except for changes in the ordinary course of business which have not had and would not reasonably be expected to have a Material Adverse Effect, individually or in the aggregate;

(b) any declaration or payment by the Company of any dividend, or any authorization or payment by the Company of any distribution, on any of the capital stock of the Company, or any redemption or repurchase by the Company of any securities of the Company;

(c) any material damage, destruction or loss, whether or not covered by insurance, to any assets or properties of the Company or any of its subsidiaries;

(d) any waiver, not in the ordinary course of business, by the Company or any of its subsidiaries of a material right or of a material debt owed to it;

(e) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company or any of its subsidiaries, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results or business of the Company and its subsidiaries taken as a whole (as such business is presently conducted);

(f) except for the amendment to the Company’s Certificate of Incorporation, effective as of November 20, 2023, in connection with the reverse split of the Common Stock and the Company’s Class B common stock, any change or amendment to the Company’s Certificate of Incorporation or Bylaws, or material change to any material contract or arrangement by which the Company or any of its subsidiaries is bound or to which any of its assets or properties is subject;

(g) any material labor difficulties or, to the Company’s Knowledge, labor union organizing activities with respect to employees of the Company or any of its subsidiaries;

(h) any material transaction entered into by the Company or any of its subsidiaries other than in the ordinary course of business;

(i) the loss of the services of any key employee, or material change in the composition or duties of the senior management of the Company or any of its subsidiaries; or

(j) any other event or condition of any character that has had or would reasonably be expected to have a Material Adverse Effect.

4.8 **SEC Filings**. The Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the 1933 Act and the 1934 Act, including pursuant to Section 13(a) or 15(d) thereof, for the one-year period preceding the date hereof (collectively, the “**SEC Filings**”). At the time of filing thereof, the SEC Filings complied in all material respects with the

requirements of the 1933 Act or the 1934 Act, as applicable, and the rules and regulations of the SEC thereunder and did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

4.9 **No Conflict, Breach, Violation or Default**. The execution, delivery and performance of the Transaction Documents by the Company and the issuance and sale of the Securities in accordance with the provisions thereof will not, except (solely in the case of clause (i)(b) and clause (ii)) for such violations, conflicts or defaults as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) conflict with or result in a breach or violation of (a) any of the terms and provisions of, or constitute a default under, the Company’s Certificate of Incorporation or the Company’s Bylaws, both as in effect on the date hereof (true and complete copies of which have been made available to the Investors through the Electronic Data Gathering, Analysis, and Retrieval system (the “**EDGAR system**”)), or (b) assuming the accuracy of the representations and warranties in Section 5, any applicable statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or its subsidiaries, or any of their assets or properties, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien, encumbrance or other adverse claim upon any of the properties or assets of the Company or its subsidiaries or, except as disclosed in the SEC Filings, give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any Material Contract. This Section 4.9 does not relate to matters with respect to tax status, which are the subject of Section 4.10, employee relations and labor matters, which are the subject of Section 4.13, or environmental laws, which are the subject of Section 4.15.

4.10 **Tax Matters**. The Company and its subsidiaries have timely prepared and filed all material tax returns required to have been filed by them with all appropriate governmental agencies and timely paid all material taxes shown thereon or otherwise owed by them. There are no material unpaid assessments against the Company or any of its subsidiaries, nor, to the Company’s Knowledge, any audits by any federal, state or local taxing authority. All material taxes that the Company or any of its subsidiaries is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper governmental entity or third party when due. There are no tax liens pending or, to the Company’s Knowledge, threatened against the Company or any of subsidiaries or any of its of their respective assets or property. With the exception of agreements or other arrangements that are not primarily related to taxes entered into in the ordinary course of business, there are no outstanding tax sharing agreements or other such arrangements between the Company or any of its subsidiaries and any other corporation or entity (other than among the Company and any subsidiary of the Company).

4.11 **Title to Properties**. The Company and its subsidiaries have good and marketable title to all real properties and all other material properties and assets owned by them, in each case free from liens, encumbrances and defects, except such as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and the Company and its subsidiaries hold any leased real or personal property under valid and enforceable leases with no exceptions, except such as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

4.12 **Certificates, Authorities and Permits**. The Company and its subsidiaries possesses adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by them, except where failure to so possess would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any written notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that would reasonably be expected to have a Material Adverse Effect, individually or in the aggregate.

4.13 **Labor Matters**.

(a) Neither the Company nor any of its subsidiaries is party to or bound by any collective bargaining agreements or other agreements with labor organizations. To the Company’s Knowledge, neither the Company nor any of its subsidiaries has violated in any material respect any laws, regulations, orders or contract terms affecting the collective bargaining rights of employees or labor organizations, or any laws, regulations or orders affecting employment discrimination, equal opportunity employment, or employees’ health, safety, welfare, wages and hours.

(b) No material labor dispute with the employees of the Company or any of its subsidiaries, or with the employees of any principal supplier, manufacturer, customer or contractor of the Company or any of its subsidiaries, exists or, to the Company’s Knowledge, is threatened or imminent.

4.14 **Intellectual Property**. The Company and its subsidiaries own, possess, license or have other rights to use, all patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, technology, know-how and other intellectual property that are described in the SEC Filings as being owned, possess, licensed or used by the Company and its subsidiaries (collectively, the “**Intellectual Property**”); and to the Company’s Knowledge, no additional third party intellectual property rights are necessary for the conduct of the business of the Company and its subsidiaries in all material respects as now conducted or as proposed in the SEC Filings to be conducted; and (a) except as described in the SEC filings, there are no rights of third parties to any such Intellectual Property owned by the Company and its subsidiaries, including no liens, security interests or other encumbrances; (b) to the Company’s Knowledge, there is no material infringement by third parties of any such Intellectual Property; (c) there is no pending or, to the Company’s Knowledge, threatened action, suit, proceeding or claim by others challenging the Company’s or its subsidiaries’ rights in or to any such Intellectual Property, and the Company is unaware of any facts, which could form a reasonable basis for any such action, suit, proceeding or claim; (d) such Intellectual Property that is described in the SEC Filings has not been adjudged by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part; (e) there is no pending or, to the Company’s Knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property that is owned by or exclusively licensed to the Company or its subsidiaries, including interferences, oppositions, reexaminations or government proceedings; (f) there is no pending or, to the Company’s Knowledge, threatened action, suit, proceeding or claim by others that the Company or its subsidiaries infringe, misappropriate, or otherwise violate any patent, trademark, copyright, trade secret or other proprietary rights of others; (g) to the Company’s Knowledge, there is no third-party U.S. patent or published U.S. patent application which contains claims for which an Interference Proceeding (as defined in 35 U.S.C. § 135) has been commenced against any patent or patent application described in the SEC Filings as being owned by or exclusively licensed to the Company or its subsidiaries; (h) to the Company’s Knowledge, the Company and its subsidiaries have complied in all material respects with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or such subsidiary, and all such agreements are in full force and effect; and (i) each key employee of the Company or any of its subsidiaries and each employee of the Company or any of its subsidiaries involved with the development of Intellectual Property that is material to the Company and its subsidiaries has entered into an invention assignment agreement with the Company or the applicable subsidiary of the company, and to the Company’s Knowledge, no such employee is in violation of such confidential information and invention assignment agreement or any prior employee contract or proprietary information agreement with any other corporation or third party.

4.15 **Environmental Matters**. Neither the Company nor any of its subsidiaries is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances

(collectively, “**Environmental Laws**”), has not released any hazardous substances regulated by Environmental Laws onto any real property that it owns or operates, and has not received any written notice or claim it is liable for any off-site disposal or contamination pursuant to any Environmental Laws, which violation, release, notice, claim, or liability would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, and to the Company’s Knowledge, there is no pending or threatened investigation that would reasonably be expected to lead to such a claim.

4.16 **Legal Proceedings**. There are no legal, governmental or regulatory investigations, actions, suits or proceedings pending, or to the Company’s Knowledge, threatened to which the Company or its subsidiaries are, or may reasonably be expected to become, a party or to which any property of the Company or its subsidiaries are, or may reasonably be expected to become, the subject that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries is a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit or proceeding initiated by the Company or any of its subsidiaries currently pending or which the Company or any of its subsidiaries currently intends to initiate.

4.17 **Financial Statements**. The financial statements included in each SEC Filing comply as to form in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent restatement) and present fairly, in all material respects, the consolidated financial position of the Company as of the dates shown and its consolidated results of operations and cash flows for the periods shown, subject in the case of unaudited financial statements to normal, immaterial year-end audit adjustments, and such financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“**GAAP**”) (except as may be disclosed therein or in the notes thereto, and except that the unaudited financial statements may not contain all footnotes required by GAAP, and, in the case of quarterly financial statements, except as permitted by Form 10-Q under the 1934 Act). Except as set forth in the financial statements of the Company included in the SEC Filings or as otherwise disclosed in the SEC Filings filed prior to the date hereof, the Company and its subsidiaries have not incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which, individually or in the aggregate, have had or would reasonably be expected to have a Material Adverse Effect. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the SEC Filings fairly present the information called for in all material respects and have been prepared in accordance with the SEC’s rules and guidelines applicable thereto.

4.18 **Insurance Coverage**. The Company and its subsidiaries maintain in full force and effect insurance coverage that is customary for comparably situated companies for the business being conducted and properties owned or leased by the Company and its subsidiaries, and the Company reasonably believes such insurance coverage to be adequate against all liabilities, claims and risks against which it is customary for comparably situated companies to insure.

4.19 **Compliance with Nasdaq Continued Listing Requirements**. The Company is in compliance with applicable Nasdaq continued listing requirements. There are no proceedings pending or threatened against the Company relating to the continued listing of the Common Stock on Nasdaq and the Company has not received any notice of, nor to the Company’s Knowledge is there any reasonable basis for, the delisting of the Common Stock from Nasdaq.

4.20 **Brokers and Finders**. No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company or any of its subsidiaries. No Investor shall have any obligation with respect to any fees, or with respect to any claims made by or on behalf of other Persons for fees, in each case of the type contemplated by this Section 4.20 that may be due in connection with the transactions contemplated by this Agreement or the Transaction Documents.

4.21 **No Directed Selling Efforts or General Solicitation**. Neither the Company nor its subsidiaries nor any Person acting on its or their behalf has conducted any general solicitation or general advertising in connection with the offer or sale of any of the Securities.

4.22 **No Integrated Offering**. Assuming the accuracy of the Investors’ representations and warranties set forth in Section 5, neither the Company nor its subsidiaries nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any Company security, under circumstances that would adversely affect reliance by the Company on Section 4(a)(2) of the 1933 Act and Rule 506 under the 1933 Act for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the 1933 Act.

4.23 **Private Placement**. Assuming the accuracy of the representations and warranties of the Investors set forth in Section 5, the offer and sale of the Closing Securities to the Investors are exempt from the registration requirements of the 1933 Act pursuant to Section (4)(a)(2) of the 1933 Act and Rule 506 under the 1933 Act. The issuance and sale of the Closing Securities do not contravene the rules and regulations of Nasdaq.

4.24 **No Disqualification Events**. With respect to the Shares and Pre-Funded Warrants to be offered and sold hereunder in reliance on Rule 506 under the 1933 Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company’s outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale is subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a “**Disqualification Event**”), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Investors a copy of any disclosures provided thereunder.

4.25 **Questionable Payments**. Neither the Company nor its subsidiaries nor, to the Company’s Knowledge, any of their current or former directors, officers, employees, agents or other Persons acting on behalf of the Company or its subsidiaries, has on behalf of the Company or its subsidiaries in connection with their business: (a) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payments to any governmental officials or employees from corporate funds; (c) established or maintained any unlawful or unrecorded fund of corporate monies or other assets which is in violation of law; (d) made any false or fictitious entries on the books and records of the Company or its subsidiaries; or (e) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

4.26 **Transactions with Affiliates**. None of the executive officers or directors of the Company or any of its subsidiaries and, to the Company’s Knowledge, none of the employees of the Company or any of its subsidiaries is presently a party to any transaction with the Company or any of its subsidiaries (other than as holders of stock options, restricted stock units, warrants and/or restricted stock, and for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the Company’s Knowledge, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

4.27 **Internal Controls.**The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the 1934 Act), which (a) are designed to ensure that material information relating to the Company, including its subsidiaries, is made known to the Company’s principal executive officer and its principal financial officer by others within those entities; (b) have been evaluated by management of the Company for effectiveness as of the end of the Company’s most recent fiscal quarter; and (c) are effective in all material respects to perform the functions for which they were established. Since the end of the Company’s most recent audited fiscal year, there have been no material weaknesses in the Company’s internal control over financial reporting (whether or not remediated) and no change in the Company’s internal control over financial reporting that has materially affected, or would reasonably be expected to materially affect, the Company’s internal control over financial reporting. The Company is not aware of any change in its internal controls over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or would reasonably be expected to materially affect, the Company’s internal control over financial reporting.

4.28 **Disclosures**. Neither the Company nor any Person acting on its behalf has provided the Investors or their agents or counsel with any information that constitutes or would reasonably be expected to constitute material non-public information concerning the Company or its subsidiaries, other than with respect to the transactions contemplated hereby, which will be disclosed in the Public Disclosure (as defined below). The SEC Filings do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The Company understands and confirms that the Investors will rely on the foregoing representations in effecting transactions in securities of the Company.

4.29 **Required Filings**. Except for the transactions contemplated by this Agreement, including the acquisition of the Securities contemplated hereby, no event or circumstance has occurred or information exists with respect to the Company, its subsidiaries or their respective businesses, properties, operations or financial condition, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

4.30 **Investment Company**. The Company is not required to be registered as, and immediately following the Closing will not be required to register as, an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

4.31 **Tests and Preclinical and Clinical Trials**. The preclinical studies and clinical trials conducted by or on behalf of or sponsored by the Company or its subsidiaries, or in which the Company or its subsidiaries have participated, that are described in the SEC Filings, or the results of which are referred to in the SEC Filings, as applicable, were, and if still pending are, being conducted in all material respects in accordance with standard medical and scientific research standards and procedures for products or product candidates comparable to those being developed by the Company and its subsidiaries and all applicable statutes and all applicable rules and regulations of the U.S. Food and Drug Administration and comparable regulatory agencies outside of the United States to which they are subject (collectively, the “**Regulatory Authorities**”); (ii) the descriptions in the SEC Filings of the results of such studies and trials are accurate and complete in all material respects and fairly present the data derived therefrom; (iii) to the Company’s Knowledge, there are no other studies or trials not described in the SEC Filings, the results of which the Company believes are inconsistent with or reasonably call into question the results described or referred to in the SEC Filings; (iv) the Company and its subsidiaries have operated at all times and are currently in compliance with all applicable statutes, rules and regulations of the Regulatory Authorities, except where such non-compliance would not, individually or in the aggregate, have a Material Adverse Effect; and (v) neither the Company nor any of its subsidiaries have received any written notices,

correspondence or other communications from the Regulatory Authorities or any other governmental agency requiring or threatening the termination, material modification or suspension of any preclinical studies or clinical trials that are described in the SEC Filings or the results of which are referred to in the SEC Filings, other than ordinary course communications with respect to modifications in connection with the design and implementation of such studies or trials, and, to the Company’s Knowledge, there are no reasonable grounds for the same.

4.32 **Manipulation of Price**. The Company has not taken, and, to the Company’s Knowledge, no Person acting on its behalf has taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities.

4.33 **Anti-Bribery and Anti-Money Laundering Laws**. Each of the Company, its subsidiaries and its and their respective officers, directors, supervisors, managers, agents, or employees, are and have at all times been in compliance with and their participation in the offering will not violate: (A) anti-bribery laws, including but not limited to, any applicable law, rule, or regulation of any locality, including but not limited to any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any other law, rule or regulation of similar purposes and scope or (B) anti-money laundering laws, including, but not limited to, applicable federal, state, international, foreign or other laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 US. Code sections 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any Executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder.

4.34 **Cybersecurity**. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) the Company and its subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of the Company’s or any subsidiary’s information technology and computer systems, networks, hardware, software, data (including the data of its respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of it), equipment or technology (collectively, “**IT Systems and Data**”) and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification; (ii) there has been no security breach or other compromise of or relating to such IT Systems and Data and neither the Company nor any of its subsidiaries has been notified of, or has knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to such IT Systems and Data; (iii) the Company and its subsidiaries have implemented and maintained commercially reasonable safeguards to maintain and protect its material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and Data; and (iv) the Company and its subsidiaries have implemented backup and disaster recovery technology consistent with commercially reasonable industry standards and practices.

4.35 **No Additional Agreements**. The Company has not entered into any other agreement or understanding (including, without limitation, side letters) with any Investor to purchase the Closing Securities or on terms more favorable to such Investor than as set forth herein.

4.36 **Shell Company Status**. The Company is not, and has never been, an issuer identified in Rule 144(i)(1).

4.37 **Compliance**. Neither the Company nor any of its subsidiaries is (i) in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or subsidiary of the Company under), nor has the Company or any subsidiary of the Company received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived) or (ii) in violation of any judgment, decree or order of any court, arbitrator or Governmental Body, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

4.38 **Subsidiaries**. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 4.38. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each such subsidiary free and clear of any lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction), and all of the issued and outstanding shares of capital stock of each such subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

5. **Representations and Warranties of the Investors**. Each of the Investors hereby severally, and not jointly, represents and warrants to the Company that:

5.1 **Organization and Existence**. Such Investor is a duly incorporated or organized and validly existing corporation, limited partnership, limited liability company or other legal entity, has all requisite corporate, partnership or limited liability company power and authority to enter into and consummate the transactions contemplated by the Transaction Documents and to carry out its obligations hereunder and thereunder, and to invest in the Securities pursuant to this Agreement, and is in good standing under the laws of the jurisdiction of its incorporation or organization.

5.2 **Authorization**. The execution, delivery and performance by such Investor of the Transaction Documents to which such Investor is a party have been duly authorized and each has been duly executed and when delivered will constitute the valid and legally binding obligation of such Investor, enforceable against such Investor in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally, and general principles of equity.

5.3 **Purchase Entirely for Own Account**. The Securities to be received by such Investor hereunder will be acquired for such Investor’s own account, not as nominee or agent, for the purpose of investment and not with a view to the resale or distribution of any part thereof in violation of the 1933 Act, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the 1933 Act without prejudice, however, to such Investor’s right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. The Securities are being purchased by such Investor in the ordinary course of its business. Nothing contained herein shall be deemed a representation or warranty by such Investor to hold the Securities for any period of time. Such Investor is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.4 **Investment Experience**. Such Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.5 **Disclosure of Information**. Such Investor has had an opportunity to receive, review and understand all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities, and has conducted and completed its own independent due diligence. Such

Investor acknowledges that copies of the SEC Filings are available on the EDGAR system. Based on the information such Investor has deemed appropriate, it has independently made its own analysis and decision to enter into the Transaction Documents. Such Investor is relying exclusively on its own investment analysis and due diligence (including professional advice it deems appropriate) with respect to the execution, delivery and performance of the Transaction Documents, the Securities and the business, condition (financial and otherwise), management, operations, properties and prospects of the Company, including but not limited to all business, legal, regulatory, accounting, credit and tax matters. Neither such inquiries nor any other due diligence investigation conducted by such Investor shall modify, limit or otherwise affect such Investor’s right to rely on the Company’s representations and warranties contained in this Agreement.

5.6 **Restricted Securities**. Such Investor understands that the Securities are characterized as “restricted securities” under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.

5.7 **No Public Market**. Such Investor understands that no public market now exists for the Pre-Funded Warrants, no market for the Pre-Funded Warrants may develop and the Company has made no assurances that a public market will ever exist for the Pre-Funded Warrants and does not intend to register the Pre-Funded Warrants under the 1933 Act or apply for listing of the Pre-Funded Warrants on a securities exchange or securities market.

5.8 **Legends**. It is understood that, except as provided below, certificates or book-entry positions evidencing the Shares and Warrant Shares may bear the following or any similar legend(s):

(a) “THE OFFER AND SALE OF THESE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAW OF ANY STATE OF THE UNITED STATES. THE SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS, OR UNLESS OFFERED, SOLD, PLEDGED, HYPOTHECATED OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS. THE COMPANY AND ITS TRANSFER AGENT SHALL BE ENTITLED TO REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND THE TRANSFER AGENT THAT SUCH REGISTRATION IS NOT REQUIRED. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.”

(b) If required by the authorities of any state in connection with the issuance or sale of the Shares and Warrant Shares, the legend required by such state authority.

5.9 **Investor Status**. At the time such Investor was offered the Closing Securities, it was, and as of the date hereof it is, either: (i) an “accredited investor” within the meaning of Rule 501(a) of the 1933 Act or (ii) a “qualified institutional buyer” as defined Rule 144A(a) under the 1933 Act. Such investor is a sophisticated institutional investor with sufficient knowledge and experience in investing in private equity transactions to properly evaluate the risks and merits of its purchase of the Securities. Such Investor has determined based on its own independent review, analysis and such professional advice as it deems appropriate that its purchase of the Securities and participation in the transactions contemplated by the Transaction Documents (i) are fully consistent with its financial needs, objectives and condition, (ii) comply and are fully consistent with all investment policies, guidelines and other restrictions applicable to such Investor, (iii) have been duly authorized and approved by all necessary action, (iv) do not and will not

violate or constitute a default under such Investor’s charter, bylaws or other constituent document or under any law, rule, regulation, agreement or other obligation by which such Investor is bound and (v) are a fit, proper and suitable investment for such Investor, notwithstanding the substantial risks inherent in investing in or holding the Securities. Furthermore, each such Investor is an “Institutional Account” as defined in FINRA Rule 4512(c). No “bad actor” disqualification is applicable to such Investor or, to such Investor’s knowledge, any Investor Covered Person, except for a Disqualification Event as to which Rule 506(d)(2) or (d)(3), is applicable.

5.10 **No General Solicitation**. Such Investor did not learn of the investment in the Securities as a result of any general or public solicitation or general advertising, or publicly disseminated advertisements or sales literature, including (a) any advertisement, article, notice or other communication published in any newspaper, magazine, website, or similar media, or broadcast over television or radio, or (b) any seminar or meeting to which such Investor was invited by any of the foregoing means of communications.

5.11 **Brokers and Finders**. No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Investor.

5.12 **Short Sales and Confidentiality Prior to the Date Hereof**. Other than consummating the transactions contemplated hereunder, such Investor has not, nor has any Person acting on behalf of or pursuant to any understanding with such Investor, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Investor first contacted the Company or any other Person regarding the transactions contemplated hereby and ending immediately prior to the date hereof. Other than to other Persons party to this Agreement and other than to such Person’s outside attorney, accountant, auditor or investment advisor only to the extent necessary to permit evaluation of the investment, and the performance of the necessary or required tax, accounting, financial, legal, or administrative tasks and services and other than as may be required by law, such Investor has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

5.13 **No Government Recommendation or Approval**. Such Investor understands that no United States federal or state agency, or similar agency of any other country, has reviewed, approved, passed upon, or made any recommendation or endorsement of the Company or the purchase of the Securities.

5.14 **Residency**. Such Investor’s office in which its investment decision with respect to the Securities was made is located at the address immediately below such Investor’s name on its signature page hereto.

5.15 **No Conflicts**. The execution, delivery and performance by such Investor of the Transaction Documents and the consummation by such Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Investor or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Investor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Investor to perform its obligations hereunder.

6. **Conditions to Closing**.

6.1 **Conditions to the Investors’ Obligations**. The obligation of each Investor to purchase Closing Securities at the Closing is subject to the fulfillment to such Investor’s satisfaction, on or prior to the Closing Date, of the following conditions, any of which may be waived by such Investor (as to itself only):

(a) The representations and warranties made by the Company in Section 4 hereof shall be true and correct in all material respects, except for those representations and warranties qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects, as of the date hereof and as of the Closing Date, as though made on and as of such date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects, except for those representations and warranties qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects, as of such earlier date. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Closing Date.

(b) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary for the consummation of the purchase and sale of the Closing Securities and the consummation of the other transactions contemplated by the Transaction Documents, all of which shall be in full force and effect.

(c) The Company shall have filed with Nasdaq a Listing of Additional Shares notification form for the listing of the Closing Securities.

(d) The Company shall have executed and delivered the Registration Rights Agreement.

(e) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any Governmental Body, shall have been issued, and no action or proceeding shall have been instituted by any Governmental Body, enjoining or preventing the consummation of the transactions contemplated hereby or in the other Transaction Documents.

(f) The Company shall have delivered a Certificate, executed on behalf of the Company by its Chief Executive Officer or its Chief Accounting Officer, dated as of the Closing Date, certifying to the fulfillment of the conditions specified in subsections (a), (b), (e), (h), and (i) of this Section 6.1.

(g) The Company shall have delivered a Certificate, executed on behalf of the Company by its Secretary, dated as of the Closing Date, certifying the resolutions adopted by the Board approving the transactions contemplated by the Transaction Documents, the issuance of the Securities, certifying the current versions of the Certificate of Incorporation and Bylaws of the Company and certifying as to the signatures and authority of persons signing the Transaction Documents and related documents on behalf of the Company.

(h) There shall have been no Material Adverse Effect with respect to the Company since the date hereof.

(i) No stop order or suspension of trading shall have been imposed by Nasdaq, the SEC or any other governmental or regulatory body with respect to public trading in the Common Stock.

(j) This Agreement shall not have been terminated as to such Investor in accordance with Section 6.3 herein.

(k) The Company shall have delivered a legal opinion of Hunter LLP, counsel to the Company, dated as of the Closing Date, in form and substance reasonably satisfactory to the Investors, which the Investors shall be entitled to rely upon.

(l) The Company shall have executed and delivered the Pre-Funded Warrant purchased by such Investor, registered in each such Investor’s name.

(m) In the case of the Lead Investors, the Company shall have executed and delivered each Side Letter.

(n) The Board shall have, effective as of the Closing Date, (i) elected Dr. Humphrey Zhong, who shall be considered the First Designee for purposes of Section 7.9(a) and Dr.  , who shall be considered the Third Designee for purposes of Section 7.9(b), to the Board, (ii) requested and received the resignations of Dr. Cohn and Mr. Smirnov, from the Board, (iii) determined to request the resignations of Dr. Harris and Mr. Condon from the Board following the filing of the Company’s Annual Report on Form 10-K for the year ended December 31, 2023, (iv) determined to request the resignation of Dr. Harris from the Board following the later of (a) the filing of the Company’s Annual Report on Form 10-K for the year ended December 31, 2023 and (b) the appointment of a director pursuant to Section 7.9(c), and (v) adopted written policies to require the approval of each of Dr. Zhong, Dr. Gunther, Mr. Mandela, Dr. Al Alal, and Mr. Torn, to approve any sale of New Securities of the Company by the Board between the Closing Date and the date on which the Board has removed the directors pursuant to clause (iii) hereof.

6.2 **Conditions to Obligations of the Company**. The Company’s obligation to sell and issue Closing Securities at the Closing to each Investor is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) The representations and warranties made by such Investor in Section 5 hereof shall be true and correct in all material respects, except for those representations and warranties qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects, as of the date hereof and as of the Closing Date, as though made on and as of such date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects, except for those representations and warranties qualified by materiality or Material Adverse Effect, which shall be true and correct in all respects, as of such earlier date. Such Investor shall have performed in all material respects all obligations and covenants herein required to be performed by them on or prior to the Closing Date.

(b) Such Investor purchasing Closing Securities at the Closing shall have paid in full its purchase price to the Company.

(c) Such Investors shall have executed and delivered the Registration Rights Agreement.

(d) This Agreement shall not have been terminated as to such Investor in accordance with Section 6.3 herein.

(e) In the case of the Lead Investors, each Lead Investor shall have executed and delivered a Side Letter.

6.3 **Termination of Obligations to Effect Closing; Effects.**

(a) The obligations of the Company, on the one hand, and the Investors, on the other hand, to effect the Closing shall terminate as follows:

(i) Upon the mutual written consent of the Company and Investors that agreed to purchase a majority of the Shares and Warrant Shares underlying the Pre-Funded Warrants to be issued and sold pursuant to this Agreement;

(ii) By either the Company or any Investor (with respect to itself only) if the Closing has not occurred on or prior to February 29, 2024; *provided*, *however*, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in the circumstances giving rise to such party’s seeking to terminate its obligation to effect the Closing.

(b) In the event of termination by the Company or any Investor of its obligations to effect the Closing pursuant to Section 6.3, written notice thereof shall be given to the other Investors by the Company, and the other Investors shall have the right to terminate their obligations to effect the Closing upon written notice to the Company and the other Investors. Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

7. **Covenants and Agreements of the Parties**

7.1 **Removal of Legends**. Subject to receipt from the Investor by the Company and the transfer agent for the Common Stock (the “**Transfer Agent**”) of customary representations and other documentation reasonably acceptable to the Company and the Transfer Agent in connection therewith, upon the earliest of such time as the Shares and the Warrant Shares (i) have been sold or transferred pursuant to an effective registration statement under the 1933 Act, (ii) have been sold pursuant to Rule 144 or any other exemption under the 1933 Act, or (iii) are eligible for resale under Rule 144(b)(1) or any successor provision, the Company shall, in accordance with the provisions of this Section 7.1 and within the standard settlement period for the Principal Trading Market that is then in effect, after any request therefor from an Investor accompanied by such customary and reasonably acceptable documentation referred to above, (A) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall make a new, unlegended entry for such book entry shares, and (B) cause its counsel to deliver to the Transfer Agent one or more opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act if required by the Transfer Agent to effect the removal of the legend in accordance with the provisions of this Agreement. Any shares subject to legend removal under this Section 7.1 may be transmitted by the Transfer Agent to the Investor by crediting the account of the Investor’s prime broker with the Depository Trust Company’s (“**DTC**”) system as directed by such Investor. The Company shall be responsible for the fees of its Transfer Agent and any DTC fees associated with such issuance.

7.2 **Transfer Restrictions**. Each Investor agrees that it will sell, transfer or otherwise dispose of the Securities only in compliance with all applicable state and federal securities laws and that any Securities sold by such Investor pursuant to an effective registration statement will be sold in compliance with the plan of distribution set forth therein.

7.3 **Subsequent Equity Sales by the Company**. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the 1933 Act of the sale of the Securities to the Investors, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any trading market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction. The Company shall not take any action or steps that would adversely affect reliance by the Company on Section 4(a)(2) for the exemption from registration for the transactions contemplated hereby or require registration of the Securities under the 1933 Act.

7.4 **Fees**. The Company shall be responsible for the payment of any placement agent’s fees, financial advisory fees, or broker’s commissions (other than for Persons engaged by any Investor) relating to or arising out of the transactions contemplated hereby.

7.5 **Short Sales and Confidentiality After the Date Hereof**. Each Investor covenants that it will not, nor will it cause any Affiliates acting on its behalf or pursuant to any understanding with it to, execute any Short Sales during the period from the date hereof until the earlier of (i) the Closing Date or (ii) such time as this Agreement is terminated in full. Each Investor covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company, such Investor will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction), other than to such Person’s outside attorney, accountant, auditor or investment advisor only to the extent necessary to permit evaluation of the investment, and the performance of the necessary or required tax, accounting, financial, legal, or administrative tasks and services and other than as may be required by law, in accordance with the confidentially agreement entered into by such Investor.

7.6 **Filings**. The Company shall make all filings with the SEC and its Trading Market as required by the transactions contemplated hereby.

7.7 **Equity Incentive Plan Evergreen Provisions**. The Company will not, without the prior written approval of the Lead Investors, adopt an equity (or equity-linked) incentive plan that includes, or amend an existing equity (or equity-linked) incentive plan to include, any provision (a) providing for one or more annual automatic increase(s) (i.e., without stockholder approval) in the aggregate number of shares authorized for issuance under such incentive plan that is in excess of 4% of (i) the outstanding Common Stock and (ii) all shares of Common Stock issuable or issued upon exercise of the warrants with an exercise price equal to or less than $0.01 per share that are held by the Lead Investors or their transferees or assignees, as adjusted for stock splits, recapitalizations and other similar events) of the Company on the date of such increase (the “**Evergreen Cap**”) or (b) permitting the Board to determine an automatic increase in excess of the Evergreen Cap.

7.8 **Clear Market**. For a period of 30 days after the Closing Date, the Company will not, and will not publicly disclose an intention to, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, hedge, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or submit to, or file with, the SEC a registration statement under the 1933 Act, or (ii) enter into any swap, hedging or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, other than (A) any shares of Common Stock, restricted stock, restricted stock units and options to purchase Common Stock, shares of Common Stock underlying options granted and other securities, each pursuant

to any director or employee equity plans, stock ownership plan or dividend reinvestment plan of the Company in effect on the date hereof; (B) any shares of Common Stock of the Company issued upon the exercise of convertible securities of the Company outstanding on the date hereof; (C) any ATM Shares (as defined below) and (D) if applicable, the filing of a registration statement by the Company, pursuant to the Registration Rights Agreement.

7.9 **Board Rights**.

(a) BB shall have the right to require the Company to nominate and recommend at each Election Meeting (as defined below) the election of (i) two individuals (individually, the “**First Designee**”and the “**Second Designee**”) to serve as a director on the Board so long as BB, together with its Affiliates, is a Qualified Investor.

(b) Salinger shall have the right to require the Company to nominate and recommend at each Election Meeting the election of (i) one individual (the “**Third Designee**,” together with the First Designee and the Second Designee, the “**Investor Designees**” and each a “**Investor Designee**”) to serve as a director on the Board so long as Salinger, together with its Affiliates, is a Qualified Investor.

(c) Following the satisfaction of the conditions set forth in Section 6.1(n) and the exercise by the Qualified Investors of their rights under Section 7.9(a) and (b), the Board shall nominate, by a majority vote, one individual to serve as a director on the Board; provided that such director must qualify as an “independent” director as defined under Nasdaq Listing Rule 5605(a)(2) and 5605(c)(2);

(d) Following any exercise of their rights under Section 7.9(a) and (b) by the Qualified Investors, the Company shall include such Investor Designee in the slate of nominees recommended to the Company’s stockholders for election as directors of the Company at each annual or special meeting of the Company’s stockholders at which directors of the same class as such Investor Designee are to be elected and every adjournment or postponement thereof (an “**Election Meeting**”). The Company will recommend, support and solicit proxies for the election of such Investor Designee in the same manner as for all other Board members nominated for election at an Election Meeting. The Qualified Investors will provide to the Company, in writing, the information about such Investor Designee that is reasonably required by applicable law for inclusion in the Company’s proxy materials for Election Meetings promptly after the Company requests such information from the Qualified Investors, and will cause such Investor Designee to submit on a timely basis to the Company a completed and executed questionnaire in the form that the Company provides to its outside directors generally. If the Qualified Investors or Investor Designee fail to provide such information to the Company in accordance with this Section 7.9(d), the Company shall not be required to nominate and recommend the Investor Designee at the applicable Election Meeting.

(e) So long as the Lead Investors remain Qualified Investors, the Board will be comprised of: (i) the Chief Executive Officer of the Company, (ii) two directors designated by the Company, (iii) the Investor Designees (to the extent the Lead Investors have exercised their rights provided in Section 7.9(a) and (b)) and (iv) one director pursuant to Section 7.9(c) (to the extent the Lead Investors have exercised such right).

(f) For so long as the Lead Investors’ rights under this Section 7.9 remain in effect, the Board will not create any “executive committee” of the Board, or delegate to any existing committee of the Board responsibilities substantially similar to those of an executive committee.

(g) Notwithstanding the provisions of Section 7.9(a) and (b), the Investors shall not be entitled to require the Company to nominate and recommend for election any individual as an Investor Designee if a majority of the disinterested members of the Board (or the nominating committee thereof) reasonably and in good faith determine, after consultation with the Company’s outside legal counsel and

upon advice of such counsel, that such Person would not be qualified to serve as a director of the Company under any applicable law, rule or regulation, rule of the stock exchange on which the Common Stock is listed, the organizational documents of the Company, or any policy or guidelines previously approved by the Board, but only if a direct or indirect purpose of any such policy or guideline is not to obstruct the Investors’ right to designate an individual as a nominee to the Board or its rights under this Agreement. Notwithstanding anything set forth herein to the contrary, a person’s status as a director, officer, employee or affiliate of any Investor shall not cause such Person to be deemed not qualified to serve as a director of the Company, except as required by applicable law or regulation and except as may be necessary to maintain compliance with Nasdaq corporate governance rules for board and committee composition. In the event the Board (or the nominating committee thereof) does not accept an Investor Designee as a result of such Investor Designee failing to meet the requirements set forth in this Section 7.9(g), the applicable Investor shall have the right to recommend an additional Investor Designee in accordance with Section 7.9(a) or (b). The Company shall notify the applicable Investor of any objection to an Investor Designee pursuant to this Section 7.9(g) sufficiently in advance of the date on which the proxy materials related to any such designee are to be mailed by the Company in connection with such election of directors, and in no event less than the first Business Day after such determination by the Board, so as to enable the applicable Investor to propose a replacement Investor Designee in accordance with the terms of this Agreement.

(h) Notwithstanding the foregoing, the rights of the Investors provided in this Section 7.9 shall at all times be subject to, and in compliance with, Nasdaq Listing Rule 5640.

(i) The Company agrees to purchase and maintain director insurance for the benefit of each Investor Designee on terms equivalent to the director insurance it provides to its other directors.

(j) The rights of the Lead Investors provided in this Section 7.9 will terminate and be of no further force or effect as to a Lead Investor at such time as such Investor ceases to be a Qualified Investor.

7.10 **Board Matters.**

(a) Except as permitted under Section 6.1(n), the Company shall not expand the Board in excess of seven (7) directors without the consent of the Lead Investors, provided that the consent of a Lead Investor is not required if the Lead Investor is no longer a Qualified Investor.

(b) From the Closing Date through and including the three (3) year anniversary of the Closing Date, the Company shall not, without the vote of at least five (5) members of the Board:

(i) sell, assign, transfer, license, sublicense or otherwise dispose of any of the Company’s material assets or material Intellectual Property or sell a royalty interest in the Intellectual Property;

(ii) effect or be a party to any sale, a merger, consolidation, share exchange or similar business combination transaction involving the Company; or

(iii) enter into any financing transactions that would result in the issuance of debt, equity or debt- or equity-like instruments by the Company.

(c) From the Closing Date through and including the three (3) year anniversary of the Closing Date, the Company shall not, without the vote of at least four (4) members of the Board, which shall not include the vote of the Chief Executive Officer, terminate the Chief Executive Officer of the Company or appoint an individual other than the individual serving as the Chief Executive Officer of the Company on the Closing Date.

7.11 **Nasdaq Listing**. The Company will use commercially reasonable efforts to continue the listing and trading of its Common Stock on Nasdaq and, in accordance therewith, will use commercially reasonable efforts to comply in all material respects with the Company’s reporting, filing and other obligations under the bylaws or rules of such market or exchange, as applicable.

7.12 **Participation Rights**.

(a) Non-Underwritten Offerings.

(i) If, during the period from the Closing Date through and including the five (5) year anniversary of the Closing Date (the “**Participation Period**”), the Company proposes to offer and sell any New Securities in an offering that is conducted pursuant to an exemption from registration under the 1933 Act, or in an offering that is registered under the 1933 Act that is not conducted as a firm-commitment underwritten offering, then, subject to compliance with all applicable securities laws and regulations, each Investor shall have the right to purchase, on the same terms, including the price per security, and subject to substantially the same conditions, as are applicable to the other investors in such offering, that amount of New Securities being offered for sale in such offering equal to their Pro Rata Share of the total amount of New Securities offered for sale in such offering.

(ii) If the Company proposes to conduct an offering with respect to which the Investors would have rights to purchase New Securities pursuant to this Section 7.12(a), the Company shall give written notice (the “**Offer Notice**”) to the Investors at least three (3) Business Days prior to the commencement of the offering of the New Securities, stating (i) its bona fide intention to offer such New Securities, (ii) the number, type and material terms of such New Securities to be offered, (iii) the price and terms, if any, upon which it proposes to offer such New Securities, (iv) each Investor’s Pro Rata Share and (v) the estimated date and time at which the Company expects to enter into a definitive agreement for the sale of the New Securities (the “**Expected Sale Date**”). If the information contained in the Offer Notice constitutes material non-public information (as defined under the applicable securities laws), the Company shall deliver such Offer Notice only to the individuals identified on the Schedule of Investors and shall not communicate the information to anyone else acting on behalf of such Investors without the consent of such individuals. Each Investor shall maintain the confidentiality of such information until the information is publicly disclosed or is no longer material.

(iii) If an Investor desires to exercise its rights under this Section 7.12(a) to participate in such offering, then such Investor must provide a written notice to the Company by not later than 4:00 p.m. (New York City time) on the first Business Day prior to the Expected Sale Date set forth in the Offer Notice, stating the amount of such Investor’s elected participation. If the Company receives no such notice from such Investor within the time period set forth herein, such Investor shall be deemed to have notified the Company that it does not elect to purchase any New Securities in connection with such offering and the Company shall be free to sell such securities in the offering.

(b) Underwritten Offerings. If, during the Participation Period, the Company proposes to offer and sell any New Securities in a firm commitment underwritten offering registered under the 1933 Act, then, subject to compliance with all applicable securities laws and regulations, the Company will use its commercially reasonable efforts to cause the managing underwriter(s) of such offering to contact the Investors about potentially participating in such offering and to provide to the Investors, on the same terms, including the price per security, and subject to substantially the same conditions, as are applicable to the public in such offering, the opportunity to purchase that amount of New Securities being offered for sale in such offering equal to their respective Pro Rata Share of the total amount of New Securities offered for sale in such offering (excluding securities issuable to the underwriter(s) of the offering upon exercise of an overallotment or other option to purchase additional shares).

(c) At-the-Market Offerings. If, during the Participation Period, the Company proposes to offer and sell any New Securities in an “at-the-market offering” as defined in Rule 415(a)(4) that is registered under the 1933 Act (each, an “**ATM Offering**”), then, subject to compliance with all applicable securities laws and regulations and Section 7.12 hereof, the obligations and rights set forth in Section 7.12(a) will not apply to any shares of Common Stock to be offered and sold pursuant to such offering.

(d) General Terms Applicable to Participation Rights.

(i) Notwithstanding anything to the contrary in this Section 7.12 and unless otherwise agreed by the Lead Investors, in the event the Company determines to abandon a proposed offering regarding which the Company or any underwriter have provided notice to the Investors pursuant to this Section 7.12, the Company shall, or shall cause the managing underwriter(s), to confirm such abandonment to the Investors in substantially the same manner and on the same day as such abandonment is communicated to other potential investors. If, by the tenth (10th) Business Day following delivery of notice of the offering to the Investors pursuant to this Section 7.12, no public disclosure regarding a transaction with respect to the applicable offering has been made, such offering shall be deemed to have been abandoned and the Investors shall be deemed to not be in possession of any material non-public information (as defined under the applicable securities laws) with respect to the proposed offering, unless the Company advises the Investors that the offering has not been abandoned. The Company understands and confirms that the Investors may rely on this Section 7.12 when effecting transactions in securities of the Company.

(ii) Subject to compliance with all applicable securities laws and regulations, the Investors may apportion any New Securities to be purchased pursuant to their rights in this Section 7.12 in such proportion as they deem appropriate among themselves and any of their respective Affiliates.

(iii) The rights of the Investors under this Section 7.12 to purchase securities in an offering will be conditioned upon the completion of such offering.

(iv) The rights of each Investor described in this Section 7.12 will terminate and be of no further force or effect upon the earliest to occur of the following: (i) such time as the such Investor and/or its Affiliates ceases to beneficially own (in the aggregate) Securities that represents at least 90% of the shares of Common Stock (including all shares of Common Stock issuable or issued upon exercise of the Pre-Funded Warrants) originally purchased by such Investor pursuant to this Agreement (as adjusted for stock splits, recapitalizations and other similar events) and (ii) such time as such Investor is offered the opportunity to participate in an offering pursuant to its rights under this Section 7.12 and such Investor and/or its Affiliates does not purchase at least 50% of its aggregate Pro Rata Share of the total amount of New Securities offered for sale in such offering.

(v) The Company and the Investors hereby acknowledge that nothing in this Section 7.12 shall constitute an offer or the commitment by any Person to purchase any New Securities in any offering.

7.13 **ATM Participation Rights**.

(a) During the Participation Period, if the Company sells shares of Common Stock pursuant to an ATM Offering, then the Company shall provide written notice to the Investors (the “**ATM Notice**”) that shall include (i) the number of shares of Common Stock sold pursuant to the ATM Offering (the “**ATM Shares**”), (ii) the average sale price per share to the public of the ATM Shares (the “**Average Price**”) and (iii) the then-current number of outstanding shares of Common Stock. The ATM Notice shall be provided promptly following public disclosure by the Company of such ATM Shares in each Annual Report on Form 10-K and Quarterly Report on Form 10-Q, or upon disclosure by the Company in a prospectus supplement filed pursuant to Rule 424(b) of the 1933 Act.

(b) Within five (5) Business Days of receiving the ATM Notice, each Investor may elect to purchase up to its Pro Rata Share of the total amount of ATM Shares issued and sold in such ATM Offering. Any such purchase shall be made in a private placement exempt from the registration requirements of the 1933 Act at a price per share equal to the lower of (a) the closing price of the Common Stock (as reflected on Nasdaq.com) on the trading date immediately preceding the signing of the definitive documents for such private placement and (b) the average closing price of the Common Stock (as reflected on Nasdaq.com) for the five (5) trading days immediately preceding the signing of the definitive documents for such private placement.

(c) Any shares of Common Stock to be purchased by an Investor pursuant to this Section 7.13 may be in the form of pre-funded warrants to purchase shares of Common Stock at the sole discretion of such Investor.

7.14 **Additional Financing**.

(a) After the Closing, the Company agrees that it will use commercially reasonable efforts to (a) offer and sell New Securities and/or ATM Shares for cash consideration and/or (b) receive cash consideration in connection with a royalty or licensing agreement related to a preclinical or clinical drug candidate of the Company, other than TTP 399, that in respect of (i) and/or (ii) results in the receipt of gross proceeds to the Company of at least an aggregate of $30.0 million (the “**Additional Financing**”) prior to the date that is the earlier of (i) eighteen (18) months from the Closing Date and (ii) sixty (60) days prior to the date, as projected by the operating budget as most recently approved by the Board, that the Company will not have sufficient cash to fund its operations as planned under such operating budget (the “**Additional Financing Deadline**”).

(b) If the Company has not satisfied such Additional Financing obligation by the Additional Financing Deadline, then the Investors will have the right to purchase a number of shares of Common Stock at an aggregate purchase price equal to (a) $30.0 million minus (b) the amount of gross proceeds received by the Company in connection with any transaction or transactions that constitute an Additional Financing pursuant to Section 7.14(a) (the “**Call Right Financing**”). The Company will provide written notice to the Investors of the pro rata amount of shares of Common Stock that each Investor is eligible to purchase in connection with the Call Right Financing at least ten (10) Business Days prior to the Additional Financing Deadline, and each Investor shall notify the Company within five (5) trading days of receipt of such notice of the amount of shares of Common Stock that such Investor intends to purchase in the Call Right Financing. If any Investor subscribes for less than its Call Right Pro Rata Share of the Call Right Financing pursuant to their rights under this Section 7.14, then any other Investor may subscribe to that portion of such pro rata amount that was not subscribed by the Investor that purchases less than its Call Right Pro Rata Share.

(c) The Company and the Investor(s) shall execute definitive documentation for such purchase in a private placement exempt from the registration requirements of the 1933 Act within one (1) Business Day of such notification by the Investors. The price per share of any shares of Common Stock purchased in such Call Right Financing shall be the lower of (a) the closing price of the Common Stock (as reflected on Nasdaq.com) on the trading date immediately preceding the signing of the definitive documents for such Call Right Financing and (b) the average closing price of the Common Stock (as reflected on Nasdaq.com) for the five (5) trading days immediately preceding the signing of the definitive documents for such Call Right Financing.

(d) Any shares of Common Stock to be purchased by an Investor pursuant to this Section 7.14 may be in the form of pre-funded warrants to purchase shares of Common Stock at the sole discretion of such Investor.

8. **Survival and Indemnification**.

8.1 **Survival**. The representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing of the transactions contemplated by this Agreement for the applicable statute of limitations.

8.2 **Indemnification**. The Company agrees to indemnify and hold harmless each Investor and its Affiliates, and their respective directors, officers, trustees, members, managers, employees, investment advisers and agents, from and against any and all losses, claims, damages, liabilities and expenses (including without limitation reasonable and documented attorney fees and disbursements and other documented out-of-pocket expenses reasonably incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) to which such Person may become subject as a result of any breach of representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person solely to the extent such amounts have been finally judicially determined not to have resulted from such Person’s fraud or willful misconduct.

8.3 **Conduct of Indemnification Proceedings*.***Any person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; *provided* that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed in writing to pay such fees or expenses, (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and *provided, further*, that the failure of any indemnified party to give written notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned or delayed, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. No indemnified party will, except with the consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed, consent to entry of any judgment or enter into any settlement.

9. **Miscellaneous**.

9.1 **Successors and Assigns**. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or each of the Investors, as applicable, provided, however, that an Investor may assign its rights and delegate its duties hereunder in whole or in part to an Affiliate or to a third party acquiring some or all of its securities in a transaction complying with applicable securities laws without the prior written consent of the Company or the other Investors, provided such assignee agrees in writing to be bound by the provisions hereof that apply to Investors. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Without limiting the generality of the foregoing, in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the Common Stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder, the term “Company” shall be deemed to refer to such Person and the term “Securities” shall be deemed to refer to the securities received by the Investors in connection with such transaction. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective permitted successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.2 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signatures complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

9.3 **Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.4 **Notices**. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by e-mail, then such notice shall be deemed given on the date of transmission (provided that notice shall not be considered given or effective if the sender receives an automatic system-generated response that such e-mail was undeliverable), (iii) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first class mail, postage prepaid, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one (1) Business Day after delivery to such carrier. All notices shall be addressed to the party to be notified at the address as follows, or at such other address as such party may designate by ten (10) days’ advance written notice to the other party:

If to the Company:

Omicure Inc.

[…], NC 27265

Telephone:

Attention:

Email:

With a copy (which shall not constitute notice) to:

Hunter LLP

[…]

New York, NY 10036-6797

Telephone: (202) 698-3616

Attention:

Email:

If to the Investors:

Only to the addresses set forth on the signature pages hereto.

9.5 **Expenses**. The parties hereto shall pay their own costs and expenses in connection herewith regardless of whether the transactions contemplated hereby are consummated, except that the Company has agreed to reimburse the Investors in an aggregate amount of up to $150,000 for the Investors’ reasonable and documented legal fees at the time of Closing.

9.6 **Amendments and Waivers**. Prior to Closing, no amendment or waiver of any provision of this Agreement will be effective with respect to any party unless made in writing and signed by a duly authorized representative of such party. Following the Closing, any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investors holding a majority of the Securities issued pursuant to this Agreement. Notwithstanding the foregoing, this Agreement may not be amended and the observance of any term of this Agreement may not be waived with respect to any Investor without the written consent of such Investor unless such amendment or waiver applies to all Investors in the same fashion. Any amendment or waiver effected in accordance with this paragraph shall be binding upon (i) prior to Closing, each Investor that signed such amendment or waiver and (ii) following the Closing, each holder of any Securities purchased under this Agreement at the time outstanding, and in each case, each future holder of all such Securities and the Company.

9.7 **Publicity**. Except as set forth below, no public release or announcement concerning the transactions contemplated hereby shall be issued by the Investors without the prior consent of the Company, except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Investors shall allow the Company reasonable time to comment on such release or announcement in advance of such issuance. Notwithstanding the foregoing, each Investor may identify the Company and the value of such Investor’s security holdings in the Company in accordance with applicable investment reporting and disclosure regulations or internal policies without prior notice to or consent from the Company (including, for the avoidance of doubt, filings pursuant to Sections 13 and 16 of the 1934 Act). The Company shall not include the name of any Investor or any Affiliate or investment adviser of such Investor in any press release or public announcement (which, for the avoidance of doubt, shall not include any SEC Filing to the extent such disclosure is required by SEC rules and regulations) without the prior written consent of such Investor. No later than the Business Day immediately following the date this Agreement is executed, the Company shall issue a press release or file a Form 8-K with the SEC disclosing all material terms of the transactions contemplated by this Agreement, the other Transaction Documents and any material non-public information that the Company may have provided any Investor at any time prior to the issuance of such press release or Form 8-K (the “**Public Disclosure**”). In addition, the Company will make such other filings and notices in the manner and time required by the SEC or Nasdaq.

9.8 **Severability**. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

9.9 **Entire Agreement**. This Agreement, including the signature pages, Exhibits, the other Transaction Documents and any confidentiality agreement between the Company and each Investor constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

9.10 **Further Assurances**. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

9.11 **Third-Party Beneficiaries**. This Agreement is intended for the benefit of the parties hereto, the parties named in Section 8.2, and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in this Section 9.11 or Section 8.2.

9.12 **Governing Law**. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS OR ARISING OUT OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER**.

9.13 **Independent Nature of Investors’ Obligations and Rights**. The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Document. The decision of each Investor to purchase Closing Securities pursuant to the Transaction Documents has been made by such Investor independently of any other Investor. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Subject to the provisions hereof, each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no Investor will be acting as agent of such Investor in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The Company acknowledges that each of the Investors has been provided with the same Transaction Documents for the purpose of closing a transaction with multiple Investors and not because it was required or requested to do so by any Investor. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and an Investor, solely, and not between the Company and the Investors collectively and not between and among the Investors.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **COMPANY:** | | |
|  | | |
| **VTV THERAPEUTICS INC.** | | |
|  |  | |
| By: |  | /s/ Henry Torn |

**LicA#24**

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this “Agreement”) is entered into effective as of the 6th day of April, 2018 (the “Effective Date”), by and between The Jersey Bankers, a New York banking corporation (“Licensor”), and Moneymakers Products, LLC, a limited liability company established pursuant to the laws of the State of Delaware (“Licensee”).

WHEREAS, Licensor and Licensee have entered into a fee letter agreement on even date herewith (the “Fee Letter Agreement”) regarding the establishment and maintenance of Currency Based Securities Products (defined below) to be known as Moolahkis products (“Moolahkis”).

WHEREAS, in connection with such Moolahkis, Licensee wishes to obtain a license under certain of Licensor’s patent rights, and Licensor wishes to grant such license subject to the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Licensor and Licensee agree as follows:

|  |  |
| --- | --- |
| **1.** | **CERTAIN DEFINITIONS.** |

For the purposes of this Agreement, the following terms have the following meanings:

“Affiliate” means any entity that directly or indirectly controls, is controlled by or is under common control with a party. In this context, the term “control” means ownership of more than fifty percent (50%) of the voting securities of such entity (or, in the case of a non-corporate entity, equivalent interests). The term “controlled” has a corollary meaning.

“Currency Based Securities Products” means any investment product that is based solely on the securitization of a single non-U.S. currency. For the purposes of clarity, Currency Based Securities Products do not include any products involving the securitization, in whole or in part, of any commodity other than non-U.S. currency.

“Licensed Product” means any Currency Based Securities Product that is sold, sponsored or issued by Licensee in the Territory that is covered by or encompasses a claim contained in Licensor Patent Rights, including, but not limited to the Euro Currency Trust.

“Licensor Patent Rights” means: (i) U.S. Patent Application No. 10/0000, filed on October 6, 2003, entitled “Systems and Methods for making Moolah” (the “Patent Application”), (ii) all foreign and international counterparts filed by or on behalf of Licensor (iii) all continuations, continuations-in-part, divisionals, substitutes and equivalents thereof relating to any of the foregoing patent applications (iv) all letters patent that are or may be granted from any of the foregoing patent applications, and (v) all know-how related to any of the foregoing patents and patent applications.

1 of 10

“Territory” means the United States.

“Trust Agreement” means a definitive agreement entered into among Licensee, Licensor and certain other parties that, among other things, establishes a Licensed Product and sets forth the respective roles and responsibilities of Licensee and Licensor with respect to such Licensed Product.

“Trustee” means any entity designated to act in the capacity of any or all of the following, as the context requires: trustee, custodian, issuing agent, registrar, agent, administrator or the like for and on behalf of (i) the sponsor, issuer or other entity offering shares in a Currency Based Securities Product and/or (ii) any participant of such Currency Based Securities Product.

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| **2.** | **LICENSE.** |

Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, personal and non-transferable (except as provided in Article 12.1) license under Licensor Patent Rights for the term of this Agreement solely for the purpose of establishing, operating and marketing the Licensed Products in the Territory (the “License”).

The License includes the limited right of Licensee to grant sublicenses to its partners, co-sponsors, joint-venturers, trustees, custodians and agents (each a “Sublicensee”), but solely in connection with such Sublicensee’s establishment, operation and marketing of the Licensed Product and provided that Licensee shall have previously entered into an enforceable, written agreement with each such Sublicensee on terms no less protective of Licensor’s rights in the Licensor Patent Rights than the terms in this Agreement and shall provide Licensor with copies of such agreements on request.

ALL RIGHTS NOT SPECIFICALLY AND EXPRESSLY GRANTED TO LICENSEE IN THIS ARTICLE 2 ARE HEREBY RESERVED TO THE LICENSOR.

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| **3.** | **PAYMENT.** |

The grant of the License hereunder is in consideration for the engagement of Licensor to act as Trustee for each Licensed Product under terms substantially as set forth in the Fee Letter Agreement, or such other terms as the parties may mutually agree in writing hereafter. No additional payment of royalties to Licensor shall be required (i.e., the Licensee shall not be subject to a Royalty Obligation, as defined below) as long as Licensor is so engaged.

In the event that Licensor is not engaged to act as Trustee for a Licensed Product for any reason, then, to enjoy the benefit of the License with respect to such Licensed Product, Licensee shall thereafter pay Licensor a royalty (the “Royalty Obligation”) as follows:

2 of 10

(a) The Licensee shall pay Licensor a running royalty that will accrue daily at the annualized rate of 0.0500% (five basis points) of the total gross adjusted assets of such Licensed Product.

(b) The five basis point running royalties described in the preceding subparagraph (a) shall be collectively identified hereinafter as the “Royalty Fee.” Such Royalty Fee shall be due and payable within ten days following the end of each calendar month for which such Royalty Fee has accrued and shall be subject to the Minimum Annual Royalty set forth the following subparagraph (c).

(c) Notwithstanding subparagraph (a) above, and only applicable if the Licensee is subject to a Royalty Obligation:

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|  | (i) | for each year in which there is one Licensed Product (which year shall be measured from the date that is six months after the launch date of the Licensed Product; each such year being defined hereinafter as an “Annual Period”), Licensee shall pay Licensor a minimum annual royalty (the “Minimum Annual Royalty”) of not less than Two Hundred Fifty Thousand Dollars ($250,000) per Annual Period for such Licensed Product. If the aggregate Royalty Fees payable to Licensee over an Annual Period for such Licensed Product is less than the Minimum Annual Royalty, then Licensee shall pay Licensor the difference between the Minimum Annual Royalty and the aggregate Royalty Fees payable to Licensee over such Annual Period for such Licensed Product, which payment shall be due and payable within 30 days after the end of the applicable Annual Period. |

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|  | (ii) | for each year in which there are seven or more Licensed Products (which year shall be measured from the date that is six months after the launch date of the final Licensed Product to be launched; each such year being defined hereinafter as an “Annual Period”), Licensee shall pay Licensor a Minimum Annual Royalty of not less than One Million Two Hundred Fifty Thousand Dollars ($1,250,000) per Annual Period for such Licensed Products. If the aggregate Royalty Fees payable to Licensee over an Annual Period for such Licensed Products are less than the Minimum Annual Royalty, then Licensee shall pay Licensor the difference between the Minimum Annual Royalty and the aggregate Royalty Fees payable to Licensee over such Annual Period for such Licensed Products, which payment shall be due and payable within 30 days after the end of the applicable Annual Period. |

Any payments to Licensor hereunder shall be made in United States dollars either by corporate check to Licensor at the address specified in Article 12 (or such other address as Licensor may hereafter designate in writing) or by wire transfer to a bank account

3 of 10

designated by Licensor in writing. Payments to Licensor hereunder shall be deemed made as of the day on which they are received by Licensor at such address or bank account. Payments in arrears in excess of sixty (60) days shall accrue interest from the date due at rate that is the lesser of 1.5% per month or the maximum rate permitted by law.

Except with respect to any taxes assessed directly upon Licensor’s income, all amounts payable by Licensee under this Agreement are exclusive of any taxes that are or may be assessed or imposed by any governmental authority in any jurisdiction in connection with establishing, operating and marketing such Licensed Product, including without limitation, any sales, use, excise, value-added, personal property, export, import or withholding taxes, which taxes shall all be assumed and paid by Licensee.

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| 4. | **REPORTS, RECORDS AND AUDITS.** |

During the term of this Agreement, for so long as Licensee is subject to a Royalty Obligation, Licensee shall deliver to Licensor within ten (10) days of the end of each calendar month a report setting forth in reasonable detail the Royalty Fee due to Licensor for such calendar month and Licensee’s calculation of the same.

During the term of this Agreement, for so long as Licensee is subject to a Royalty Obligation and for three (3) years thereafter, Licensee shall keep complete and accurate books and records in sufficient detail to enable Licensor to verify the amounts due to it hereunder.

During the term of this Agreement, is subject to a Royalty Obligation and for three (3) years thereafter, Licensor shall have the right, through a qualified independent auditor, to review and audit the books and records of Licensee for the purpose of verifying the accuracy of royalty payments made by Licensee under this Agreement. Such reviews and audits shall be conducted with reasonable prior written notice to Licensee, at Licensee’s place of business and during Licensee’s normal business hours, and shall not be conducted more than once per calendar year. Each review and audit hereunder shall be at Licensor’s sole cost and expense; provided, however, that Licensee shall promptly reimburse Licensor for all costs and expenses actually incurred in connection with a review and audit if the auditor determines that Licensee has underpaid by five percent (5%) or more during the relevant period under examination. Licensee will promptly pay Licensor the invoiced amount of any underpayment revealed by a review and audit. Payments in arrears in excess of sixty (60) days shall accrue interest from the date due at rate that is the lesser of 1.5% per month or the maximum rate permitted by law. For the avoidance of doubt, this Section 4 shall not be applicable if the Licensee is not subject to a Royalty Obligation pursuant to the first paragraph of Section 3.

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| 5. | **ENFORCEMENT.** |

Licensee shall promptly (i) notify Licensor of any potential or actual infringement by a third party of Licensor Patent Rights of which Licensee becomes aware, and (ii) provide to Licensor all evidence of such infringement in Licensee’s possession, custody or control. Licensor shall have the sole right, but not the obligation, to initiate any legal action at its own expense against such infringement and to recover damages and enforce any injunction granted as a result of any judgment in Licensor’s favor. Licensor shall have sole control over any such action including, without limitation, the sole right to settle and compromise such action. In the event of a dispute between Licensor and any third party regarding the infringement, validity or enforceability of Licensor Patent Rights, Licensee agrees, at Licensor’s expense, to do all things reasonably requested by Licensor to assist Licensor in connection with such dispute.

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| 6. | **TERM AND TERMINATION.** |

This Agreement shall commence on the Effective Date and, unless earlier terminated according to the terms of this Agreement, shall expire upon the expiration or lapse of the last-to-expire or lapse of the Licensor Patent Rights (or, if earlier, upon the entry of a final order by a court of competent jurisdiction, which order is not appealable or regarding which appeal is not taken, effectively holding that there is no valid claim included in the Licensor Patent Rights).

During the term of this Agreement, Licensor shall diligently prosecute and/or maintain Licensor Patent Rights. If no letters patent are granted on the applications specified in Licensor Patent Rights or if all such applications are finally rejected without appeal being taken or are abandoned, withdrawn or otherwise lapse, then the License granted pursuant to this Agreement shall terminate immediately. Licensor shall notify Licensee promptly in writing if the foregoing events shall occur.

The License granted pursuant to this Agreement will terminate immediately, without any requirement for Licensor to provide notice, with respect to any Licensed Product that is terminated.

In addition, either party may terminate this Agreement by written notice at any time if the other party materially breaches this Agreement and fails to cure such breach with thirty (30) days following written notice thereof from the non-breaching party. Upon any termination or expiration of this Agreement, all rights and obligations under this Agreement (including Licensee’s rights under the License) will immediately terminate; provided, however, that the provisions of Articles 1, 8 (the second paragraph only), 10 (solely with respect Licensee’s Losses based on or arising from Licensee’s exercise of its rights in accordance with this Agreement while the License was in effect), 11 and 12, and any other provision that survives by its express terms, shall survive any termination or expiration of this Agreement.

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| 7. | **ACKNOWLEDGMENT OF RIGHTS.** |

Licensee hereby acknowledges and agrees that, as between Licensor and Licensee, Licensor is the exclusive owner of all right, title and interest in and to the Licensor Patent Rights. During the term of this Agreement, Licensee will not directly or indirectly: (i) initiate or participate in any proceeding of any kind opposing the grant of any patent, or challenging any patent application, within the Licensor Patent Rights, (ii) dispute the validity or enforceability of any patent within the Licensor Patent Rights or any of the claims thereof, or (iii) assist any other Person to do any of the foregoing (except if required by court order or subpoena); provided, however, the foregoing shall in no way limit Licensee’s ability to defend against or to mitigate any claim brought by Licensor against Licensee.

During the term of this Agreement and thereafter, Licensee shall not directly or indirectly interfere improperly with Licensor’s ability to negotiate with any potential licensee under, or any potential purchaser of, the Licensor Patent Rights, or assist any other Person to do the foregoing (except if required by court order or subpoena). This paragraph shall survive termination or expiration of this Agreement for any reason.

Any violation of this Article 8 will constitute a material breach of this Agreement.

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| 8. | **REPRESENTATIONS AND WARRANTIES.** |

Each party hereby represents and warrants that (i) it has the power and authority to enter into this Agreement and perform its obligations hereunder; (ii) the execution and delivery of this Agreement have been duly authorized and all necessary actions have been taken to make this Agreement a legal, valid and binding obligation of such party enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by such party of its obligations hereunder will not contravene or result in any breach of the Certificate of Incorporation or Bylaws of such party or of any agreement, contract, indenture, license, instrument or understanding or, to the best of its knowledge, result in any violation of law, rule, regulation, statute, order or decree to which such party is bound or by which they or any of their property is subject.

EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, LICENSOR DOES NOT MAKE AND HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE SUBJECT MATTER OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

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| 9. | **INDEMNITY.** |

Each party shall defend, indemnify and hold harmless the other party and such other party’s Affiliates, employees, officers, directors, and agents from and against any liabilities, losses, damages, costs or expenses (including, without limitation, reasonable attorneys’ fees) (collectively, “Losses”) resulting from or arising in connection with the breach by the indemnifying party of any of its representations, warranties, covenants or obligations contained in this Agreement.

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If any action, suit, proceeding (including, but not limited to, any governmental investigation), claim or dispute (collectively, a “Proceeding”) is brought or asserted against a party for which indemnification is sought under this Agreement, the party seeking indemnification (the “Indemnified Party”) shall promptly (and in no event more than seven (7) days after receipt of notice of such Proceeding) notify the party obligated to provide such indemnification (the “Indemnifying Party”) of such Proceeding. The failure of the Indemnified Party to so notify the Indemnifying Party shall not impair the Indemnified Party’s ability to obtain indemnification from the Indemnifying Party (but only for costs, expenses and liabilities incurred after such notice) unless such failure adversely affects the Indemnifying Party’s ability to adequately oppose or defend such Proceeding. Upon receipt of such notice from the Indemnified Party, the Indemnifying Party shall be entitled to participate in such Proceeding at its own expense. Provided no conflict of interest exists as specified in clause (ii) below and there are no other defenses available to Indemnified Party as specified in clause (iv) below, the Indemnifying Party, to the extent that it shall so desire, shall be entitled to assume the defense of the Proceeding with counsel reasonably satisfactory to the Indemnified Party, in which case all attorney’s fees and expenses shall be borne by the Indemnifying Party (except as specified below) and the Indemnifying Party shall in good faith defend the Indemnified Party. After receiving written notice from the Indemnifying Party of its election to assume the defense of the Proceeding, the Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, provided that the fees and expenses of such counsel shall be borne entirely by the Indemnified Party unless (i) the Indemnifying Party expressly agrees in writing to pay such fees and expenses, (ii) there is such a conflict of interest between the Indemnifying Party and the Indemnified Party as would preclude, in compliance with the ethical rules in effect in the jurisdiction in which the Proceeding was brought, one lawyer from representing both parties simultaneously, (iii) the Indemnifying Party fails, within the earlier of (x) twenty (20) days following receipt of notice of the Proceeding from the Indemnified Party or (y) seven (7) days prior to the date the first response or appearance is required to be made in such Proceeding, to assume the defense of such Proceeding with counsel reasonably satisfactory to the Indemnified Party or (iv) there are legal defenses available to the Indemnified Party that are different from or are in addition to those available to the Indemnifying Party. In each of cases (i) through (iv), the fees and expenses of counsel shall be borne by the Indemnifying Party. No compromise or settlement of such Proceeding may be effected by either party without the other party’s consent unless there is no finding or admission of any violation of law and no effect on any other claims that may be made against such other party and the sole relief provided is monetary damages that are paid in full by the party seeking the settlement. Neither party shall have any liability with respect to any compromise or settlement effected without its consent, which shall not be unreasonably withheld. The Indemnifying Party shall have no obligation to indemnify and hold harmless the Indemnified Party from any loss, expense or liability incurred by the Indemnified Party as a result of a default judgment entered against the Indemnified Party unless such judgment was entered after the Indemnifying Party agreed, in writing, to assume the defense of such proceeding.

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| 10. | **LIMITATION OF LIABILITY.** |

IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER INDIRECT DAMAGES, HOWSOEVER CAUSED, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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| 11. | **MISCELLANEOUS PROVISIONS.** |

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|  | (a) | **Assignment.**Licensee may not assign or otherwise transfer (whether by operation of law or otherwise) any right or obligation under this Agreement without the prior written consent of Licensor. Such consent shall be deemed given with respect to an assignment or transfer (whether by operation of law or otherwise) of the entire Agreement, including all rights and obligations hereunder, to a successor in interest or assignee of substantially all of the assets of Licensee, provided that Licensee has given prompt written notice thereof to Licensor. This Agreement is binding on, and inures to the benefit of, the parties and their permitted successors and assigns. Any attempted assignment or other transfer of rights under this Agreement in violation of this Article 12.1 will be void. |

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|  | (b) | **Injunctive Relief.**Licensee agrees and acknowledges that money damages may not be an adequate remedy for any breach by Licensee of the provisions of this Agreement and that the Licensor may, in its sole discretion, apply to any court of law or equity of competent jurisdiction for temporary preliminary relief (specific performance and/or injunctive relief), without posting a bond or other security, in order to enforce or prevent any violation of the provisions of this Agreement. |

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|  | (c) | **Governing Law.**This Agreement will be governed by and construed under the laws of the State of New York, without reference to any choice of law rules (except that questions affecting the construction and effect of any patent will be determined by the law of the country in which the patent was granted). |

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|  | (d) | **Exclusive Jurisdiction and Venue; No Jury.**Any action brought by either party that arises out of or relates to this Agreement will be filed only in the state or federal courts located in New York County, New York. Each party irrevocably submits to the jurisdiction of those courts. FURTHERMORE, EACH PARTY (I) WAIVES ANY OBJECTIONS THAT IT MAY HAVE NOW OR IN THE FUTURE TO THE JURISDICTION OF THOSE COURTS, (II) WAIVES ANY CLAIM THAT IT MAY HAVE NOW OR IN THE FUTURE THAT LITIGATION BROUGHT IN THOSE COURTS HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND (III) WAIVES ANY RIGHT TO A JURY TRIAL. |

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|  | (e) | **Entire Agreement.**This Agreement sets forth the entire agreement of the parties as to its subject matter and supersedes all prior agreements, negotiations, representations, and promises between them with respect to its subject matter. |

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|  | (f) | **Unenforceable Provisions.**If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, the other provisions will remain in full force and effect. If legally permitted, the unenforceable provision will be replaced with an enforceable provision that as nearly as possible gives effect to the parties’ intent. |

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|  | (g) | **Relationship Of The Parties.**Each party is an independent contractor of the other party. Nothing in this Agreement creates a partnership, joint venture or agency relationship between the parties. |

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|  | (h) | **Notices.**A notice under this Agreement is not sufficient unless it is: (i) in writing; (ii) addressed using the contact information listed below for the party to which the notice is being given (or using updated contact information which that party has specified by written notice in accordance with this Article); and (iii) sent by hand delivery, facsimile transmission, registered or certified mail (return receipt requested), or reputable express delivery service with tracking capabilities (such as Federal Express). |

Contact Information for Licensor: Contact Information for Licensee:

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| The Jersey Bankers  Brooklyn, NY  Attn:s    And    The Jersey Bankers  1  Attn: Depositary Receipts |  | Moneymakers  Products  New York, NY 10017  Attn: Law Dept. |

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|  | (i) | **Amendments.**This Agreement may not be amended unless the amendment is in writing and signed by authorized representatives of both parties. |

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|  | (j) | **Waivers.**A waiver of rights under this Agreement will not be effective unless it is in writing and signed by an authorized representative of the party that is waiving the rights. |

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|  | (k) | **Counterparts.**The parties may execute this Agreement by signing separate copies of the signature page. A facsimile copy of the signature page will have the same effect as the original. |

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

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| THE JERSEY BANKERS | | |

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| By: |  | /s/ Brad Pitakis |

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|  |  |  |
| Name: Brad Pitakis | | |
| Title:   Managing Director | | |
|  | | |
| MONEYMAKERS PRODUCTS, LLC | | |

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| By: |  | /s/ Morgan Chance |

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| Name: Morgan Chance | | |
| Title:   Secretary | | |

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**LicA#25**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of Earliest Event Reported):   **November 22, 2006**

**FAST FORWARD TECHNOLOGIES, INC.**(Exact name of registrant as specified in its charter)

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| --- | --- | --- | --- | --- |
| **South Kentucky** |  | **001-** |  | **20-0000** |
| (State or other jurisdiction |  | (Commission |  | (I.R.S. Employer |
| of incorporation) |  | File Number) |  | Identification No.) |
|  |  |  |  |  |
|  | | |  |  |
| **Denver, Colorado** | | |  |  |
| (Address of principal executive offices) | | |  | (Zip Code) |

Registrant’s telephone number, inclUSKing area code: **(303)**

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o   Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o   Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o   Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o   Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**I tem 1.01   Entry into a Material Definitive Agreement.**

On November 22, 2006, Fast Forward Technologies, Inc. (the “Company”) and USK Technology Corporation, a non-profit corporation affiliated with the University of South Kentucky (“USK”), entered into a patent license agreement (the “Agreement”), pursuant to which USK agreed to license certain patents and a pending patent application to the Company on a non-exclusive basis.  The licensed technology is relevant to the production of photovoltaic conversion cells, modules and arrays.  Unless earlier terminated, the Agreement terminates with the expiration of the last to expire of the licensed patents.  A redacted copy of the Agreement is filed as an exhibit to this Current Report.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

10.1 License Agreement between USK Technology Corporation and Fast Forward Technologies, Inc.\*

\*  Portions of this exhibit have been omitted pursuant to a request for confidential treatment.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

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|  | FAST FORWARD TECHNOLOGIES, INC. | |
|  |  |  |
| November 28, 2006 | By: | /s/ Paul Benson |
|  |  | Name: Paul Benson |
|  |  | Title: President and Chief Executive Officer |

**[CONFIDENTIAL]**

**REDACTED COPY**

**EXHIBIT 10.1**

**[Note: A “[\*]” indicates that material has been omitted pursuant to a request for confidential treatment and that the material has been filed separately.]**

**LICENSE AGREEMENT**

This License Agreement (“Agreement”) is made this 21st day of November, 2006, between the USK Technology Corporation, a non-profit corporation located at XXX, South Kentucky, (hereinafter referred to as “Licensor”) and Fast Forward Technologies, Inc., a South Kentucky corporation with its principal place of business in Littleton, Colorado (hereinafter referred to as “Licensee”).

WITNESSETH THAT:

WHEREAS, Licensor is the owner of certain intellectual property related to a means of manufacturing solar cells, modules and arrays based on GADel3FER and related materials encompassing 1) a multi-source physical vapor deposition process to form the GADel3FER on a continuously moving substrate, 2) a method to coat a substrate with a metal that eliminates cracking and poor adhesion of the GADel3FER layer, and 3) a process to deposit a BS layer, all useful for production of photovoltaic conversion cells, modules, and arrays.

WHEREAS, Licensee desires to obtain a non-exclusive license to practice the intellectual property to make, use, and sell products comprising solar cells, modules, and/or arrays which can be prepared using the intellectual property; and

WHEREAS, Licensor is willing to grant such a license on the terms and subject to the conditions set forth below, and Licensee desires to receive and operate commercially under such a license.

NOW THEREFORE, in consideration of the premises and mutual agreements

hereinafter set forth, Licensor and Licensee agree as follows:

ARTICLE 1.           DEFINITIONS

For the purpose of this License Agreement, unless the context clearly or necessarily indicates otherwise, the following words and phrases shall have the meanings set forth below:

1.1           “Licensed Patents” means all (i) patent(s) and patent application(s) listed in Exhibit A attached hereto; (ii) any international counterparts thereof; (iii) any divisionals, continuations, continuations-in-part, and extensions of any of the foregoing patents and patent application(s); (iv) all substitutions, reissues, renewals, reexaminations, patents of addition, and inventors’ certificates thereof, patent term extensions, supplementary protection certificates, and data package exclusivity extensions of the foregoing patents; and (v) all patent(s) issuing from any of the foregoing.

1.2           “Licensed Products” shall mean any solar cell, module, and/or array constituting an apparatus or article for the generation of electricity, characterized by a power rating in watts determined under standard conditions, which but for the grant of rights in Paragraph 2.1 would infringe the Licensed Patents.

1.3           “Sale” or “Sales” shall mean any bona fide transaction for which consideration is received or expected for the sale, use, lease, transfer, or other disposition of the Licensed Product(s).  A Sale of Licensed Product(s) shall be deemed completed at the time that Licensee receives payment for such Licensed Products.  In determining the amount of Sales, Licensee may first deduct applicable returns and allowances, as well as charges for freight, handling, transportation, in-transit insurance, sales taxes, use taxes and other applicable taxes

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paid by Licensee with respect to the sale, use, lease, transfer or other disposition of Licensed Products (“Net Sales”).

1.4           “License Year” means the one year period starting on January 1, of one year and ending on December 31, of the same year.  The first License Year shall begin on the Effective Date and end on December 31, 2006.

1.5           “Effective Date” means the date when this Agreement is fully executed by the parties.

1.6           “Affiliate” of a party means any corporation or other legal entity directly or indirectly controlling, controlled by or under common control of such party.  For purposes, hereof, the term “controlled” (inclUSKing the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the direct and indirect ability or power to direct or cause the direction of management policies of such entity or otherwise direct the affairs of such entity, whether through ownership of equity participation, voting securities, beneficial interest, by contract or otherwise.

ARTICLE 2.           LICENSE GRANT

2.1           Licensor hereby grants to Licensee for the term of this Agreement a non-exclusive, non-transferable license, without the right to sublicense except to Affiliates, under the Licensed Patents, to make, have made, use, and sell Licensed Products throughout the world.

2.2           The right to sublicense to Affiliates granted to Licensee hereunder is subject to the following conditions.

a.             In each sublicense, the sublicensee shall be subject to the terms and conditions of the license granted to Licensee hereunder.

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b.             Each sublicense shall expressly provide that Licensor makes no warranties or representations regarding the Licensed Patents, and shall provide that Licensor has no liability to sublicensees with regard to the Licensed Patents.

c.             Licensee shall forward to Licensor, within thirty (30) days of execution, the name and address of each sublicensee and the identity of any designated representative of the sublicensee (name, title, location) to receive communications relative to the sublicense and copies of each sublicense agreement upon written request of Licensor.

2.3.          The rights and licenses granted to Licensee herein shall be effective as of the Effective Date.

2.4           Licensee shall use reasonable commercial efforts to develop for commercial use and to practice the Licensed Patents as soon as reasonably possible, consistent with sound and reasonable business practices.

ARTICLE 3.           CONSIDERATION

3.1           In consideration for the grant of rights provided above in Paragraph 2.1, Licensee shall pay to Licensor a royalty based upon the Net Sales of Licensed Products sold or transferred according the following schedule:

[\*]

3.2           Minimum royalties per License Year shall be [\*] regardless of Net Sales, except that the minimum annual royalty for the first calendar year ending December 31, 2006 shall be prorated from the Effective Date.  Should Licensee fail to meet any License Year’s annual minimum royalty, Licensor, in its sole discretion, may terminate this License Agreement.

3.3           The royalty due shall be paid to Licensor in United States Dollars.  For

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converting royalties into United States Dollars any royalties that accrue in a foreign currency, the parties shall use the average of the closing buying rates of the Morgan Guaranty Trust Company of New York applicable to transactions under exchange regulations for the particular currency on the first business day of each month of the License Year for which royalties are payable.

3.4           The royalty shall be paid annually by Licensee (on behalf of itself and its sublicensees) no later than thirty (30) days after the end of each License Year.  The royalty relating to any Sales by Licensee to Affiliates shall be calculated based upon the transfers of Licensed Product and the royalty schedule provided in Paragraph 3.1, above.

3.5           Licensee’s obligation to pay royalties (for itself and its Affiliates) shall continue until the earlier of termination of this License Agreement or the date of the last to expire of the Licensed Patents.  Licensee shall notify Licensor of the date of first commercial sale of Licensed Product within each country in which sales are made within (60) days of the date of such first sale.

3.6           Royalty payments shall be payable to “USK Technology Corporation” and sent to:

Vice President  
USK Technology Corporation  
  
South Kentucky

ARTICLE 4.           REPORTING BY LICENSEE

4.1           Licensee shall prepare annual royalty reports setting forth sales of Licensed Products during the License Year by Licensee and its sublicensees.  These reports shall be delivered to Licensor with the royalty payments within thirty (30) days following the end of each calendar year.

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4.2           If no sales of Licensed Products have been made by Licensee and/or its Affiliates during any calendar year, a statement to that effect shall be delivered by Licensee to Licensor with the minimum royalties described in paragraph 3.2 within thirty (30) business days following the end of each calendar year.

ARTICLE 5.           BOOKS AND RECORDS

5.1           Licensee shall maintain and cause its Affiliates to maintain full, true and accurate books of accounts and other records containing all particulars which may be necessary to ascertain and verify the royalties payable under this Agreement.  Upon Licensor’s reasonable written request, Licensee and its Affiliates shall permit independent Certified Public Accountants selected and paid for by Licensor to examine at reasonable times during regular business hours such of their records as may be reasonably necessary to determine the accuracy of any report and/or payment made under this Agreement, subject to execution by such independent Certified Public Accountants of appropriate confidentiality and non-disclosure agreements with Licensee.

5.2           To the extent practical and not inconsistent with any other provision herein, all reports and other documents provided hereunder and all calculations shall be made pursuant to generally accepted accounting principals as practiced by certified public accountants in the United States.

ARTICLE 6.           IMPROVEMENTS OF LICENSEE

Any improvements, patented or unpatented, made to the Licensed Patents by Licensee during the term of this Agreement, shall be the sole property of Licensee.  Licensee hereby agrees not to assert rights in any such improvements, or in any patents related thereto,

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against Licensor, its licensees, or the customers of each.

ARTICLE 7.           [INTENTIONALLY LEFT BLANK]

ARTICLE 8.           INFRINGEMENT LITIGATION

8.1           Licensor agrees to provide such assistance and cooperation at Licensee’s expense as may be reasonably necessary to assist Licensee in its defense of any litigation which seeks to prevent Licensee’s right to use the Licensed Patents necessary for the processing, manufacture, use, or sale of the Licensed Products.

8.2           If Licensor or Licensee becomes aware of any third party’s infringement of the Licensed Patents, it shall immediately notify the other party in writing of such infringement or unauthorized use.  A decision to bring suit shall be in the sole discretion of the Licensor.  Licensee shall have the right to be represented in any such proceeding by counsel of its choice, at its expense.  Licensor shall be entitled to any recovery of damages resulting from such lawsuit in the event Licensor has filed and prosecuted such lawsuit.

8.3           If Licensor shall elect not to bring suit against the allegedly infringing party within one hundred eighty (180) days after notification thereof, Licensee may bring suit in its own name, but shall do so at Licensee’s sole expense.  Licensor shall provide Licensee such nonfinancial assistance and cooperation in prosecuting such case as Licensee may reasonably request.  Licensor shall have the right to be represented in any such proceeding either by counsel of its choice, at its expense or by Licensee’s counsel at Licensee’s expense, insofar as is possible or practical.  Any costs reasonably incurred by Licensor in support of litigation brought by Licensee, excluding attorney’s fees from counsel elected by Licensor, shall be reimbursed to

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Licensor from any sums recovered by Licensee.

ARTICLE 9.           TERM AND TERMINATION

9.1           This Agreement, unless sooner terminated as provided herein, shall terminate with the expiration of the last to expire of the Licensed Patents on a country-by-country basis.

9.2           Licensor may terminate this Agreement if any of the following occur:

a.             Licensee becomes more than sixty (60) days in arrears in payment of royalties due pursuant to this Agreement, and Licensee does not provide full payment immediately upon demand; or

b.             Licensee files or has filed against it a petition or proceedings under any bankruptcy, insolvency or similar law, or becomes insolvent, makes an assignment for the benefit of creditors, or appoints or has appointed a receiver or trustee over its property.

9.3           If either party fails to fulfill any material obligations under this Agreement or materially breaches any of the representations, warranties, or covenants contained herein, the non-breaching party may terminate this Agreement upon written notice to the breaching party as provided below.  Such notice must contain a full description of the event or occurrence constituting a breach of the Agreement.  The party receiving notice of the breach shall have the opportunity to cure that breach within sixty (60) days of receipt of notice.  If the breach is not cured within that time, the termination will be effective as of the (60 th ) day after receipt of notice.

9.4           If Licensor terminates this Agreement under paragraphs 9.2 and/or 9.3, by reason of defaults by Licensee, Licensee and its sublicensees shall cease using all Licensed Patents.

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9.5           Licensee’s obligation to pay royalties accrued under Article 3 hereof at the time of termination shall survive termination of this Agreement.  In addition, the provisions of Article 11 shall survive such termination.

9.6           Any failure on the part of either party to terminate hereunder shall not be deemed a condonation of such default or breach or a waiver of any future default or breach.

9.7           Termination of this Agreement by either party for any reason shall not affect and shall be without prejUSKice to the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement.

9.8           Termination of this Agreement shall result in the immediate termination of all sublicenses granted Affiliates hereunder by Licensee.

9.9           Upon expiration of this Agreement, Licensee’s rights in the Licensed Patents shall be fully paid, provided Licensee has paid all royalties due to Licensor and has complied with all of its obligations under this Agreement.

ARTICLE 10.         REPRESENTATIONS AND WARRANTIES

10.1         Licensor represents, covenants and warrants that Licensor has the right to enter into this Agreement, to grant to Licensee all of the rights and sublicenses granted herein, and to perform all other obligations of this Agreement and the transactions contemplated by this Agreement do not and will not conflict with or result in a breach or default with respect to any agreements to which Licensor is subject.

10.2         Licensee hereby represents and warrants that the execution, and performance of this Agreement by Licensee and the consummation of the transactions contemplated by this Agreement do not and will not conflict with or result in a breach of or

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default with respect to the provisions of any agreements to which Licensee is subject and will not (i) violate any provision of any law or regulation applicable to Licensee, or any other Judgment or decree of any court or other agency of any government binding on Licensee, or (ii) require any approval by, consent of, or filing with, any person, entity, or agency of any government.

ARTICLE 11.         DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE LICENSED PATENTS LICENSED UNDER THIS AGREEMENT IS PROVIDED ON AN “AS IS” BASIS, AND LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO.  BY WAY OF EXAMPLE BUT NOT OF LIMITATION, LICENSOR MAKES NO REPRESENTATION OR WARRANTIES (i) OF COMMERCIAL UTILITY; (ii) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 12.         LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY (OR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY’S RIGHTS, INCLUSKING SUBLICENSEES) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUSKING LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, AND FURTHER INCLUSKING INJURY TO PROPERTY, AS A RESULT OF BREACH OF ANY WARRANTY OR ANY MATERIAL OBLIGATION OF THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR

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IN FACT KNEW OF THE POSSIBILITY THEREOF.  EACH PARTY ACKNOWLEDGES THAT THE FOREGOING SENTENCE REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT, THAT SUCH VOLUNTARY RISK ALLOCATION WAS A MATERIAL PART OF THE BARGAIN BETWEEN THE PARTIES, AND THAT THE ECONOMIC AND OTHER TERMS OF THIS AGREEMENT WERE NEGOTIATED AND AGREED TO BY THE PARTIES IN RELIANCE ON SUCH VOLUNTARY RISK ALLOCATION.

ARTICLE 13.         INSURANCE

13.1         Licensee shall, before any Licensed Products are sold and throughout the term of this Agreement, obtain and maintain at its own cost and expense from an insurance company licensed to do business in South Kentucky with Moody’s Rating of A, a Comprehensive General Liability (CGL) insurance policy which will inclUSKe a standard product liability endorsement covering Licensee and any sublicenses issued to others by Licensee pursuant to this Agreement and any products sold by Licensee or its sublicensees based upon practice of the Licensed Patents.  Such insurance policy shall name Licensor, its officers, directors, trustees, employees and agents as additional insureds.  Such policy shall provide protection against all claims, demands and causes of action arising out of any defects or failures of any kind based upon the practice of the Licensed Patents by Licensee and its sublicensees or use of any product resulting therefrom.

13.2         The amount of coverage shall be at least five (5) million dollars ($5,000,000) per occurrence.

13.3         Licensee shall furnish Licensor a certificate of insurance evidencing same

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within ten (10) days prior to the sale of Licensed Product.  In no event shall Licensee practice the Technology or sell or permit the sale of Licensed Products prior to receipt by Licensor of such evidence of insurance.

13.4         Licensee shall notify Licensor in writing within thirty (30) days of any modification, alteration, cancellation or termination of any insurance policy issued to Licensee under this clause.  In the case of any cancellation, termination or other action adversely affecting the coverage required under paragraphs 13.1 and 13.2, Licensee shall obtain replacement coverage that complies with this Article 13.  During any gap in coverage Licensee and its Affiliates shall immediately cease selling Licensed Products until replacement coverage is obtained.  Failure to obtain, maintain and replace insurance as provided in this Article 13 and the ongoing sale of Licensed Products with knowledge in a gap in insurance coverage shall provide Licensor with the immediate right to terminate this Agreement.

ARTICLE 14.           INDEMNIFICATION

Licensee agrees to indemnify, defend and hold harmless Licensor, its Affiliates and the officers, directors and employees of each of them (the “Licensor Indemnified Parties”) against any claims, damages, liabilities, costs, and expenses (including reasonable attorneys’ fees) incurred by or awarded against the Licensor Indemnified Parties based on or resulting from any act or omission of Licensee and/or its Affiliates relating to this Agreement.  This obligation shall survive the termination of this Agreement.  Licensee and Licensor shall give each other prompt notice of each threat, claim or suit arising from such conduct, and Licensee shall have sole control over the defense and/or settlement of such threats, claims or suit.

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ARTICLE 15.         NOTICES

All notices required under this Agreement shall be in writing and sent by facsimile with confirmation to the respective parties by mail or courier that requires acknowledgment of receipt to the following addresses (or to such other address as may hereafter be designated by a party by notice to the other given in accordance with this Section):

Notices to Licensee

Fast Forward Technologies, Inc.  
  
, Colorado   
  
Attention:  Paul Benson

Notices to Licensor

The University of South Kentucky  
Office of the Vice Provost for Research  
210 Hullihen Hall  
Newark, South Kentucky  19716  
FAX:  (302) 831-2828  
Attention:  R. D. Holsten  
Associate Provost for Research

Any notice given in accordance with this License Agreement shall be effective upon receipt by the addressee.

ARTICLE 16.         GOVERNING LAW AND JURISDICTION

This Agreement shall be interpreted and construed in accordance with the laws of the State of South Kentucky.  The parties hereby consent and submit to the exclusive jurisdiction of the respective federal and state courts in and of the State of South Kentucky.

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ARTICLE 17.             MISCELLANEOUS

17.1         The parties hereto acknowledge that they have read this Agreement and understand it, and they agree to be bound by all of its terms and conditions.  They further agree that this Agreement embodies the entire understanding between the parties relating to the subject matter of the Agreement.  Any prior representations, warranties or agreements between the parties, whether written or oral, not contained in this Agreement are null and void and superseded by this Agreement.  This Agreement shall not be modified except by a written agreement signed by duly authorized representatives of Licensor and Licensee.

17.2         If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such ruling shall not affect the validity or enforceability of the remainder of this Agreement.  Notwithstanding the foregoing, if such ruling substantially impairs the value of the entire Agreement as to either party, the parties shall enter into good faith negotiations for a period of sixty (60) days aimed at modifying the entire Agreement in a manner that compensates such party for the lost value.  In the event such negotiations are not successful, this Agreement shall automatically be terminated upon the expiration of the negotiating period unless the time of the negotiating period has been extended by the mutual consent of the parties.

17.3         The headings and captions used in this Agreement are intended for convenience only and shall not affect its construction or interpretation.

17.4         This Agreement is personal to Licensee, and shall not be assignable or otherwise transferable in whole or in part, voluntarily, involuntarily or by operation of law inclUSKing any merger or consolidation, substantial change in ownership or control of Licensee’s business, or by any other means, without the express written consent of Licensor.  Licensor may

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assign its rights hereunder.

17.5         It is agreed that no waiver by either party hereto of any breach or default of any covenants, terms, or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

17.6         It is agreed that neither party shall use the name, trademarks, brands, or logos of the other party in any advertising, promotion, publicity or news release without the prior written consent of the other party.

17.7         It is agreed that this Agreement and all information marked by Licensor or Licensee as “Proprietary” or “Confidential” and forwarded to by one party to the other party for the purposes of this Agreement (a) are to be received in strict confidence, (b) are to be used only for the purposes of this Agreement, and (c) are not to be disclosed by the recipient party, its agents or employees without the prior written consent of the other party, except to the extent that the recipient party can establish by competent written proof that such information: (i) was in the public domain at the time of disclosure; (ii) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns; (iii) was lawfully disclosed to the recipient party by a third party having the right to disclose it; (iv) was already known by the recipient party at the time of disclosure; (v) was independently developed by the recipient party; or (vi) is required by law or regulation to be disclosed, provided however, that the disclosing party shall first give the recipient party written notice and adequate opportunity to object to such order for disclosure or to request confidential treatment.  In the case of Licensor, the above confidentiality obligation shall be accepted separately and individually by staff at the Licensor and not the Licensor itself.

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IN WITNESS WHEREOF, this Agreement has been duly executed by the parties through their authorized representative to be effective on the date this agreement is fully executed by the parties.

|  |  |
| --- | --- |
|  | The University of South Kentucky (Licensor) |
|  |  |
| Date: November 22, 2006 | /s/ Tamara Grant |
|  | Tamara Grant |
|  | Associate Provost for Research |
|  |  |
|  |  |
|  | Fast Forward Technologies, Inc. (Licensee) |
|  |  |
| Date: November 21, 2006 | /s/ Paul Benson |
|  | Paul Benson, CEO |

**EXHIBIT A**

**ISSUED PATENTS**

**XXXXXXXXXXXX**

**PENDING PATENT APPLICATION**

**LicA#26**

10.1 EXCLUSIVE LICENSE AGREEMENT

**TERM SHEET**

**For an exclusive license Agreement**

**(the “Agreement”)**

The Agreement is entered into on the 19th day of January, 2016 by and between

**Henry Duchampes** Transfert having its principal administrative offices at XXX, Paris (hereinafter “HD”), and

**Cancer Solutions, Inc** having its principal administrative offices at, YYY, Stanford CA , U.S.A (hereinafter “CSI”),

Individually referred to as the “Party” or collectively “the Parties”.

WHEREAS Henry Duchampes Transfe**r**tis the technology transfer Affiliate of Henry Duchampes, a comprehensive cancer center engaged in care, education and research in the area of oncology;

WHEREAS, Henry Duchampes has developed and owns certain Patent Rights in the field of exosomes use, development and manufacturing in oncology;

WHEREAS, Henry Duchampes has granted a worldwide exclusive license with the right of sublicense to its Affiliate, Henry Duchampes Transfert under Patent Rights;

WHEREAS, CSI desires to obtain an exclusive license from HD to use the Patent Rights for the development, manufacture and sale of exosome in the Territory;

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

**ARTICLE I: DEFINITIONS**

1.1

“Affiliate” shall mean with respect to a particular party, a person, corporation, partnership, or other entity that controls, is controlled by or is under common control with such Party. For the purposes of the definition in this Section 1.1, the word “control” (including, with correlative meaning, the terms “controlled by” or “under the common control with”) means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.

1.2

“Confidential Information” shall mean any and all proprietary or confidential scientific, technical, financial or business information in whatever form (written, oral or visual) that is furnished or made available to recipient by or on behalf of discloser or its Affiliates, and that (a) if in tangible form, is labeled in writing or otherwise characterized as proprietary or confidential; (b) if in oral or visual form, is identified as proprietary or confidential at the time of disclosure or otherwise identified as such within fifteen (15) days thereafter; or (c) is commonly regarded as confidential or proprietary in the life sciences industry.

1.3

“Effective Date” shall mean the date first referenced above.

1.4

“IND” shall mean an application submitted to a regulatory authority to initiate human clinical trials, including (1) an Investigational New Drug application or any successor application or procedure filed with the FDA or any foreign equivalent thereof, and (2) all supplements and amendments that may be filed with respect to the foregoing.

1.5

“Licensed Product” shall mean any product sole or in combination which cannot be developed, manufactured, used or sold as vaccines or therapeutic with exosomes in oncology without utilizing the Patent Rights.

1.6

“Net Sales” shall mean gross revenues received by CSI for the sales of Licensed Product in the Territory and/or the sublicense revenues in the Territory of Licensed Products; which is invoiced to a third-party, whatever the country, by CSI, its Affiliates or its authorized sub-licensees, less allowances for discounts, rebates or any refunds actually granted, freight, postage, shipping, transportation, customs duties, excises, insurance charges and all other taxes.

1.7

“Patent Rights” shall mean the list of patents, all continuations-in- and divisionals thereto, and any patents issuing on said applications, all corresponding foreign patent applications, and all re-examinations or extensions thereof enclosed in Exhibit A.

1.8

“Territory” shall mean the world except China, Taiwan and Hong Kong.

**ARTICLE II: SCOPE OF THE AGREEMENT**

HD hereby grants to CSI in the Territory an exclusive license in the Territory royalty bearing with the right to sublicense to practice the Patent Rights in order to develop and commercialize the Licensed Products.

HD will be free to use the Patents rights for non-commercial research, internal (including clinical) and/or educational purposes at Henry Duchampes, including the ability to distribute any biological material covered under the Patent Right(s) for nonprofit academic research to academic entities as is customary in the scientific community

**ARTICLE III:  HD WARRANTIES**

HD makes no expressed or implied warranty of merchantability or fitness for a particular purpose as to any Licensed Product. HD makes no warranty or representation as to the validity or scope of the Patent Rights or that any Licensed Product will be free from an infringement of patents of third parties, or that no third parties are in any way infringing Patent Rights.

**ARTICLE IV: CONSIDERATION OF CSI**

4.1

In consideration of the License under the Patent Rights, CSI shall pay an upfront payment to HD a non-refundable payment in an amount of fifteen Thousand euros (euros 15 000) excluding fees equivalent to the USPTO maintenance fees to be paid for the US patents which shall be due and payable within thirty (30) days of execution of this Agreement. This may be paid in CSI common stock at the discretion of CSI.

4.2

CSI shall pay performance milestones to HD until this Agreement is terminated. Performance milestones shall include the following commercialization and research and development milestones for the Licensed Products (together the “Milestones”).

CSI shall pay upon the achievement of the Milestones:

1)

Two hundred and Fifty thousand euros (€250 000) Milestones payment that shall be nonrefundable and due thirty (30) days from the approval of the IND by the U.S. FDA for conducting a phase I clinical trial.

2)

Two hundred seventy five thousand euros (€275 000) Milestones payment that shall be nonrefundable and due thirty (30) days from the first ten patients treated with the Licensed Product in the scope of the first U.S. clinical trial.

3)

Three hundred thousand euros (€300 000) Milestones payment that shall be nonrefundable and due thirty (30) days from the initiation of the phase II U.S. clinical trial.

4)

Three hundred seventy five thousand euros (€375 000) Milestones payment that shall be nonrefundable and due thirty (30) days from the initiation of the phase III U.S. clinical trial

5)

Five hundred thousand euros (€ 500 000) Milestones payment that shall be nonrefundable and due thirty (30) days from the first market authorization or equivalent of the Licensed Product.

During the term of this agreement, CSI shall pay on quarterly basis to HD:

1

Five percent (5%) of running royalty of the cumulative Net Sales of the Licensed Product made or sold in the territory.

2

Forty Percent (40%) of any consideration that is based on revenue such as but not limited to, sublicense issue fees, sublicense maintenance fees, royalty etc.) that CSI receives from sublicensees or assignees in consideration for rights to practice under the Patent Rights, excepting only research and development funding;

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4.3

During the term of the Agreement, CSI will pay the remaining maintenance fees of the Patent Rights to the appropriate government agencies.

**ARTICLE V: INTELLECTUAL PROPERTY**

Notwithstanding any clause to the contrary, any information, and/or the Patent Rights of HD hereto shall remain at all times the sole beneficiary.

**ARTICLE VI:  TERMINATION**

6.1

 The term of this Agreement shall commence on the Effective Date and shall continue, in each country, until the date of expiration of the last Patents Rights in that country.

6.2

HD may terminate this Agreement upon thirty (30) days written notice to CSI, if CSI breaches or defaults on its obligations hereunder, unless before the end of the thirty (30) day period, CSI has cured the breach or default and so notifies HD in writing, stating the manner of the cure.

**ARTICLE VII: CONFIDENTIAL INFORMATION**

7.1

Parties may disclose other Confidential Information to each other, from time to time, in connection with work contemplated under this Agreement. All such Confidential Information whether disclosed initially or during Agreement shall be deemed Confidential Information. Each Party will use reasonable efforts to prevent the disclosure of any of the other Party's Confidential Information to third parties for a period of five (5) years from receipt thereof, provided that the recipient Party's obligation will not apply to information that:

a.

is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure;

b.

is already in the recipient Party's possession at the time of disclosure thereof and not obtained directly or indirectly from the other, as proven by the receiving Party’s written records;

c.

is or later becomes published through no fault of the recipient Party;

d.

is lawfully acquired from a third party having no obligations of confidentiality to the disclosing Party;

e.

is independently developed by the recipient Party; or

f.

is required by law or regulation to be disclosed.

7.2

In the event that information is required to be disclosed under Section 7.1(f) above, the Party required to make disclosure will notify the other to allow that Party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

7.3

Notwithstanding the foregoing, CSI may disclose Confidential Information at any time (i) to prospective lenders, investors and other financing sources; (ii) with the prior written consent of HD (which consent shall not be unreasonably withheld); or (iii) to the extent necessary for CSI to properly evaluate Patent Rights. To the extent that any such Confidential Information is disclosed to any third party for evaluation purposes, the confidentiality obligations contained herein shall be made by CSI to apply to, and be made binding upon, all such third parties.

7.4

CSI shall not use any Confidential Information furnished by HD, other than for purposes in furtherance of this Agreement, provided however that other use of said Confidential Information may be made with the prior written consent of HD, which consent shall not be unreasonably withheld.

7.5

In the event of termination of the Agreement, CSI agrees to promptly return all records embodying Confidential Information including, but not limited to, drawings, specifications, instructions, and other documents relating to the Patent Rights which it has received from HD, and all copies, elaboration's, modifications, and adaptations which it has made of the Confidential Information.

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7.6

CSI represents that HD believes the Confidential Information supplied by it under this Agreement to be accurate, but does not otherwise warrant the accuracy of this information; nor does HD warrant that products produced in accordance with such information will be free from claims of infringement of the patents, copyrights or trade secrets of any third party.

**ARTICLE VIII:   NOTICES**

All notices under this Agreement shall be effective upon receipt by the recipient at the following addresses:

HD:

Henry Duchampes Transfert

Paris

FRANCE

Attention:  General Manager

and

CSI:

Cancer Solutions

Stanford, CA

U.S.A

Attention: Herb Gallagher, CEO

or any other addresses of which either Party shall notify the other Party in writing.

**ARTICLE IX:  MISCELLANEOUS PROVISIONS**

9.1

CSI shall have no right to assign all of his rights and duties hereunder to a third party entity without the prior written consent of HD, which consent may not unreasonably be withheld; provided, however, that no such consent shall be necessary in the event the assignment is to an entity to an Affiliate of CSI or a new company with CSI as a shareholder.

9.2

This Agreement, together with attached exhibits, constitutes the entire and only Agreement between the parties relating to an option to acquire a license, and all prior negotiations, representations, Agreements and understandings are superseded hereby. No Agreements altering or supplementing the terms hereof may be made except by written mutual Agreement by the Parties.

9.3

The relationship between HD and CSI is that of independent contractors. HD and CSI are not joint venturers, partners, principal and agent, master and servant, employer or employee, and have no other relationship other than independent contracting parties. HD will have no power to bind or obligate CSI in any manner, other than as is expressly set forth in this Agreement. Likewise, CSI will have no power to bind or obligate HD in any manner, other than as is expressly set forth in this Agreement.

9.4

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

9.5

Any delay in enforcing a Party's right under this Agreement or any waiver as to a particular default or other matter will not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, except only as to an express written and signed waiver to a specific matter for a specific period of time.

9.6

This Agreement shall be construed in accordance with the laws of France.

9.7

The Parties agree that any dispute arising from this Agreement shall be resolved in a court of competent jurisdiction in France and both Parties hereby agree to submit to the jurisdiction of the courts of France should any dispute arise.

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IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Henry Duchampes Transfert

CSI

By: */s/ Francoise Villeneuf*

By: */s/ Herb Gallagher*

Name: Francoise Villeneuf

Name: Herb Gallagher

Its: General Manager

Its: CEO

**LicA#27**

EXHIBIT 10.1

**Exhibit 10.1**

**FIRST AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT**

This FIRST AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT (this “**Amendment**”), entered into as of November 22, 2022 (the “**Amendment** **Effective Date**”), is made and entered into by and among Model Therapeutics Inc. (“**Model**”), Paris Immunotherapeutics LLC (“**Licensee**”), Harding Therapeutics Limited (“**Harding**”) and Brown Bioscience Limited (“**Brown**”). Each of Model, Licensee, Harding and Brown is referred to herein as a **Party** and together, the **Parties**.

WHEREAS, Brown and Harding entered into that certain Third Amended and Restated Exclusive License Agreement, dated as of November 1, 2020 (the “**Two-Party Agreement**”), pursuant to which Brown granted to Harding an exclusive license under the Licensed Technology, the Auxiliary Technologies, and the Auxiliary Technology Patents to Exploit Licensed Products in the Territory in the Field during the Term (as those terms are defined in the Two-Party Agreement);

WHEREAS, Brown, Harding, and Licensee entered into that certain Exclusive License Agreement, dated as of April 26, 2021 (as amended by that certain letter agreement by and among the Parties, dated as of November 15, 2022, the “**Three-Party Agreement**”), pursuant to which Brown and Harding granted to Licensee an exclusive license under the Licensed Technology, the Auxiliary Technologies, and the Auxiliary Technology Patents to Exploit Licensed Products in the Territory in the Field during the Term (as those terms are defined in the Three-Party Agreement);

WHEREAS, the Two-Party Agreement provides Brown the right to terminate the Two-Party Agreement if Harding has not submitted an IND for any Licensed Product in the Field on or before the date that is two (2) years after the Third Amendment Effective Date (as those terms are defined in the Two-Party Agreement) and Harding did not submit an IND for any Licensed Product in the Field on or before such date;

WHEREAS, Brown wishes to grant to Licensee, and Licensee wishes to accept, an exclusive, sublicensable license under the Brown Patents (as defined below) for the purpose of identifying and pursuing opportunities to grant sublicenses under the Brown Patents in the Territory to third parties as described herein; and

WHEREAS, the terms of the Three-Party Agreement may be modified if such modification is made in writing and signed by a duly authorized officer of each Party pursuant to Section 11.4 thereof.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth out in this Amendment and other good and valuable consideration, the sufficiency of which are acknowledged, the Parties hereby agree as follows:

1.           Model will be responsible as a guarantor for all payments and other obligations of Licensee owed to Brown under the Three-Party Agreement, including, but not limited to, all payments set forth therein, and any obligations that matured prior to the Amendment Effective Date and payment thereof shall remain an ongoing obligation of Model until such amounts are paid in full.

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2.          The Two-Party Agreement is hereby terminated in accordance with Section 7.2.3 of the Two-Party Agreement. In accordance with Section 11.16.5 of the Three-Party Agreement, Brown agrees that the rights and licenses granted to Licensee by Harding thereunder shall survive such termination of the Two-Party Agreement and Brown hereby grants to Licensee such rights and licenses on the same terms and conditions as granted by Harding to Licensee in the Three-Party Agreement. In accordance with Section 7.7 of the Two-Party Agreement, Harding hereby requests that that certain License Agreement dated as of October 6, 2020 by and between Harding and Palau, Inc. (as amended, the “**Palau Agreement**”), as a sublicense under the Two-Party Agreement, survive such termination and that the license granted by Harding to Palau, Inc. under the Palau Agreement be considered a direct license from Brown to Palau, Inc. and Brown hereby agrees to said request. Harding is eliminated from the Three-Party Agreement and the Palau Agreement and is replaced by Brown as the direct Licensor to Licensee.  Licensee hereby agrees that Brown shall be entitled to enforce all applicable provisions of the Three-Party Agreement directly against Licensee with respect to the licenses granted to Licensee thereunder, and all applicable provisions of the Palau Agreement with respect to the licenses granted to Palau, Inc. thereunder, and Brown shall not assume, and shall not be responsible to Palau for, any representations, warranties or obligations of Harding to Palau under the Palau Agreement, other than to permit Palau to exercise any rights to the Licensed Technology, Auxiliary Technologies, and the Auxiliary Technology Patents previously sublicensed to Palau by Harding pursuant to the Palau Agreement.

3.           The title of Section 2 of the Three-Party Agreement shall be amended and restated as follows:

“Product Development Licenses”

4.           The following Section 2A shall be inserted in the Three-Party Agreement immediately following Section 2 and before Section 3:

“**Section 2A**

Identified Opportunity Licenses

2A.1. *License Grant*.

In addition to the licenses granted to Licensee under Section 2 and subject to Section 2A.3, Brown hereby grants to Licensee an exclusive (even as to the Brown), non-transferrable (except in accordance with Section 11.2) license, with the right to grant sublicenses pursuant to Section 2A.2, under the Brown Patents in the Territory for any and all uses during the Opportunity Term.

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2A.2. *Sublicensing*.

On an Identified Opportunity-by-Identified Opportunity basis, Licensee may sublicense the rights granted to it under Section 2A.1 to third party sublicensees (each such third party sublicensee, an “**Opportunity Sublicensee**”, such sublicense, an “**Opportunity Sublicense**”) during the Identification Period, so long as: (a) the Opportunity Sublicense is royalty-bearing and in writing; (b) the terms of the Opportunity Sublicense include customary terms for such types of sublicenses, including, without limitation, terms that are substantially consistent (subject to conforming revisions to refer to the rights licensed to and products to be Exploited by the applicable Opportunity Sublicensee) with the terms and conditions of Sections 3, 5.3.7, 5.4 (if payments are based on ongoing product sales), 5.5, 5.6, 6.3, 6.4, 6.5, 7.6, and 7.10 of  this Agreement, and, if the applicable Opportunity Sublicense is an exclusive license granted for the purpose of Exploitation of Opportunity Products, include the obligation of the Opportunity Sublicensee to use Commercially Reasonable Efforts to Exploit one or more Opportunity Products; (c) the Opportunity Sublicense was negotiated by Licensee in good faith, for a proper purpose and on reasonable arm’s-length commercial terms; (d) the Opportunity Sublicense names Brown as a third-party beneficiary thereof; (e) the Opportunity Sublicensee has, or has the ability to acquire, adequate resources (including scientific, technical and financial) to perform its obligations under such Opportunity Sublicense, as reasonably determined by Licensee at the time of entry into the Opportunity Sublicense; and (f) a complete, confidential copy of the Opportunity Sublicense agreement and any amendments thereto are provided to Brown within thirty (30) days of the execution of said Opportunity Sublicense agreement or any such amendments thereto. In each case, Licensee will be responsible for enforcing the performance of the Opportunity Sublicensees under the Opportunity Sublicenses, including, without limitation, making any payments provided for hereunder. Subject to Section 8.6, Licensee will provide Brown with a complete, confidential copy of each such Opportunity Sublicense agreement executed by Licensee and any amendments thereto, and will promptly notify Brown of the termination of any such Opportunity Sublicense.

2A.3. *Retained Rights*.

2A.3.1 The license granted to Licensee under Section 2A.1 is subject to Brown’s right to make and use, and permit academic, government, and not-for-profit institutions or agencies to make and use the inventions disclosed in the Brown Patents for non-commercial research, academic, educational, and all other non-commercial purposes and for the commercial or non-commercial provision by Brown of research services to third parties. Subject to the terms of this Agreement, any commercial provision of research services by Brown to a third party will be subject to a written agreement between Brown and such third party that grants such third party a license under the Brown Patents to use such research services only for non-commercial purposes.

2A.3.2. The license granted to Licensee under Section 2A.1 is subject to any licenses or other rights already granted by Brown to third parties as of November 1, 2022, and as set forth on Appendix B hereto (the “**Prior Agreements**”).

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2A.4. *Consideration*.

In consideration for the rights granted by Brown to Licensee under Section 2A.1, Licensee shall, within thirty (30) days of receiving any Opportunity Sublicense Fees, pay to Brown (i) twenty percent (20%) of such Opportunity Sublicense Fees received in connection with any Identified Opportunities Identified during the Initial Identification Period and (ii) thirty percent (30%) of any Opportunity Sublicense Fees received in connection with any Identified Opportunities Identified during the Extended Identification Period. For clarity, the Opportunity Sublicense Fee due under this Section 2A.4 shall only apply to Opportunity Sublicenses and not to any sublicenses granted pursuant to Sections 2.1 or 2.2. Sections 5.3, 5.4, 5.5 and 5.6 of this Agreement shall apply *mutatis mutandis* to any Opportunity Sublicense Fees to be paid to Brown.

2A.5. *Representations, Warranties, and Covenants of Brown*.

2A.5.1 Brown hereby represents and warrants to Licensee that, as of the Amendment Effective Date and continuing for the entire Opportunity Term, subject to Section 2A.3.2 of this Agreement, it is the sole and exclusive owner or licensee of the Brown Patents, and it has the right, power and authority to grant the rights set forth in Section 2A.1 of this Agreement;

2A.5.2  Brown hereby represents and warrants to Licensee that as of the Amendment Effective Date, there are no judgments or settlements against or owed by Brown or its Affiliates or, to its knowledge, pending or threatened claims or litigation, in either case relating to the Brown Patents;

2A.5.3 Brown hereby covenants to Licensee, during the Opportunity Term, that Brown shall, at Licensee’s reasonable request and at Licensee’s sole cost and expense, join any proceedings reasonably necessary to Pursue Opportunity Sublicenses;

2A.5.4 Brown hereby covenants to Licensee, during the Opportunity Term, that Brown shall, at Licensee’s request from time to time, update Appendix C; and

2A.5.5 Brown hereby covenants to Licensee, during the Opportunity Term, that it shall inform Licensee of any Opportunities it becomes aware of, provided that doing so does not violate any obligation of confidentiality owed by Brown to a third party, or shall refer such Opportunities to Licensee to pursue.

2A.6. *Representations, Warranties, and Covenants of Licensee*.

2A.6.1 Licensee hereby represents and warrants to Brown that, as of the Amendment Effective Date, the execution and performance of Licensee’s obligations under this Agreement do not conflict with, cause a default under, or violate any existing contractual obligation that may be owed by Licensee to any third party, including, without limitation, any Affiliate of Licensee;

2A.6.2 Licensee hereby represents and warrants to Brown that, as of the Amendment Effective Date, there is no action or suit pending against Licensee or any of its Affiliates that questions the validity of this Agreement or the right of Licensee to enter into this Agreement or consummate the transactions contemplated hereby;

2A.6.3 Licensee hereby covenants to Brown, during the Opportunity Term, that, subject to Section 2.1, Licensee will not develop or commercialize any Opportunity Product by itself or through any Affiliate of Licensee;

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2A.6.4 Licensee hereby covenants to Brown, during the Opportunity Term, that, Licensee will not Pursue any Opportunity for which it does not have resources sufficient to Pursue such Opportunity, including, without limitation, financial resources necessary to defend any claim, action or proceeding that may arise as a result of or in connection with such Pursuit;

2A.6.5 Licensee hereby covenants to Brown, during the Opportunity Term, that, in the event of any dispute or disagreement between Brown and Licensee as to the Pursuit of any Opportunity (or the performance of any obligations hereunder with respect thereto, including, without limitation any alleged breach of the representations, warranties, and covenants set forth in Section 2A.6 of this Agreement) that could reasonably result in irreparable harm to the validity or enforceability of one or more Brown Patents, Licensee shall immediately cease Pursuing any Opportunities that are the subject of such dispute or disagreement, and shall not resume Pursuing any such Opportunities unless and until such dispute or disagreement is resolved in accordance with the provisions set forth in Section 10 of the Agreement; and

2A.6.6 Licensee hereby covenants to Brown that, prior to granting an Opportunity Sublicense, Licensee and Brown shall cooperate reasonably to determine whether the granting of such Opportunity Sublicense would cause Brown to be in material breach of any of the Prior Agreements.

Sections 6.3, 6.4, 7.6, and 11.13 of this Agreement shall apply *mutatis mutandis* to the Brown Patents.

2A.9. *Protection of Intellectual Property Rights*.

2A.9.1 Notwithstanding anything in this Agreement to the contrary, during the Opportunity Term, Brown, in consultation with Licensee, will be responsible for, using counsel of its choosing and at Licensee’s sole expense, preparing, filing, prosecuting and maintaining the Brown Patents.

2A.9.2 Subject at all times to the rights granted by Brown to its third-party licensees under the Prior Agreements, Licensee shall have the sole right to enforce the Brown Patents and shall defend the Brown Patents in any action or proceeding, including, but not limited to, any declaratory judgment action or administrative proceeding arising from Pursuit of Opportunity Licenses, which alleges the invalidity, unenforceability or non-infringement of any of the rights associated with the Brown Patents. All costs and expenses associated with enforcing and defending the Brown Patents in any such action or proceeding will be borne by Licensee and Licensee shall be entitled to any recovery or compensation resulting from enforcement or defense of the Brown Patents, but shall reimburse Brown for reasonable out of pocket expenses incurred by Brown in providing cooperation and/or participating in such proceedings and shall pay to Brown the applicable consideration with respect to Opportunity Sublicense Fees received by Licensee with respect thereto, in accordance with Section 2A.4 above. Brown will cooperate and provide reasonable assistance in any action or proceeding described in this Section 2A.9.2.

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2A.10. *Term and Termination*.

2A.10.1 *Term*. This Section 2A is effective as of the Amendment Effective Date and, unless earlier terminated pursuant to the provisions of Section 2A.10.2 of this Agreement, will expire, in its entirety, upon the expiration of the Identification Period (the “**Opportunity Term**”).

2A.10.2 *Termination*. Brown may, at its option, terminate this Section 2A. upon thirty (30) days’ advance written notice to Licensee, provided that this termination right shall not be exercisable during the first sixty (60) days after the Amendment Effective Date, and provided further that Brown shall not exercise this termination right for an additional sixty (60) days if Licensee is negotiating in good faith with Brown with respect to the terms for an amended and restated exclusive license agreement amending and restating the Agreement containing mutually acceptable additional terms with respect to Pursuit of Opportunities.

2A.10.3 *Effects of* *Termination*. Subject to Section 2A.10.4, upon termination of this Section 2A, Licensee’s right to the Brown Patents which have been granted under this Section 2A and all use thereof will terminate. Expiration or termination of this Section 2A will not release either Party from any obligation that matured prior to the effective date of such expiration or termination.

2A.10.4 *Effects on Identified Opportunities and Opportunity Sublicenses*. Notwithstanding anything to the contrary, Licensee shall have the right to continue Pursuing Opportunity Sublicenses with respect to Opportunities that Licensee has Identified prior to the effective date of termination of this Section 2A for up to one (1) year from the effective date of termination of this Section 2A, and collect any compensation received under any such Opportunity Sublicenses entered into with respect to such Identified Opportunities, subject to payment to Brown of the compensation applicable with respect thereto in accordance with Section 2A.4 above, and provided that such Identified Opportunities are expressly made subject to the provisions of this Agreement, including the covenants of Licensee set forth in Section 2A.6.4 and 2A.6.5, which shall survive any termination of this Section 2A with respect to such Identified Opportunities. Additionally, any other Opportunity Sublicenses granted by Licensee in accordance with this Agreement shall survive the termination of this Agreement or this Section 2A. The surviving Opportunity Sublicenses shall be considered direct licenses from Brown to such surviving Opportunity Sublicensee; provided that such Opportunity Sublicensee agrees in writing that (i) Brown is entitled to enforce all relevant provisions directly against such Opportunity Sublicensee, and (ii) Brown shall not assume, and shall not be responsible to such Opportunity Sublicensee for, any representations, warranties or obligations of Licensee to such Opportunity Sublicensee, other than to permit such Opportunity Sublicensee to exercise any rights to the Brown Patents sublicensed to such sublicensee by Licensee. During the Opportunity Term, Licensee may, at Licensee’s sole discretion, identify two Opportunities, whether or not such Opportunities are Identified Opportunities, as “Surviving Opportunities”. Notwithstanding anything to the contrary, Licensee shall have the right to continue Pursuing Opportunity Sublicenses with respect to the Surviving Opportunities for up to four (4) years from the effective date of termination of this Section 2A, and collect any compensation received under any such Opportunity Sublicenses entered into with respect to such Surviving Opportunities, subject to payment to Brown of the compensation applicable with respect thereto in accordance with Section 2A.4 above. Licensee’s right to Pursue the Surviving Opportunities is expressly made subject to the provisions of this Agreement, including the covenants of Licensee set forth in Section 2A.6.4 and 2A.6.5, which shall survive any termination of this Section 2A with respect to such Surviving Opportunities. Upon the termination of this Section 2A and in the event the Parties are unable to resolve any dispute regarding the Surviving Opportunities, or at Licensee’s election, Brown shall assume the Surviving Opportunities and pay to Licensee 80% of all amounts received by Brown pursuant to Opportunity Sublicenses entered into with respect to such Surviving Opportunities, provided that such Opportunity Sublicenses are entered into within four (4) years from the effective date of such termination of this Section 2A.

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2A.10.5 *Survival*. Notwithstanding anything to the contrary, this Section 2A shall survive the expiration or termination of the Agreement unless terminated in accordance with the terms of this Section 2A.10.

2A.11 *Definitions*. Capitalized terms used but not defined herein shall have the meanings given to such terms as set forth in Appendix A hereto or elsewhere in the Agreement.”

5.           New Appendices A, B, and C shall be attached to the Three-Party Agreement as set forth in Appendices A, B, and C of this Amendment.

6.           Upon execution, this Amendment shall be made a part of the Three-Party Agreement and shall be incorporated by reference therein.

7.           This Amendment may be executed by original or facsimile signature in any number of counterparts, each of which need not contain the signature of more than one Party but all such counterparts taken together will constitute one and the same agreement.

8.           The persons signing on behalf of each Party hereby warrant and represent that they have authority to execute this Amendment on behalf of the Party for whom they have signed.

9.           All provisions of the Three-Party Agreement not expressly modified by this Amendment shall remain in full force and effect. In the event of any conflict between the terms of the Three-Party Agreement and this Amendment, the terms of this Amendment shall govern and control.

10.          The substantive law governing this Amendment (which shall be applied in any arbitration) shall be, with respect to disputes involving general contract or trade secret matters, the internal laws of the Commonwealth of Massachusetts, and with respect to matters involving patents, the United States Patent Act, as to copyright matters, the United States Copyright Act, and as to trademark matters, the United States Trademark Act, each as amended from time to time. Any award rendered by the Arbitrator shall be final, conclusive and binding upon the Parties to this Amendment, and judgment thereon may be entered and enforced in any state or federal court of competent jurisdiction. Notwithstanding anything to the contrary, in the event of any conflict between the terms of Section 10 of this Amendment and the Three-Party Agreement, the terms of the Three-Party Agreement shall govern and control.

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11.          If any provisions of this Amendment are or will come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the Parties or this Amendment, those provisions will be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this Amendment will remain in full force and effect. If such a deletion is not so allowed or if such a deletion leaves terms thereby made clearly illogical or inappropriate in effect, the Parties agree to substitute new terms as similar in effect to the present terms of this Amendment as may be allowed under Applicable Law. Notwithstanding anything to the contrary, in the event of any conflict between the terms of Section 11 of this Amendment and the Three-Party Agreement, the terms of the Three-Party Agreement shall govern and control.

12.          All capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in Appendix A hereto or the Three-Party Agreement.

[*Signature page follows*]

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**IN WITNESS WHEREOF**, the Parties hereto have duly executed this First Amendment to Exclusive License Agreement as of the Amendment Effective Date.

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|  | **FACTOR BIOSCIENCE LIMITED** |
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| --- | --- | --- |
|  | By: | */s/ Amina Patel* |

|  |  |  |
| --- | --- | --- |
|  | Name: | Amina Patel |
|  | Title: | Director |

|  |  |
| --- | --- |
|  | **ETERNA THERAPEUTICS INC.** |
|  |  |

|  |  |  |
| --- | --- | --- |
|  | By: | */s/ Fred Roosevelt* |

|  |  |  |
| --- | --- | --- |
|  | Name: | Fred Roosevelt |
|  | Title: | Chief Financial Officer |

|  |  |
| --- | --- |
|  | **BROOKLYN IMMUNOTHERAPEUTICS LLC** |
|  |  |

|  |  |  |
| --- | --- | --- |
|  | By: | */s/ Fred Roosevelt* |

|  |  |  |
| --- | --- | --- |
|  | Name: | Fred Roosevelt |
|  | Title: | Chief Financial Officer |

|  |  |
| --- | --- |
|  | **NOVELLUS THERAPEUTICS LIMITED** |
|  |  |

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|  | By: | */s/ Fred Roosevelt* |

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| --- | --- | --- |
|  | Name: | Fred Roosevelt |
|  | Title: | Director and Secretary |

[*Signature Page to First Amendment to Exclusive License Agreement*]

Appendix A

*Definitions*

“*Extended Identification Period*” means the period commencing at the end of the Initial Identification Period and continuing for two and a half (2.5) years thereafter.

“*Brown Patents*” means, during the term of the Agreement, all Patents owned or Controlled by Brown on the Amendment Effective Date and during the term of the Agreement, including as of the Amendment Effective Date, (a) the patents and patent applications set forth on Appendix C, and (b) any reissue, divisional, continuation, reexamination, renewal, extension, supplementary protection certificate, or foreign counterpart of each of the patents and patent applications set forth on Appendix C that includes at least one claim that is directed to subject matter disclosed in the patents and patent applications described in clause (a) above, and claims priority to such patents and patent applications.

“*Identification Period*” means the Initial Identification Period and the Extended Identification Period, if the Success Milestone has been met during the Initial Identification Period, provided that if an Identified Opportunity has been Identified by Licensee prior to the end of the Identification Period, the Identification Period shall be automatically extended for an additional one (1) year period, but only with respect to such Identified Opportunity.

“*Identify*” means with respect to an Opportunity and a third party, the execution of a term sheet between Licensee and such third party for the Opportunity.

“*Identified Opportunity*” means an Opportunity Identified by Licensee.

“*Initial Identification Period*” means the period commencing on the Amendment Effective Date and continuing for five (5) years thereafter.

“*Opportunity*” means with respect to any third party, the opportunity by Licensee to sublicense any Brown Patent to such third party.

“*Opportunity Product*” means any product Covered by the Brown Patents.

“*Opportunity Sublicense*” has the meaning set forth in Section 2A.2.

“*Opportunity Sublicensee*” has the meaning set forth in Section 2A.2.

“*Opportunity Sublicense Fee*” means any consideration in any form received by Licensee or its Affiliates pursuant to an Opportunity Sublicense or as consideration for or in connection with a sublicense of, or other right, license, option, privilege, or immunity with respect to, any Opportunity Product or any of the rights to the Brown Patents granted to Licensee hereunder, including without limitation settlement amounts, license fees, upfront payments, milestone payments, and royalties payable on sales of Opportunity Products.

“*Opportunity Term*” has the meaning set forth in Section 2A.10.1.

“*Patents*” means any patents and provisional and non-provisional patent applications, together with all priority applications, additions, divisions, continuations, continuations-in-part, substitutions, and reissues claiming priority thereto, as well as any reexaminations, extensions, registrations, patent term extensions, supplemental protection certificates, renewals and the like with respect to any of the foregoing and all foreign counterparts thereof.

“*Pursue*” means with respect to an Opportunity and a third party, the process until signing of a definitive agreement between Licensee and such third party for the Opportunity.

“*Success Milestone*” means actual receipt by Licensee of at least $100 million from the Opportunity Sublicenses, including but not limited to upfront fees, milestone payments, royalties and other amounts.

**LicA#28**

LICENSE AGREEMENT, DATED AS OF FEBRUARY 6, 2008

THE SYMBOL “\*\*\*\*\*” DENOTES PLACES WHERE PORTIONS OF THIS DOCUMENT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT. SUCH MATERIAL HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**Exhibit 10.4**

**LICENSE AGREEMENT**

     This License Agreement (this “Agreement”) is made and entered into as of the 6thday of February, 2008, by and between Konvert GmbH, a company organized and existing under the laws of Germany (“Licensor”), and Turnaround Energy, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Turnaround ”).

     WHEREAS, Konvert GmbH, a company organized and existing under the laws of Germany (as further defined below, “Konvert”), has granted certain rights to Licensor with respect to a proprietary technology to convert waste material that contains hydrocarbons into diesel oil (as further defined below, the “Technology”) in various countries, including the United States;

     WHEREAS, Turnaround is interested in obtaining license rights from Licensor with respect to the Technology, all on the terms and conditions set forth herein, to secure or to help secure orders for the sale of the equipment that utilizes the Technology; and

     WHEREAS, Licensor is willing to grant such license rights to Turnaround , all on the terms and conditions set forth herein;

     NOW, THEREFORE, in light of the mutual premises set forth herein and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows.

**ARTICLE 1 – DEFINITIONS AND INTERPRETATION**

Section 1.1 Capitalized Terms. Unless otherwise specified herein, the following capitalized terms shall have the following meanings:

     “Affiliate” means, in relation to any Person, any other Person that controls, is controlled by, or is in common control with, such Person. For the purpose of this definition, control means the direct or indirect control of fifty percent (50%) or more of the voting rights in such Person or the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise. Except as shall otherwise be expressly provided in this Agreement, and for the avoidance of any doubt, as of the Effective Date, (i) Licensor and Konvert are Affiliates and (ii) Licensor and Garamond are Affiliates, but Konvert and Garamond are not Affiliates.

     “Agreement” has the meaning set forth in the first paragraph hereof.

     “Konvert” means Konvert GmbH, a company organized and existing under the laws of Germany, and its successors and permitted assigns.

     “Turnaround ” has the meaning set forth in the first paragraph hereof and includes its successors and permitted assigns.

     “Commercial Waste” means all non-hazardous solid waste that is collected from commercial establishments, including residential apartment buildings, office buildings, restaurants, industrial parks, all other business facilities and all recyclable materials from recycling facilities.

     “Competitor of Licensor” means a Person, directly or through Affiliates, engaged primarily in the business of selling equipment that converts waste or organic feedstock(s) containing hydrocarbon materials into diesel fuel or any Person that is involved primarily in the development of such equipment or the technology on which it is based.

     “Contracted Waste” means all non-hazardous waste, regardless of the source of such waste, which is under contract to be delivered to Coomer or any of its Affiliates for disposal in, or processing by, one of the facilities owned or operated by Coomer or any of its Affiliates.

     “Coomer” means Coomer Energy Corporation, a Delaware corporation.

     “Coomer License Agreement” means the License Agreement of even date herewith entered into between Licensor and Coomer, a copy of which is attached hereto as Exhibit 1.

     “Customer” means any Person that is not owned or controlled by Turnaround that wants to purchase a System for its own account.

     “Default” has the meaning set forth in Section 10.1.

     “Demonstration Plant” means the System to be purchased by Coomer as provided for in the Coomer License Agreement, the order for which has been procured by Turnaround .

     “Dispute” has the meaning set forth in Section 9.1.

     “Effective Date” has the meaning set forth in Section 5.1.

     “Extended Period” means the period that begins on the date that the Initial Period terminates and ends on the date that this Agreement terminates.

     “Feedstock” means Household Waste, Contracted Waste, Commercial Waste or Radial Biomass, as the case may be.

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     “Full Right” means that the Person being granted the right(s) described herein shall be the only Person that is entitled to exercise such right(s) so long as this Agreement is in effect and that no other Person shall be authorized, by the grantor of such right(s), to exercise such right(s) or be granted such right(s).

     “Garamond” means Garamond Energy, Inc., a Nevada corporation.

     “Household Waste” means all non-hazardous, post-recycled municipal solid waste which is collected from residences, which waste is of the type normally accepted for processing at waste to energy facilities in the United States.

     “ICC” means the International Chamber of Commerce.

     “ICC Rules” has the meaning set forth in Section 9.1.

     “Improvements” means all the techniques, enhancements, modifications, changes, experience, methods, information, data or knowledge that will be created or acquired in the future relating to the Technology and/or the manufacturing of such components for Systems (whether or not patentable, useful or workable) through the implementation, development, testing and improvement of the Technology.

     “Initial Period” means the period which begins on the date that the Interim Period ends and terminates on the second (2nd) anniversary thereof.

     “Intellectual Property” means any intellectual property and/or proprietary information and materials relating to the Technology along with all rights therein, whether existing before or conceived or developed after the Effective Date (except as otherwise expressly provided), including: (i) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice), including the Patents; (ii) trademarks, service marks, trade dress, trade names, corporate names, logos, slogans and Internet domain names, together with all goodwill associated with each of the foregoing; (iii) copyrights and copyrightable works; (iv) trade secrets, confidential information and know-how (including ideas, formulae, compositions, manufacturing and production processes and techniques, research and development information, test data and results, drawings, specifications, designs, supplier lists and related information); and (vi) registrations, applications, divisionals, continuations, continuations-in-part, foreign counterparts and renewals for any of the foregoing.

     “Interim Period” means the period which begins on the Effective Date and ends twelve (12) months following the date that the Demonstration Plant has been successfully commissioned and is ready for commercial operation; provided, however, that if the Demonstration Plant passes the performance test that is agreed to by Konvert and Coomer (all as further provided for in Section 2.2(c) of the Coomer License Agreement) more than thirty (30) days prior to the scheduled end of the Interim Period, the Interim Period shall terminate thirty (30) days following the date that the Demonstration Plant has passed

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such performance test, Licensor to provide a notice to such effect to Turnaround in writing; provided further, however, that the Interim Period shall in no event be longer than two (2) years.

     “KMX 790” means the system of components, including all of the structural steel, piping, pumps, vessels, control systems, wiring, two proprietary “mixing turbine pumps” and the operations, maintenance and start-up manuals provided by Konvert, to convert hydrocarbon feedstock, including any Feedstock, into diesel oil using the Technology which is capable of producing a minimum of 790 liters of diesel oil per hour.

     “Licensor” has the meaning set forth in the first paragraph hereof and includes its successors and permitted assigns.

     “Parties” means Licensor and Turnaround .

     “Party” means Licensor or Turnaround , as the case may be.

     “Patents” means any existing or future patent applications, patents, registrations, utility models and utility model applications relating to the Technology which are necessary or useful to manufacture or to sell, offer for sale, use or otherwise make available Systems or the components of Systems, including those set forth in Exhibit 2 attached hereto.

     “Person” means any natural person, corporation, company, partnership, business trust, governmental authority or other entity.

     “Purchase Order” has the meaning set forth in Section 2.5.

     “Purchaser” has the meaning set forth in Section 2.5.

     “Qualified Right” means that the Person being granted the right(s) described herein shall be entitled to exercise such right(s) so long as this Agreement is in effect, but the grantor of such right(s) shall be entitled to grant such right(s) or allow such right(s) to be exercised by all other Persons except a Person that is precluded from exercising such right(s) under the express terms hereof.

     “Radial Biomass” means biomass, including wood, wood waste and other types of cellulosic materials which are collected within or from an area within a 100 mile radius of any biomass facility owned by Coomer or an Affiliate of Coomer in the states of California or New York as of the Effective Date.

     “Rights Agreements” means (i) the “Terms of Agreement” dated May 2, 2007, (ii) the “Shareholders’ Agreement” dated July 10, 2007 and (iii) the Articles of Association of Licensor dated November 14, 2007 and November 22, 2007, a copy of each of which is attached hereto in Exhibit 2.

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     “System” means any system of components, whether it is in existence today or developed hereafter, including all of the structural steel, piping, pumps, vessels, control systems, wiring, the proprietary “mixing turbine pump(s),” any new components of any future system of components and all of the operations, maintenance and start-up manuals provided by Konvert, to convert hydrocarbon feedstock, including any Feedstock, into diesel oil using the Technology, including, for the avoidance of doubt, the KMX 790.

     “Technology” means the proprietary, renewable diesel technology developed by Dr. Walter Schreiber (as well as any related technology licensed to Dr. Walter Schreiber or to Konvert) to convert municipal solid waste, organic materials, sludge and other hydrocarbon materials, including Feedstock, to diesel oil, including all Improvements to such technology made or acquired from time to time, including Intellectual Property, Systems, the formulation of catalysts used in Systems and all related materials and information.

     “Territory” has the meaning set forth in Section 2.1.

     “Third Party Purchaser” has the meaning set forth in Section 2.5.

Section 1.2 Interpretation. In this Agreement, unless otherwise indicated or required by the context:

     (a) Reference to and the definition of any document (including this Agreement) or any applicable law shall be deemed a reference to such document or applicable law as it may be amended, supplemented, revised or modified from time to time;

     (b) All references to an “Article,” “Section” or “Exhibit” are to an Article or Section hereof or to an Exhibit attached hereto;

     (c) Article and Section headings and other captions are for the purpose of reference only and do not limit or affect the meaning of the terms and provisions hereof;

     (d) Defined terms in the singular include the plural and vice versa, and the masculine, feminine and neuter gender include all genders;

     (e) The words “hereof,” “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement; and

     (f) The words “include,” “includes” and “including” mean include, includes, and including “without limitation” and “without limitation by specification.”

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**ARTICLE 2 – LICENSE RIGHTS**

Section 2.1 Grant of License Rights. Subject to the terms of this Agreement, Licensor hereby grants Turnaround the Full Right in the Territory to market and sell Systems and utilize the Technology. As of the Effective Date, the territory (the “Territory”) shall be the states of California, New York and Texas, it being agreed that Licensor shall not grant any Person the right to sell Systems in New Jersey or Florida before the date by which Turnaround must satisfy the requirement set forth in clause (ii) of the first sentence of Section 2.1(b) . For the avoidance of doubt, Turnaround shall be entitled to exercise any or all of the license rights that are granted to it in the Technology itself or through any of its Affiliates, but Turnaround shall not have the right to issue sublicenses to any Person other than an Affiliate. The Parties further agree as follows:

     (a) Notwithstanding anything that is contained herein to the contrary, Turnaround shall be credited for the sale of all of the Systems sold to Coomer during the term of this Agreement regardless of whether such Systems are for use inside or outside the Territory.

     (b) Turnaround shall be required to secure or to help Licensor or Garamond to secure (i) an order for one KMX 790 prior to the end of the Interim Period (it being agreed that the Purchase Order being placed by Coomer for the Demonstration Plant satisfies this requirement) and (ii) orders for an additional two KMX 790s prior to the end of the Initial Period. If Turnaround fails to secure or help Licensor or Garamond to secure orders for a total of three KMX 790s prior to the end of the Initial Period, Licensor shall have the right, in its sole and absolute discretion, to notify Turnaround that it must give up its Full Rights for one (1) of the states in the Territory (such state to be selected by Turnaround ). If Turnaround meets the two (2) requirements set forth in this Section 2.1(b), the Territory thereafter shall be the states of California, New York, Texas, New Jersey and Florida. The phrases “secure orders” as used herein mean that a Person has executed a Purchase Order for one or more KMX 790s and made the initial deposit thereunder.

     (c) Licensor acknowledges and agrees that the ability of Turnaround to meet the requirements set forth in this Section 2.1 will depend, in part, on the initial three KMX 790s installed in the United States (including the Demonstration Plant) demonstrating the technical and financial viability of the Technology. Notwithstanding anything contained herein to the contrary, (i) if there is any delay in the installation of any of the initial three (3) KMX 790s in the United States, including the Demonstration Plant (with such KMX 790s meeting all performance guarantees), beyond the date committed by Konvert in the applicable Purchase Order or (ii) if any such KMX 790s experience operating or financial problems due to a failure of the KMX 790 to operate in accordance with its performance guarantees, then all of the time periods set forth in this Section 2.1 shall be extended automatically for the full period of all such delays for all purposes hereof.

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     (d) During the Extended Period, Turnaround shall be required to secure orders for: (i) two (2) KMX 790s per year for each of the first two (2) full calendar years of the Extended Period; (ii) five (5) KMX 790s per year for each of the next two (2) calendar years of the Extended Period; and (iii) ten (10) KMX 790s per year for each calendar year thereafter, each such determination to be made on a cumulative basis (such that Turnaround shall be entitled to credit additional KMX 790s sold in one year above the minimum requirement for that year to a later year). If Turnaround fails to meet any such targets in any calendar year during the Extended Period, Licensor shall have the right, in its sole discretion, to notify Turnaround that it shall only have a Qualified Right in all of the states in the Territory to market and sell Systems and utilize the Technology for the remainder of the term of this Agreement. Licensor agrees that all Systems sold by Licensor outside the Territory that are pursuant to a referral made by Turnaround shall count towards Turnaround ’s minimum purchase requirements hereunder. However, none of the Systems purchased by Coomer or an Affiliate of Coomer for its own account during the Extended Period shall count towards meeting Turnaround ’s minimum purchase requirements unless the sale of Systems is to a project developed by Turnaround or an Affiliate of Turnaround in which Coomer is an investor.

     (e) For purpose of meeting any of the minimum order thresholds for KMX 790s which are set forth in this Section 2.1, if a System is developed by Konvert (such as the “KDV 2000” which is currently under development by Konvert) that is capable of producing a higher amount of diesel oil per hour than a KMX 790 (expected to be 2,000 liters per hour in the case of a “KDV 2000” as compared to 500 liters per hour for a KMX 790), then such System will count as more than one KMX 790 based on the amount of diesel oil per hour capable of being provided (expected to be four KMX 790s in the case of a “KDV 2000”).

     (f) Notwithstanding anything contained herein to the contrary, Turnaround shall not lose its Full Rights in any state in the Territory if it fails to meet the cumulative order requirements in Section 2.1(b) or (d) if (i) Konvert is not able to produce enough Systems to meet the Purchase Orders secured by Turnaround , Licensor and Garamond or (ii) any problems experienced with the Technology in the Systems installed by Konvert make it commercially unreasonable for Turnaround to secure orders for any additional Systems until such problems have been resolved, in which case the Parties shall agree to an equitable adjustment, in good faith, to the cumulative requirements provisions of Sections 2.1(b) and (d) or extend the date for such requirements to be performed.

     (g) If Turnaround fails to meet its performance obligations under this Section 2.1 and Licensor elects to require Turnaround to give up its Full Rights in one or more of the states in the Territory as further provided for herein, Turnaround ’s sole penalty will be for its rights in such state(s) to become a Qualified Right to market and sell the Technology for the remainder of the term of this Agreement.

Section 2.2 Obligation to Make Referrals. If any Person contacts Licensor or any of its Affiliates regarding the purchase of one or more Systems for installation in the Territory, Licensor shall refer such Person to Turnaround .

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Section 2.3 Sales to Coomer Energy. The sale of all Systems to Coomer or to any of its Affiliates, including the Demonstration Plant, shall be pursuant to Purchase Orders placed with Konvert through Licensor, and Turnaround shall derive a license fee on all such sales. Licensor shall mark up the cost of all of the Systems that are sold to Coomer or any of its Affiliates (other than the System for the Demonstration Plant) by ten percent (10%) and pay fifty percent (50%) of such amount to Turnaround as its commission. Such commissions shall be paid to Turnaround as the payments that are due from Coomer or its Affiliates are received under the applicable Purchase Order.

Section 2.4 Commission on Sales to Other Customers. Turnaround shall be entitled to a commission of five percent (5%) on all Systems that are sold in the Territory. If Turnaround identifies a Customer that is interested in purchasing one or more Systems in an area that is outside the Territory, Turnaround shall refer such Customer to Licensor and, if such sale is completed (the decision to complete such sale to be made by Licensor in its sole discretion), Turnaround shall be entitled to a commission of five percent (5%) on such sale. Licensor shall mark up the cost of all of the Systems on which Turnaround is entitled to a commission by ten percent (10%) and pay fifty percent (50%) of such amount to Turnaround as its commission. Commissions shall be paid to Turnaround as the payments that are due under the applicable Purchase Orders are received. For the avoidance of doubt, in connection with Customers that are identified by Turnaround outside of the Territory, Licensor shall be obligated to pay the commission to Turnaround if the System is sold within two (2) years after the Customer is identified to Licensor by Turnaround .

Section 2.5 Purchase Orders. All purchase orders for System(s) (“Purchase Orders”) shall be entered into by and between Konvert (or its designee) and the ultimate purchaser of such System(s) (the “Purchaser”), although all Purchase Orders shall be placed through Licensor and provide for the payment of a sales commission to Licensor (except for the Systems sold for the Demonstration Plant). Each Purchase Order shall include a set of representations and warranties made by Konvert to the Purchaser which are consistent with those provided by Licensor to Turnaround in Article 8 and a non-exclusive, irrevocable and perpetual license (a “Use License”) for the Purchaser to (i) use, practice, operate, maintain, repair and make Improvements to the System(s), (ii) purchase the catalyst that is required for the operation of the System(s) from Konvert and/or any Person that is authorized to manufacture and/or sell such catalyst by Konvert, (iii) purchase components and spare parts for the System(s) from Konvert and/or any Person that is authorized to manufacture and/or to sell such components and spare parts and (iv) reproduce, modify and internally distribute copies of any and all materials and information received by Turnaround from Licensor and/or Konvert relating to the System(s), in whole or in part. In addition, if the Purchaser sells or transfers any of the System(s) to any Person (a “Third Party Purchaser”), the Purchaser shall be entitled to transfer its Use License to such Third Party Purchaser and each Third Party Purchaser shall be entitled to transfer such Use License to another Third Party Purchaser. Notwithstanding anything to the contrary contained or implied in clauses (ii) or (iii) of this Section 2.5, all Purchasers and all Third Party Purchasers shall be entitled to procure components, spare parts and catalysts that

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are commercially available from any Person. Further, if Konvert and the Persons authorized to make spare parts and components that are not commercially available are unable to timely supply the spare parts and components ordered by a Purchaser or a Third Party Purchaser, such Purchaser or Third Party Purchaser shall be authorized to purchase such spare parts and components from any other Person and to make such spare parts and components itself.

**ARTICLE 3 – ANNUAL PRICING; NO ROYALTIES**

Section 3.1 Annual Pricing. Licensor, Turnaround and Konvert shall agree on a procedure to establish the price, at the end of each November, for the following year, of (i) Systems, (ii) the catalyst that is used with the Technology, (iii) replacement/spare parts for Systems and (iv) the cost for Konvert or Licensor to provide services on Systems or other engineering services in order to (a) ensure that such prices are not increased inappropriately from year to year and (b) to provide price certainty to Turnaround for the upcoming year in connection with its sales and marketing efforts. The Parties are aware that the current price of a KMX 790 includes a technology fee of [\*\*\*\*\*] and acknowledge that the minimum technology fee to Konvert from the sale of a System in the future, as arrangements are put in place by Konvert to broaden the manufacturing base and reduce the total cost of the Systems will include a technology fee not to exceed [\*\*\*\*\*]. Licensor, Turnaround and Konvert shall use their best efforts to negotiate in good faith and agree as soon as practicable to the terms of such procedure and any other mechanisms that may be necessary or helpful to determine the pricing for the Systems or any other items. Licensor shall provide Turnaround , prior to the end of each November, with the updated pricing for the following year. Licensor further agrees (and Konvert, by its execution of this Agreement in the space provided below, agrees) that Turnaround ’s Customers will not be charged more during any year for a System than the lowest price that is paid by any other licensee of Licensor or customer of Konvert for a comparable System in such year in the United States.

Section 3.2 No Royalties. Neither Turnaround (or its Affiliates) nor any Purchasers or Third Party Purchasers shall be required to pay royalties to Licensor, Konvert, Garamond or any other Person in connection with the exercise by Turnaround or its Affiliates of any of the license rights in the Technology granted under this Agreement.

**ARTICLE 4 – CERTAIN OBLIGATIONS OF THE PARTIES**

Section 4.1 Supply of Information. Licensor shall supply Turnaround from time to time with all information relating to the installation and operation of Systems reasonably required or requested by Turnaround . Further, Licensor and/or Konvert shall provide Turnaround with any revised or updated installation or operating manuals or bulletins as soon as such materials are completed and available for distribution.

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Section 4.2 Provision of Technical Assistance. Notwithstanding Section 4.1, Licensor shall not have any obligation to provide any engineering services or technical assistance regarding the Technology or the Systems under this Agreement. Any such services and assistance may be provided under other agreements with Licensor or with Konvert.

Section 4.3 Acknowledgment and Agreement. Licensor shall arrange for Dr. Walter Schreiber to execute this Agreement in the space that is provided below, on behalf of himself and in his capacity as the President of Konvert, to evidence (i) their acknowledgement that they have reviewed this Agreement and agree to any obligations on their parts, (ii) their consent to the terms of this Agreement and (iii) their agreement for Konvert to enter into a substantially similar form of license agreement with Turnaround if the rights of Licensor pursuant to or as contemplated by the Rights Agreements are not supplemented to the extent necessary to enable Licensor to grant all of the rights being granted to Turnaround hereunder or if any such rights granted to Licensor are terminated for any reason, such new license agreement to preserve Turnaround ’s Full Rights and/or Qualified Rights in the Territory.

**ARTICLE 5 – EFFECTIVE DATE AND TERM**

Section 5.1 Effective Date. This Agreement shall become effective on the date that it has been signed by both of the Parties and by Dr. Walter Schreiber (the “Effective Date”).

Section 5.2 Term of the Agreement. This Agreement shall continue in effect from the Effective Date until July 1, 2028 unless it is terminated earlier by the provisions hereof or by either Party in accordance with its rights hereunder.

**ARTICLE 6 – INTELLECTUAL PROPERTY**

Section 6.1 No Transfer of Ownership of the Technology. The Parties agree that this Agreement shall not transfer the ownership of the Technology or any of the Intellectual Property therein, and that Turnaround will not have any right, title or interest in or to the Technology, except as expressly licensed to Turnaround pursuant to this Agreement or any separate agreement.

Section 6.2 Improvements. All Improvements conceived, developed or acquired by Konvert or Licensor during the term hereof shall be included under the license rights granted herein. All such Improvements conceived, developed or acquired exclusively by Konvert or Licensor shall remain the property of Konvert or Licensor, respectively.

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**ARTICLE 7 – INFRINGEMENT AND DESIGNATIONS**

Section 7.1 Notice of Infringements. During the term hereof, Licensor and Turnaround shall promptly notify each other in writing with respect to any claim of infringement of any Patent or other right asserted against it by any Person arising out of the exercise of the rights being granted hereunder.

Section 7.2 Indemnity for Infringement or Misappropriation. Licensor shall indemnify and hold harmless Turnaround , its Affiliates, any Purchasers and Third Party Purchasers (collectively, the “Indemnified Parties”) from any and all claims of infringement or misappropriation and attendant damages and costs by virtue of the exercise of the rights granted to an Indemnified Party hereunder or under any Purchase Order. To secure the indemnity provided for in this Section 7.2, the Indemnified Party shall: (i) provide notice to Licensor of the claim giving rise to the liability as soon as reasonably practicable after receiving a notice of the claim, it being agreed that any delay in providing such notice to Licensor shall not relieve Licensor of its indemnity obligations except to the extent it was prejudiced by such delay; and (ii) use reasonable business efforts to cooperate fully with Licensor in defending the claim; provided, however, that Licensor shall not enter into any settlement or compromise creating any payment obligation, admission or other obligation on the part of any Indemnified Party without such Indemnified Party’s prior written consent. The Indemnified Parties shall permit Licensor to defend and compromise such claim, but each Indemnified Party may employ its own counsel, at its own expense, to assist Licensor with respect to any such claim. Notwithstanding the foregoing, the Indemnified Parties shall not be entitled to indemnification hereunder if the infringement is due to the Indemnified Party or its Affiliates: (i) using the System in violation of the express written operating instructions that are provided by Konvert if the subject claim would have been avoided but for such unauthorized use; or (ii) modifying the System in a manner which is not authorized by Licensor which actually causes such infringement if the subject claim would have been avoided but for such modification.

Section 7.3 Use of Designations. If requested by Licensor in writing, Turnaround shall, in accordance with the written instructions of Licensor, provide for any System or any part of the Technology, legible statutory notice of any Patent, the existence of the license herein granted and the identity of Licensor and/or Konvert. Notwithstanding anything contained herein to the contrary, no rights are being granted by either Party to the other regarding their respective trade names or trademarks.

Section 7.4 Limitation of Liability. The Parties expressly waive any claims against each other and their respective Affiliates for indirect, special, non-compensatory, incidental, punitive, exemplary or consequential damages of any type, whether arising in contract or tort (including negligence, whether sole, joint or concurrent or strict liability), arising out of or relating to this Agreement or a breach hereof; provided, however, that this provision shall not waive any claims that the Parties may have under any other agreements entered into between the Parties. The limitations on liability and the remedies set forth in this Agreement have been expressly bargained for by the Parties and reflect the knowing allocation of the risks inherent in this Agreement between the Parties.

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**ARTICLE 8 – REPRESENTATIONS AND WARRANTIES**

Section 8.1 Party Representations. As of the Effective Date, each Party represents and warrants to the other Party that:

     (a) It is duly organized and validly existing and, where applicable, is in good standing under the laws of the jurisdiction of its formation and it has all requisite power and authority to enter into and perform its obligations under this Agreement;

     (b) The execution, delivery and performance of this Agreement have been authorized and approved by its Board of Directors or Managers, as the case may be, and do not and will not (i) violate any law, rule, regulation, order, decree or permit which is applicable to it or (ii) violate its organizational documents or any agreement to which it is a party;

     (c) This Agreement is a legal and binding obligation of such Party, enforceable against such Party in accordance with its terms, except to the extent enforceability is modified by bankruptcy, reorganization and other similar laws affecting the rights of creditors generally and by general principles of equity; and

     (d) There is no litigation pending or, to the best of its knowledge, threatened to which such Party, its parent or any of its subsidiaries is a party that, if adversely determined, would have a material adverse effect on the financial condition, prospects or business of such Party or its ability to perform its obligations under this Agreement.

Section 8.2 Licensor Representations Regarding the Technology. As of the Effective Date, Licensor represents and warrants to Turnaround , its Affiliates and each Purchaser and Third Party Purchaser that:

     (a) A list of all relevant Patents as of the Effective Date is set forth in Exhibit 3 attached hereto and all such Patents are current and valid as of the Effective Date with any and all required fees to maintain the same having been paid;

     (b) Licensor has licensed or otherwise has or otherwise will secure the rights in and to the existing and future Technology, including Intellectual Property, necessary for Licensor to grant to Turnaround the rights being granted in this Agreement, and there are no rights, options or other contractual obligations on the part of Konvert, Dr. Walter Schreiber of any other Person that would result in such Technology, including Intellectual Property, no longer being owned by or licensed to Konvert or licensed by Licensor, and Konvert shall maintain, prosecute and defend (or cause any other Person that owns any Patents to maintain, prosecute and defend) all Patents and pay all fees in connection therewith;

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     (c) The Technology, including Intellectual Property, does not use or include or rely on any third party intellectual property and no third party owns any rights, including intellectual property rights, necessary to Turnaround ’s exercise of any of its rights under this Agreement that have not been licensed to Konvert;

     (d) Except for any rights granted to Coomer or Garamond, no rights have been provided to, or authorized for, any Person to exercise any rights in, the Technology, including the Intellectual Property, which are inconsistent with the rights granted to Turnaround hereunder;

     (e) The Technology as currently used by Konvert and as planned to be used by Licensor and Turnaround in accordance with the terms of this Agreement, does not infringe, misappropriate or otherwise violate any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any Person, and Konvert and/or Licensor have not received, and to its knowledge does not know of any facts that could give rise to, any charge, complaint, claim, demand, notice or other communication (i) alleging any such infringement, misappropriation or other violation, (ii) requesting that Konvert and/or Licensor take a license from any Person or (iii) challenging the validity or enforceability of the Intellectual Property. Konvert and/or Licensor has no knowledge of any current or threatened infringement, misappropriation or other violation by any Person of the Intellectual Property, and Konvert and/or Licensor has not, and has no knowledge of any facts that would require that there be, sent or otherwise communicated to any Person any charge, complaint, claim, demand or notice asserting infringement, misappropriation or other violation of any of any such Intellectual Property; and

     (f) Licensor has provided Turnaround with a true and correct copy of the Rights Agreements and there has not been any amendment to the Rights Agreements since they were executed. Licensor shall provide Turnaround with a true and correct copy of any amendments made to the Rights Agreements during the term hereof and a copy of any additional agreements entered into by Licensor with Konvert or Dr. Walter Schreiber regarding the rights of Licensor with respect to the Technology. Licensor shall provide Turnaround with a copy of any default notice or any similar communications received by Licensor from Konvert during the term hereof and provide Turnaround with updates from time to time regarding the resolution of any such termination notice. Licensor shall not agree to or make any amendment to any of the Rights Agreements or enter into any other agreements regarding its rights to the Technology that would reduce or affect any of Turnaround ’s rights under this Agreement.

**ARTICLE 9 – RESOLUTION OF DISPUTES**

Section 9.1 Dispute Resolution. The Parties agree to cooperate with each other in good faith to try to resolve any controversy or dispute between them arising under this Agreement (each a “Dispute”) in accordance with the following procedures:

     (a) If a Dispute cannot be resolved informally, such Dispute shall initially be referred, through written notice by one Party to the other Party, to a meeting of senior

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management representatives of the Parties. The senior management representatives will meet to resolve the Dispute within fifteen (15) days following presentation of the matter to them.

     (b) If the Dispute cannot be resolved pursuant to Section 9.1(a), the Chief Executive Officers of the Parties shall meet to resolve the Dispute within fifteen (15) days following the conclusion of the consideration of the Dispute under Section 9.1(a) .

     (c) If the matter is not resolved within thirty (30) days of the written notice in Section 9.1(a), either Party may submit the Dispute to arbitration by submitting a Request for Arbitration pursuant to Article 4 of the Rules of Arbitration of the ICC or such equivalent arbitration rules of the ICC then in effect (the “ICC Rules”), provided that nothing in this Agreement shall prevent or delay either Party from applying for interim or conservatory measures pursuant to Article 23 of the ICC Rules.

Section 9.2 Arbitration of Unresolved Disputes.

     (a) All Disputes arising out of or in connection with this Agreement that are not resolved in accordance with the provisions of Section 9.1 shall be finally settled under the ICC Rules by binding arbitration conducted in the English language and held in London, England before a panel of three (3) arbitrators. Notwithstanding anything to the contrary in the ICC Rules, the following procedures shall apply for the appointment of the three (3) arbitrators. Each Party shall appoint one (1) arbitrator, obtain its appointee’s acceptance of such appointment and deliver written notification of such appointment and acceptance to the other Party within thirty (30) days from the date that the Dispute was submitted to arbitration. If a Party fails to deliver written notification of its appointment of an arbitrator and his/her acceptance within the time period provided in this Section 9.2, then such arbitrator shall be appointed by the ICC in accordance with the ICC Rules and be deemed a Party-appointed arbitrator for all purposes hereof. The first two arbitrators so selected shall select the third arbitrator (who shall act as chairman of the arbitration proceedings), prior to the thirtieth (30th) day following the appointment of the second Party-appointed arbitrator. If the Party-appointed arbitrators are unable to select a neutral arbitrator, they shall jointly submit a list of four names (two each) to the ICC, which shall select the third arbitrator from the list submitted to it.

     (b) No arbitrator shall be a past or present employee or agent of, or consultant or counsel to, a Party or any Affiliate of a Party, unless such restriction has been waived in writing by the other Party to the proceeding.

     (c) The substantive law governing the Dispute shall be the laws of the State of New York.

     (d) The arbitrators shall have the sole power and authority to determine the arbitrability of any Dispute arising under or relating to this Agreement or the subject matter hereof. Subject to any other relevant limitations set forth elsewhere herein, the arbitrators will have the power to award any type of relief that is just and appropriate in

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the arbitrators’ discretion, including compensatory damages, injunctive orders, orders for specific performances and declarations of rights.

     (e) The arbitrators shall not have power, however, to award punitive, consequential, exemplary or treble damages or any other type of relief in the nature of a penalty, and the Parties hereby expressly waive any right they might otherwise have to such relief. THE PARTIES HEREBY WAIVE ALL RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT.

Section 9.3 Finality; Enforcement. Any decision or award of a majority of an arbitral panel, as applicable, shall be final and binding upon the Parties. Each Party agrees that the arbitral award may be enforced against it or its assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof. The Parties hereby waive any right to appeal or to review of the decision or the award of an arbitral panel by any court or tribunal and also waive any objections to the enforcement of such decision or award.

Section 9.4 Costs. The costs of arbitration shall be paid in accordance with the decision of the arbitral panel pursuant to the ICC Rules.

Section 9.5 Continuing Performance Obligations. The existence of any Dispute or the pendency of the Dispute resolution procedures set forth herein will not relieve or excuse a Party from its ongoing duties and obligations under this Agreement, and the Parties shall nevertheless proceed with the performance of this Agreement in accordance with the terms hereof.

**ARTICLE 10 – TERMINATION**

Section 10.1 Termination Rights. This Agreement may be terminated by either Party in the case of the failure of the other Party to fulfill any of its material obligations hereunder (a “Default”) on ninety (90) days’ prior written notice to the Party in Default, such notice to specify the performance failure of such Party.

Section 10.2 Cure Rights. Notwithstanding anything contained herein to the contrary, a Party that is in Default shall be entitled to cure such Default by satisfying its performance obligation prior to the end of such ninety (90) day period. Furthermore, if such Party is diligently proceeding to cure such Default but such cure cannot be accomplished within such ninety (90) day period, the Party in Default shall be given up to an additional sixty (60) days to cure the Default so long as such Party continues to diligently pursue curing the Default. If the Default is cured by the Party that is in Default prior to the end of the cure period, then the notice of termination shall be null and void. If a Party fails to cure a Default, then this Agreement shall terminate on the date set forth in the notice of Default, but in no event prior to ninety (90) days following the issuance of such notice of Default.

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Section 10.3 Right to Retain the License. Notwithstanding anything contained herein to the contrary, if Licensor is in Default for a failure to perform any material obligation hereunder, Turnaround shall retain all the license rights and other rights granted to Turnaround hereunder, without any obligation to purchase any System through Licensor. In such case, Turnaround shall place all Purchase Orders through Konvert.

Section 10.4 Termination by Licensor. If Licensor terminates this Agreement based on a failure of Turnaround to fulfill any of its material obligations hereunder, Turnaround shall not be relieved of the limitations and restrictions imposed by this Agreement upon the use or dissemination of the Technology and/or the Systems which is not at such time in the public domain; and that for installed Systems, Turnaround shall retain all the license rights and other rights granted to Turnaround hereunder.

**ARTICLE 11 – GENERAL PROVISIONS**

Section 11.1 Expenses. Except as is otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement.

Section 11.2 Confidentiality. The Parties agree to maintain the confidentiality of this Agreement and the terms and conditions hereof. Any public announcements or similar publicity with respect to this Agreement shall be issued at such time and in such manner as the parties shall jointly determine. Notwithstanding the foregoing, each Party (and its Affiliates) shall have the right to make all such disclosures as required by applicable law or by any governmental body, including any stock exchange or securities market to whose regulations or disclosure requirements a Party is subject, without the consent of the other Party hereto; provided, however, that in the event of any such required disclosure, the disclosing Party (and its Affiliates), to the extent reasonably practicable, shall provide the other Party with advance notice of any such disclosure and an opportunity to comment thereon. The parties acknowledge that it is their intent to limit, to the fullest extent possible, any publicity regarding their joint cooperation during the Interim Period, it being recognized, however, that Turnaround will need to contact public officials in connection with securing permits or other approvals for the Demonstration Plant. In such regard, Turnaround will undertake to obtain assurances of confidentiality from such public officials, but disclosures may nevertheless result.

Section 11.3 Notices. All notices, consents, waivers and other communications under this Agreement must be in writing and will be deemed to have been duly given when (i) delivered by hand (with written confirmation of receipt), (ii) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (iii) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Execution Copy

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Licensor:

Konvert Garamond Energy GmbH  
[…], Germany  
Attention: Chief Executive Officer  
Facsimile: +

Turnaround :

[…] CA 91105, USA  
Attention:   
Facsimile: +1-815-361-9052

Section 11.4 Waiver. Neither the failure nor any delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing signed by the other Party, (ii) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given and (iii) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

Section 11.5 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the Party to be charged with the amendment.

Section 11.6 Assignment. Neither Party may assign its rights under this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that each Party may make an assignment of this Agreement to an Affiliate (so long as such Party remains liable for its obligations hereunder following such assignment) and each Party may make a collateral assignment of its rights hereunder to one or more lender(s) in connection with the financing being arranged by such Party. In the case of a collateral assignment by one Party to one or more lenders, the other Party shall, if requested to so, negotiate the terms of a consent to assignment in good faith and enter into such consent without delay. Notwithstanding the foregoing, Licensor may withhold its consent in the case of a proposed assignment to any Person that is a Competitor of Licensor.

Execution Copy

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Section 11.7 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid, illegal or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid, illegal or unenforceable.

Section 11.8 Governing Law. This Agreement will be governed by, and construed in accordance with the laws of, the State of New York without regard to its conflicts of law (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

Section 11.9 No Power of Representation. Neither Party shall have the authority or right under this Agreement to, nor shall either Party hold itself out as having the authority or right under this Agreement to, (i) assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party without the express prior written consent of such other Party or (ii) accept service of any legal process addressed to or intended for such other Party.

Section 11.10 No Partnership. Nothing in this Agreement shall be construed as creating a partnership, association, joint venture or any other legal entity between the Parties (including their Affiliates), nor a fiduciary relationship between the Parties (including their Affiliates).

Section 11.11 No Third Party Beneficiaries. No provision of this Agreement is intended or is to be construed to confer upon any Person, other than the Parties and their respective Affiliates and successors and permitted assigns, any rights or remedies under or by reason of this Agreement, except for all Purchasers and Third Party Purchasers to the extent provided for in Section 2.5.

Section 11.12 Counterparts and Facsimile Signatures. This Agreement, and any other agreement, instrument, certificate of other documents desirable to be executed and delivered in order to consummate the Contemplated Transactions, may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Any such document may be executed by facsimile signature. The signatures below of Turnaround and Licensor also serve to state their agreement and position as parties to the “Acknowledgement and Agreement” which is being signed below by Dr. Walter Schreiber and Konvert.

[Signature page follows]

Execution Copy

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     IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

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| --- | --- | --- |
|  | **KONVER ENERGY GMBH** | |
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|  |  |  |
|  | By: | /s/ Jacob Goldshmid |
|  |  | Jacob Goldshmid, Chief Executive Officer |
|  |  | Date: February 6, 2008 |
|  |  |  |
|  |  |  |
|  |  | **Turnaround** |
|  |  | **, LLC** |
|  |  |  |
|  |  |  |
|  |  |  |
|  | By: | /s/ Richard Baler |
|  |  | Richard Baler, Chief Executive Officer |
|  |  | Date: February 6, 2008 |

**Acknowledgment and Agreement:**

Dr. Walter Schreiber, in his capacity as President of Konvert and his individual capacity hereby, as signed below, acknowledges he has reviewed this License Agreement in its entirety and agrees to all of the terms hereof and confirms that the representations and warranties that are made in Section 8.2 are true and correct.

Konvert owns or has sufficient rights, and has granted Licensor sufficient rights, to allow Coomer to exercise the rights granted under the License Agreement. If for any reason the rights granted to Coomer by Licensor are not sufficient to allow Coomer to exercise its rights under the License Agreement, Dr. Walter Schreiber or Konvert shall convey or cause to be conveyed any and all further rights needed by Konvert or Licensor to permit Coomer to exercise such rights under the License Agreement. If the rights granted or to be granted to Licensor are terminated for any reason or if Licensor ceases to exist, Konvert shall enter into a substantially similar form of license agreement with Turnaround , such new license agreement to preserve the Full Rights and/or the Qualified Rights granted to Turnaround in the Territory. Dr. Walter Schreiber agrees that he will cause Konvert to perform its obligations hereunder.

All capitalized terms herein have the meanings given in the License Agreement.

By: /s/ Dr. Walter Schreiber  
       Dr. Walter Schreiber  
       Date: February 6, 2008

Execution Copy

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**EXHIBIT 1 – COVANTA LICENSE AGREEMENT**

[filed as Exhibit 10.2 to this Form 8-K/A]

Execution Copy

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**EXHIBIT 2 – RIGHTS AGREEMENTS**

Terms of Agreement dated May 2, 2007  
Shareholders’ Agreement dated July 10, 2007  
Articles of Association of Licensee dated November 14, 2007 and November 22, 2007

Execution Copy

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| May 2, 2007 |
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| Terms of agreement between: |
| Garamond Energy Inc (GE) public company on NASDAQ OTCBB, |
| […] Israel |
|  |
| And |
| […] |
| KONVERT GMBH (Konvert) |
|  |
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| --- | --- | --- |
| 1. | KONVERT GMBH (Konvert) Technology | Konvert and its principle Dr. Walter Schreiber developed owned and registered patents for technology to convert different types of Municipal solid Waste (MSW), organic materials, refinery sludge etc. into mineral diesel oil. The technology incorporates KDV plant and low temperature vacuum process including special patented catalyst and high speed turbine to distillate organics into diesel, all together the "technology" KDV500 has turbine of 2X200 KW, KDV5000 has turbine of 2X2000 KW |
| 2. | Konvert demonstration plants | Konvert has built five plants to demonstrate its technology in the following countries: Mexico, Canada, Spain, Bulgaria and Italy. The plants KDV500 in Spain, Canada and Bulgaria are in a phase of final commission, GE has started due diligence and visited the KDV500 in Bulgaria, GE also discussed with the principals of the Canadian operation to learn more about the KDV500 in the state of Toronto town Berrie, Canada. |
| 3. | GE and Konvert cooperation | Both companies GE and Konvert are looking to find a framework to cooperate in developing the technology, the potential market, and establish long term relationship to bring the technology to its utmost potential. |
| 4. | GE contributions | GE can assist Konvert in the following fields:           a      Financial support.           b.    Assistance in corporate management, sales and after sales support. This will achieve by new joint marketing and                  Sales Company (M&S) as defined below.           c. Organizer of engineering and plant erection world wide.           d. Manage of Joint Ventures in many countries to produce diesel by utilizing the technology. |
| 5. | Konvert contributions | Konvert and its principle Dr. Walter Schreiber can emphasize its valuable time for: |

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|  |  | a. Continues R&D for perfection of the technology.           b. Continues study to reduce the cost of the KDV units.           c. Leading the R&D program for KMX 7900.           d. Support the team of building and erection of plants.           e. Support field ideas from the Joint Ventures to maximize the technology. |
| 6. | Phase one: Marketing and Sales Company | Konvert and GE will establish a marketing and sales world wide marketing company with equal partnership. The M&S will have exclusive right to sell the technology and plants worldwide. No other company will receive such exclusive rights.  Konvert will continue to sell the technology and plants with other and smaller turbine up to 200 KW and 350 KW directly to any person in the world. It is Konvert's option to give old or new contact for new plant to the joint M&S Company to continue the sales negotiations. Konvert already gave exclusive rights for sales to: Italy, Spain, Portugal, Bulgaria, Mexico and Canada, and in Mexico and Spain for cooperation in mounting plants.            º The end user of M&S Company will pay the cost of the plant directly to Konvert the price includes agreed fee of 10% to the joint M&S Company.           º GE will finance all the M&S Company activity in the world.           º GE will deal with all permits required for erecting and selling the diesel in these countries.           º GE will manage the company and will appoint the personnel to achieve the goals of sales and after sales maintenance for these plants.           º GE will build a finance program to support the end user worldwide and allow them to pay the plant costs to Konvert.           º Konvert will support all technical aspects of the company and the customers.           º Konvert and GE will agree of the company strategy and its annual plans.           º Konvert has the right to vote against a specific decision of a deal.           º The Joint Company will be the only company with such rights.           º The Joint Company will have the exclusive |

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|  |  | right to sell any KDV turbine larger than and 350 KW. |
| 7. | Order of 3 KMX 790 | GE intends to order 3 KDV500 for Poland, USA and Israel. GE intends to start the permitting process for these 3 KDV500 plant. The price of one KDV500 will be 2.5 million Euros if GE will order one unit and 2.4 if GE will order all 3 units together. Payment terms:           º 100,000 Euros for permitting process for all 3 units, Konvert and Dr. Schreiber will support the permitting and EIA process,              if the process will require more hourly work then GE will pay additional hourly rate of 100 Euros for Dr. Schreiber,              80 Euros for senior engineer and 60 Euros for technician.           º Second payment of 1.2 million Euros for ordering of 6 turbines.           º Third payment for each plant of 50% - 400K already paid for the 2 turbines payment when building permit received.           º Fourth payment of 40% at delivery to site.           º Fifth payment of 10% after commission. |
| 8. | Monthly payment | GE directly or through the Joint Company will pay to Dr. Schreiber a salary of 10,000 Euro per month. |
| 9. | Initial Payment | The monthly payment will start subject to: First payment of 10,000 Euro will be only after complete technical "Due Diligence (DD)" which will include: (i) laboratory test of sealed sample of diesel from KMX 790 and (ii) visit continues operation of KDV plants. |
| 10. | Phase two | Konvert and GE want to establish long term cooperation and allow the parties to know each other and achieve mutual trust in the technology and the people involved in the two companies. GE will have the option to invest directly in Konvert. For the money invested by GE in Konvert, GE will get shares of the Company as defined below.           a. GE will pay the actual cost of the KDV2000 and Konvert will keep open books for that purpose GE will also be involved in this process.           b. All the above said investment will consider as full price and payment for the first KDV5000 that GE will order.           c. The investment for order of KDV5000 will be done by 3 equal installments every 6 months starting at the end of the DD period.           d. For the payment of the KDV5000 GE will get |

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|  |  | 10% shares of Konvert.           e. Konvert will show all the information to representative of GE, and GE representative will assist Konvert as much as possible.           f. The phase two is limited to start this year 2007 with the first prepayment for ordering the necessary parts and payments of the first part of 2 million Euros, when the payment is not released this year the agreement about phase two is cancelled. Konvert acknowledges that GE is a public company and has to report to the Stock Exchange Commissioner (SEC) according to the law and Konvert will report accordingly. This investment will subject to full DD that will include:           i. Patent and intellectual properties.           ii. Auditing company's balance sheets for the previous three years, including all bank loans and other obligations.           iii. Full discloser of KMX 790 production           iv. Full discloser of shareholding and shareholding agreements with companies in the countries mentioned in section 2 above.           v. Full discloser of employee and subcontract agreements.            vi. Discloser of all company's registration, article of association, legal aspects, past law sues, etc.           vii. Board resolution. viii. Any other discloser that GE may request to comply with its obligation to SEC.           ix. The money will invest in the company according to agreed milestones of the R&D program and the need of agreed working capital.           x. Konvert will arrange in proper manner all the company's intellectual property, process; know how, drawings and engineering data. This option for second DD period will be up to eight (8) months after the first payment of first phase. |
| 11. | DD period | GE will finalize its first DD period 30 days after the visit to an operational KMX 790 plant. |
| 12. | Final agreement | Upon mutual decision of both sides after the DD period GE and Konvert will work to draft a final agreement for development of KDV5000 GE in Konvert. The final agreement will include but not limited to: New Articles of Association, new Board of Directors, mechanism to achieve decisions, appointing of general |

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|  |  | manager CEO, appointing of CFO, dispute resolutions, etc. |
| 13. | First refusal | Konvert agrees that if Konvert wants to sell part of Konvert shares to third party it will give right of first refusal to GE. |
| 14. | Termination of terms of agreement | the This agreement is canceled automatically if one of the parties does not fulfill the obligations. |

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| By: | /s/ Dr. Walter Schreiber |  | By: | /s/ Mr. Rev Krevetz |
|  | Name: Walter Schreiber |  |  | Name: Rev Krevetz |
|  | Title: CEO KONVERT GMBH |  |  | Title: CEO Garamond Energy |

**July 10, 2007**

**SHAREHOLDERS’ AGREEMENT**

THIS AGREEMENT is effective as of July 10, 2007 by and among **Garamond ENERGY INC.**, a company incorporated under the laws of the State of Nevada (“**GEYI**”), and **KONVERT GMBH**, a company incorporated under the laws of the State of Germany (“**Konvert**”), (each: a “**Party**” and together: the “**Parties**”).

**WHEREAS**, the Parties have incorporated a company in (to be defined later) under the name of KONVERT - Garamond Energy Inc (the “**Company**”), with GEYI to initially hold 50% of the shares and Konvert to initially hold the remaining 50% of the Shares; and

**WHEREAS,**the Parties desire to cooperate in order to promote the business of the Company in accordance with the provisions set forth herein.

**NOW, THEREFORE**, in consideration of the undertakings and the mutual covenants of the Parties hereinafter set forth, it is agreed as follows:

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| **1.** | **SHAREHOLDING IN THE COMPANY** | |
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|  | Each of the parties shall subscribe for the shares of the Company, in consideration for the shares’ par value, and the Company shall issue 50% of the Company's shares to GEYI, and 50% of the Company’s shares to Konvert (each such amount of the shareholding shall hereinafter be referred to as the “**Shares**”). | |
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| **2.** | **MAIN PURPOSE** | |
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|  | The Company’s purpose will be the worldwide marketing and sales of the Technology and the products (as these terms are defined bellow), or any such other activities as the Company may at any time determine, and to engage in any other lawful act or activity (the “**Company’s Business**”). | |
|  |  |  |
|  | For the purpose of this Agreement, the term **"Technology"**shall mean: the technology of KDV to convert waste containing hydrocarbons into mineral diesel oil. And the term "**Products"**shall mean any products ensuing or resulting from the Technology including KDV turbines. | |
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| **3.** | **PLACE OF BUSINESS** | |
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|  | The Company’s principal place of business shall be (TBD), unless determined otherwise by the Company’s Board of Directors. | |
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| **4.** | **TRANSFER RESTRICTIONS** | |
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|  | 4.1 | No Party shall sell, assign, transfer, pledge, hypothecate, mortgage or dispose of, by gift or otherwise, or in any way encumber (any of the above, "**Transfer**"), all or any part of the Shares owned by it (or securities convertible or exercisable therefore), other than in compliance with the terms of this Agreement or other than to a Permitted Transferee. For the purposes of this Agreement, **"Permitted Transferee"**shall mean an entity which is wholly owned or controlled by the Party. A transfer to a Permitted Transferee is only permitted if (i) each such transferee agrees in writing on a form prescribed by the Company |

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|  |  | to be bound by all of the provisions of this Agreement and (ii) any Transfer in interests in a Permitted Transferee shall be subject to all the transfer restrictions in this section and otherwise contained in this Agreement (section 5, 6 and 7) as if interests in such Permitted Transferee were shares in the Company. |
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|  | 4.2 | In no event may either Party Transfer any of their Shares to any person, entity, business or venture that competes with the Company's Business. |
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|  | 4.3 | Notwithstanding the foregoing, neither Party may Transfer any of its Shares during the first five (5) years following incorporation of the Company. |

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| **5**. | **RIGHT OF FIRST OFFER (THE "RIGHT")** | |
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|  | 5.1 | If at any time either Party (the **"Offeror"**) wishes to Transfer any or all of the Shares owned by him/it to a third party (the **"Offered Shares"**), then prior to soliciting an offer from, or making any such offer to, a third party, the Offeror shall first submit a written offer containing all material terms to the other Party (the **"Offer"**) in respect of the Offered Shares. |
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|  | 5.2 | Within sixty (60) days after receipt of the Offer, the other Party shall have the right to give notice to the Offeror of its intent to purchase all (but not less than all) of the Offered Shares on the same terms and conditions as set forth in the Offer. Once delivered, such notice, taken in conjunction with the Offer, shall be deemed to constitute a valid, legally binding and enforceable agreement for the sale and purchase of such Offered Shares to the other Party, and the sale of the Offered Shares to the other Party shall occur within sixty (60) days of receipt of the Offeror's written notice. |
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|  | 5.3 | Should written notice not be received by the Offeror within the sixty day time period referenced above, or if the other Party shall give notice of its election not to acquire such Offered Shares, then the Offer will be deemed to have lapsed, and the Offeror may, for a period of up to ninety (90) days thereafter, offer the Offered Shares to a bona fide third party on terms and conditions, including price, not more favorable to the proposed buyer than those contained in the Offer to the other Party. |
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|  | 5.4 | Any Shares not sold to a bona fide third party within the 90-day period referred to in Section 5.3 shall again be subject to the requirements of this Section 5. |
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|  | 5.5 | In the event that Shares are sold to pursuant to this Section 5, said Shares shall continue to subject to the restrictions imposed by Sections 4, 5, 6 and 7 of this Agreement, and the purchaser of said Shares shall agree in writing to abide by such Sections. |
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| **6.** | **TAG ALONG** | |
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|  | 6.1 | In the event that either Party (the "**Initiating Party**") wishes to Transfer any shares of the Company held by it to a third party, the Initiating Party shall notify the other Party in writing, and the other Party shall have the right to require, as a condition to such Transfer, that the proposed transferee purchase from him/it upon the same terms, that number of shares which constitutes the same portion of the total number of shares held by him/it as the number of shares proposed to be sold by the Initiating Party (the "**Co- Sale Shares**"). |

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|  | 6.2 | The other Shareholder shall have the option, exercisable by written notice to the Offereor, within thirty (30) days after receipt of the notice from the Offeror, to require participation in the sale as referenced in section 6.1 above. |
|  |  |  |
|  | 6.3 | In the event that the other Party exercises its tag along rights hereunder, the Initiating Party must cause the proposed transferee to add such shares to the shares to be purchased by the transferee, as part of the sale agreement to such a degree that all of the Co-Sale Shares are included. |

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| **7.** | **RESERVED** | |
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|  | **8** | **ACKNOWLEDGMENT AND PRE-EMPETION RIGHTS** |
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|  | 8.1 | The Parties acknowledge that their Shares may be diluted as a result of investments and other issuances of shares by the Company. |
|  |  |  |
|  | 8.2 | If at any time prior to an IPO, the Company proposes to issue and sell New Securities, as defined below, the Parties agree that the Company shall enable the Parties to maintain their percentage ownership of the outstanding shares of the Company, as stated below: |
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|  | 8.3 | For the purpose of this Section 8, "**New Securities**" shall mean any capital stock of the Company, whether or not now authorized, and rights, options or warrants to purchase capital stock, and securities of any type whatsoever that are, or may become, convertible into capital stock; provided that the term "New Securities" shall not include (i) shares of the Company issuable upon exercise of outstanding options or warrants; (ii) securities issued pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all the assets of another corporation or any other reorganization; (iii) securities issued to employees, officers, directors and consultants of the Company pursuant to any stock option plan or stock purchases or stock bonus arrangement; (iv) securities issued pursuant to payment of any dividend or distribution with respect to all of the Company's issued and outstanding shares; and (v) securities issued to a strategic investor approved as such by the Board of Directors. |
|  |  |  |
|  | 8.4 | If the Company proposes to issue New Securities, it shall give the Parties written notice (the "**Rights Notice**") of its intention, describing the New Securities, the price, the general terms upon which the Company proposes to issue them and the number of shares that each Party has the right to purchase under this Section 8. Each Party shall have fourteen (14) days from delivery of the Rights Notice to agree to purchase all or any part of its pro-rata share of such New Securities for the price and upon the general terms specified in the Rights Notice, by giving written notice to the Company setting forth the quantity of New Securities to be purchased. The Party's pro rata share shall be the ratio of the number of shares of the Company's Ordinary Shares then held by such Party of the date of the Rights Notice, to the sum of the total number of Ordinary Shares as of such date . |
|  |  |  |
|  | 8.5 | If the Parties fail to accept such offer as to all or part of the New Securities, the Company shall have the right within one hundred and twenty (120) days thereafter to sell or enter into an agreement to sell, the New Securities as to which such offer, or offers, were not accepted; provided, however, that no such sale shall be effected at a price or upon terms more favorable to the purchasers thereof than those specified. In the event the Company has not sold or entered into an agreement to sell such New Securities within such 120-day period, the Company shall not thereafter issue or sell such New Securities without first complying with the procedure set forth in this Section 8. |

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| **9** | **TERMINATION OF RIGHTS** |

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| 9.1 | The rights contained in Sections 4, 5, 6, 7, 8 and 11 shall terminate and be of no further force or effect (i) immediately upon the consummation of the IPO or (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the U.S. Securities Exchange Act of 1934, as amended, or the reporting requirements of a similar reporting regime of another jurisdiction, whichever event occurs first. |

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| **10** | **BOARD OF DIRECTORS** |

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| 10.1 | So long as each Party owns 50% of the outstanding shares of the Company, then each Party shall be entitled to appoint an equal number of directors to the board of directors of the Company. In the event that either Party holds, at any time in the future, a majority of the number of outstanding Shares, then such Party will have the right to appoint a majority of the directors of the board of directors of the Company. |
|  |  |
| 10.2 | Initially, the directors appointed by GEYI shall be Mr. Rev Krevetz and Mr. Jacob Goldshmid and the directors appointed by Konvert shall initially be Dr. Walter Schreiber and Mr. Ludwig Walter Schreiber. |
|  |  |
| 10.3 | Neither Party shall be able to assign or transfer its/his right to designate a director to any other third party. |
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| 10.4 | Within 60 Days from the Effective Date of this Agreement, the board of directors shall agree on the Company's marketing and sales strategy, annual business plan, and goals. |

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| **11** | **MANAGEMENT OF THE COMPANY** |

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| 11.1 | GEYI shall appoint Mr. Jacob Goldshmid as the Company's Chief Executive Officer ("CEO"') in accordance with the terms of an Employment Agreement attached hereto at Appendix A (the "**Employment Agreement**") between Mr. Jacob Goldshmid and the Company as set out at Appendix A. Any subsequent CEO shall be appointed by GEYI. |
|  |  |
| 11.2 | Konvert shall initially appoint Dr. Walter Schreiber as the Company's Chairman. The Company's Chairman shall not have a casting vote. Any subsequent Chairman shall be appointed by Konvert. |
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| 11.3 | Konvert shall have the right object to any sale of Product promoted or intended by the Company, in which case the Company shall not perform such sale and/or cease the promotion of such sale as applicable |
|  |  |
| 11.4 | The Company's CEO and Chairman shall be responsible for the day to day management of the Company, and the implementation of the Company's marketing and sales strategy and business plan, and for meeting the Company's goals. |
|  |  |
| 11.5 | Notwithstanding any action or resolution regarding any of the following issues, is to be approved by the Company’s board of directors: |

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.i any action that authorizes, creates or issues shares of any class.

.ii any action that reclassifies any outstanding shares into shares having preferences or priority as to dividends or assets senior to or on a parity with the Ordinary Shares; .

iii any merger or consolidation of the Company with or into one or more other corporations;

.iv the sale, lease, or other disposition of a material asset or the sale of all or substantially all of the Company’s assets;

.v any change in the rights relating to the composition or in the right to appoint members to the Board of Directors;

.vi any transactions between the Company and any Interested Party; an “**Interested Party**” shall mean a director, officer, employee, or significant shareholder or any family member of or consultant to any such person, corporation or other entity of which any such person beneficially owns ten percent (10%) or more of the equity interests or has ten percent (10%) or more of the voting power, other than transactions in the ordinary course of business.

.vii the terms and conditions of any initial public offering of the Company;

.viii the liquidation or dissolution of the Company;

.ix incur any indebtedness, make any capital expenditures, lend, enter into any material contract or commitment, incur any pledge or lien on the assets of the Company, other than as required in the ordinary course of business, but in no event in excess in the aggregate of US$ 5,000;

.x amendment of the Articles of Association of the Company; and

.xi the Company's signatory rights.

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| **12** | **REMOVAL OF BOARD MEMBERS** |

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| 12.1 | Each Party agrees to vote in whatever manner as shall be necessary to ensure that (i) no director elected by either Party is removed from office, other than for cause, unless such removal is approved by the Party which so appointed that director and (ii) any vacancies created by the resignation, removal or death of a director shall be filled by the Party that appointed such director pursuant to the provisions of this agreement. |
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| 12.2 | All Parties agree to execute any written consents required to effectuate the obligations of this Agreement. |

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| **13** | **EXPENSES AND FINANCING** |

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| --- | --- |
| 13.1 | The Parties agree that GEYI will lend to the Company such amounts as the Parties may agree, and in any event in accordance with a budget to be approved by the board of directors of the Company. The terms of such loan, including interest on such loan, will be agreed upon between the Parties. |
|  |  |
| 13.2 | All such payments as referenced in section 13.2 above shall be made for costs and expenses set forth in a budget approved by the board of directors of the Company from time to time. |

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| **14** | **EXCLUSIVITY** |

Konvert and the Company have the rights to market and distributor the Technology based on the KDV500, as define in the agreement dated May 2 2007.

14.1.1 Konvert herby appoints the Company as its sole agent exclusive for USA and China market, Konvert will not directly market to these markets but through the Company.

14.1.2 When GEYI will invest in the technology of Turbine 2000 than the Turbine 2000 technology will be marketing only through out the Company

14.1.3. The parties acknowledge that Konvert has already granted some third parties the right to sale the Technology and Products in certain territories as detailed in agreement signed May 2, 2007 ("**Third Party Rights**").

14.1.4 All sales transactions shall be made directly between Konvert and the purchaser. The sale price of any transaction shall include a fee of 10% which shall be paid by Konvert to the Company. The company has the right to offer higher prices as the market will accept in such case the Company will benefit from the full difference between the purchase price and the sale price. Konvert and the Company will coordinate prices.

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| **15.** | **DERTAKINGS OF THE PARTIES** |

15.1 Konvert shall provide all required technical assistance and support to the Company and any potential end users and purchasers of the Technology and the Products, in order to help the promotion of the Technology and the Products and the procurement of purchases.

15.2 GEYI will build a finance program to support end users in the procurement of the Products from Konvert, however, GA shall only offer such finance program to suitable end users at its sole and absolute discretion.

15.3 GEYI shall be responsible for obtaining necessary approvals and permits for the sale of diesel produced by the use ofthe Products and the Technology, were it finds it to be reasonable at its sole and absolute discretion.

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| **16** | **REPRESENTATIONS AND WARRANTIES OF THE PARTIES** |

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| --- | --- |
| 16.1 | Each of the Parties hereby represents and warrants with respect to itself/himself the following: |
|  |  |
|  | (i) Authority and Validity. Such Party has full power and authority to enter into, execute and deliver this Agreement and perform its/his obligations under this Agreement in accordance with its terms. |

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(ii) Absence of Conflicts. The execution and delivery of this Agreement by it and the consummation of the transactions as contemplated hereunder (i) do not and will not violate or conflict with any statute, regulation, judgment, order, writ, decree, or injunction currently applicable to it/him; and (ii) do not and will not violate or conflict with any existing mortgage, indenture, contract, licensing agreement, financing statement, or other agreement binding on it.

(iii) Consents and Contractual Restrictions. No consents or approvals of any third party are required in connection with the execution and delivery of this Agreement or the performance of the transactions contemplated hereunder otherwise. No agreement or arrangement binding upon such Party restricts its ability to fulfill its obligations and responsibilities under this Agreement or any related agreement or to carry out the activities contemplated herein.

**(**iv) Investment Representations. Each Party is acquiring the Shares for its/his or her own account.

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| 16.2 | Konvert further represents and warrants that: |

(i) it has all valid legal rights to the Technology and the Products;

(ii) it has the right to grant to GEYI all rights contained in this Agreement, including the Exclusivity set forth in section 14 above; and

(iii) the provisions of this agreement and any of Konvert's undertakings hereunder does not infringe upon the intellectual property rights of any third parties.

Each Party undertakes to inform the other Party immediately upon any material change in the above representations and warranties.

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| **17.** | **ASSISTANCE TO THE COMPANY** |

The Parties shall use their best efforts to actively assist and promote the interests of the Company.

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| **18.** | **MISCELLANEOUS** |

|  |  |
| --- | --- |
| 18.1 | ENTIRE AGREEMENT. |

This Agreement represents the entire agreement between the Parties.

|  |  |
| --- | --- |
| 18.3 | ASSIGNMENT. |

No part of this agreement may be assigned by any of the Parties hereto without the consent of all of the Parties hereto.

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| 18.4 | GOVERNING LAW AND JURISDICTION. |

This Agreement shall be governed by and construed under the laws of the Republic of Germany. The competent courts in Gerrmany, shall have exclusive jurisdiction over any

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dispute arising in connection with this Agreement.

18.5           HEADINGS.  
Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

18.6           NOTICES.  
All notices or other documents under this Agreement shall be in writing and delivered personally or mailed, addressed to the Parties.

18.7           BINDING EFFECT.  
The provisions of this agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and assigns. The provisions of this Agreement shall supersede any conflicting provisions of the Articles of Associations of the Company with respect to the relationship between the Parties. The Parties agree to amend the Company's Articles of Association within the next thirty (30) days to the extent any terms of this Agreement so conflict or to the extent they otherwise deem it necessary to conform the Articles with the terms and condition set forth in this Agreement.

18.8           AMENDMENT.  
This Agreement may be amended or modified only by written agreement between the Parties.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

|  |  |  |
| --- | --- | --- |
| **Garamond ENERGY INC.** |  | **KONVERT GMBH** |
|  |  |  |
| **By:** |  | **By:** |
| Name: |  | Name: |
| Title: |  | Title: |

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**APPENDIX A**

9

Record book number […]

**Establishment of  
Limited Liability Company**

Today, the fourteenth and twenty-second day of November two thousand and seven,  
- 14 and 22 November 2007 -,  
the following appeared before me,  
Fritz Mueller  
Notary in [..]:

1) Dr. Walter Schreiber, born on July 15, 1968,  
[…]  
acting herein as manager of

KONVERT GmbH  
a company whose registered place of business is in [...]  
(business address: […])

with the authority of single representation and exempted from the limitations of Section 181 of the Civil Code, regarding which, after perusal of the Electronic Trade Register at the Bamberg District Court made on November 14th 2007, I confirm that the above company is registered therein under HRB 5308 and Dr. Walter Schreiber is on record as manager with the authority of single representation and is exempted from the limitations of Section 181 of the Civil Code,

2. Mr. Joseph, known as Yossi, Goldshmid, born on January 15, 1963, of […] acting for

**Garamond Energy Inc.**

a company limited by shares incorporated under the laws of Nevada/USA, registered at the Secretary of State of Nevada, Corp Number […], with office at […], Israel,

subject to the consent of the aforesaid corporation which has to be certified by a notary public.

The parties identified themselves by official identity documents with pictures.

Mr. Jacob Goldshmid, according to his own statement and the notary’s conviction, has insufficient knowledge of the German language, but knows sufficient English. At the time of certification the notary translated the document and the questions asked into English. All parties waived the services of an interpreter. As appendix 2 there is an English translation that has been made by the party and controlled by the notary. The annex also was made part of the notarial act. If there are differences between the German and the English text the German text shall prevale.

The reading of this deed was started on Nov. 14th, but interrupted as Mr. Goldshmid had to leave, and resumed at the point, where it had been interrupted on Nov. 22nd and finished and signed by the parties on this day.

Upon the parties’ request I hereby certify the following:

**I. Establishment**

The parties mentioned in the introduction establish a Private Limited Company whose registered place of business is in […] (business address: […]) under the name

**KONVERT - Garamond Energy GmbH**

The Articles of Association are set down in the Annex to this document. Refer-ence is made to the Annex. The shareholders are taking over the shares as provided in the Articles of Association.

**II. Costs, Copies**

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The costs of application and registration in the Commercial Register will be borne by the company as well as the costs of this certification in accordance with the Articles of Association.

The shareholders, the company, the tax office and the Registry Court of jurisdiction will each be given notarized copies.

**III. Power of Attorney**

Each of the Notary’s employees and every party of the contract will be exempted from the legal limitations and will be given power of attorney, including legal successors, to complete or amend this document in order to correct objections made by the Registry Court.

The notary shall get and receive for the parties of the contract the notarized consent of the party not represented today.

**References**

The Notary has pointed out inter alia:

- that only after registration in the Commercial Register will the company be established and that, according to Section 11, 2 of the Limited Liability Companies Law, before the company is registered the person performing legal acts on behalf of the company will be personally liable.

- that all shareholders and directors are in principle responsible for the authenticity of the data stated when establishing the company;

- that at the time of registration of the company in the Trade Register, the value of the company’s assets may not be less than that of the share capital, and that every shareholder has the obligation to pay any difference, without any limitation, compared with the pledged investment, and that the Registry Court has the right to refuse registration of the company in the Trade Registry on the grounds of unpaid prior charges.

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**V. Shareholder Resolution**

Waiving any formal and time regulations, a shareholder meeting is called and the following resolution adopted:

The first business manager appointed is Dr. Walter Schreiber. He always has the authority of single representation and is exempted from the limitations of Section 181 of the Civil Code (prohibition of acting as contracting party and of multiple representations).

Mr. Jacob Goldshmid will be granted single signature (Prokura), as well as being exempted from the limitations of Section 181 of the Civil Code.

**VI. Guarantees**

Each of the parties guarantees, insofar as they are concerned,

- that the signing parties have full power and authority of representation, of signing this agreement, executing and performing it and fulfilling the obligations based hereon;

- that signature and execution of the agreement is not contrary to any obligations stipulated in the Articles of Association, the law, agreements or otherwise;

- that no consent whatsoever by any third party is required for the execution or signature of this agreement, and

- that each party is acting on its own account.

KONVERT GmbH, […], moreover guarantees:

- that it is legally entitled to KDV Technology and the corresponding products;

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- that it is entitled to grant the newly established enterprise all the rights agreed upon herein, including the exclusive marketing right according to the Articles of Association;

- that the stipulations agreed upon herein and execution thereof do not infringe upon the protected copyrights of any third party.

Should any practical change occur regarding the above guarantees, each party has the obligation to inform the other accordingly, without delay.

Together with the Annexes 1 and 2 read by the notary,  
approved by the parties and signed

(this is still part of annex 2, the English translation):

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***Annex 1*to the document certified by Notary […}  
dated November 14th and 22nd, 2007, Document no[…]**

**Articles of Association**

**Article 1: Company’s Name and Registered Place of Business**

1.            The company’s name is

KONVERT - Garamond Energy GmbH.

2.           The company’s registered place of business is […].

**Article 2: Purpose of the Enterprise**

|  |  |
| --- | --- |
| 1. | The purpose of the company is the worldwide marketing and distribution of KDV Technology (un-pressurized catalytic lubrication) for transforming recycling and waste material containing hydrocarbons into diesel fuels, as well as of products connected to this technology, including KDV tur-bines. |
|  |  |
| 2. | The company is entitled to perform any transaction which may directly or indirectly benefit the company’s purpose, in particular - acquiring other enterprises, being a partner therein or assuming their representation and management. The company is entitled to establish branches. |

**Article 3: Share Capital**

|  |  |
| --- | --- |
| 1. | The company’s share capital amounts to € 25,000. |
|  |  |
| 2. | The share capital is divided as follows: |

|  |  |  |
| --- | --- | --- |
|  | **Shareholder** | **Amount of Authorized Capital** |
|  | KONVERT GmbH, […] | € 12,500 |
|  | Garamond Energy Inc., New York/Tel Aviv | € 12,500 |

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| --- | --- |
| 3. | The capital invested must be paid in cash and becomes fully payable immediately. |
|  |  |
| 4. | No stipulations are agreed upon in the Articles of Association regarding capital increase or later contributions. Such measures can only be decided by amending the Articles of Association. Any measure that may modify the participation quotas by modifying the authorized capital, i.e. capital increases, conditional capital increase or the issue of convertible debentures and similar financial instruments may only be decided by a unanimous resolution of all shareholders present. |

**Article 4: Duration, Business Year**

|  |  |
| --- | --- |
| 1. | The agreement is concluded for an undetermined period of time. |
|  |  |
| 2. | The business year is the calendar year. The first business year begins upon registration in the Commercial Register and ends at the end of the calendar year in which the registration is made. |
|  |  |
| 3. | Under the contracts law any transactions made from the time the company was established are considered to be made on account of the company. |

**Article 5: The Company’s Executive Organs**

The company’s executive organs are the management (manager) and the shareholder meeting.

**Article 6: Representation**

|  |  |
| --- | --- |
| 1. | As long as the company has only one manager, he has the right to sole representation. |
|  |  |
| 2. | If several managers are appointed, the company will be represented by two managers jointly or by one manager jointly with an authorized signatory (“Prokurist"). |

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| --- | --- |
| 3. | By a resolution of the shareholders, the managers or one of them can be granted sole representation rights and/or exemption from the limitations of Section 181 of the Civil Code. |
|  |  |
| 4. | The above stipulations apply also to the liquidators of the company. |
|  |  |
| 5. | As long as both partners own each one half of the company, the partners, KONVERT GmbH, [...], and Garamond Energy Inc. have the right to appoint one manager or signatory each with the sole outside representation right on behalf of the company. The partner can freely decide whether to appoint a manager or a signatory (Prokurist). The other partner has the obligation to agree to the appointment insofar as there are no important reasons against the appointment of the intended person. Cancellation of such appointment against the wish of the partner entitled to decide is only possible on serious grounds. Upon conclusion of the manager/signatory’s legal office, the entitled partner may require the appointment of a new manager or signatory to be named by him. |

**Article 7: Business Management**

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| --- | --- | --- |
| 1. | The managers must manage the company’s business carefully and conscientiously according to the stipulations of the law and the partnership agreement. They must respect instructions given as per the partners’ resolutions. | |
|  |  |  |
| 2. | Any measures beyond the regular business operation of the enterprise may only be performed by one of the managers based on a partners’ resolution. A partners’ resolution can set forth the measures requiring consent in detail. | |
|  |  |  |
| 3. | Subject to an extraordinary partners’ resolution and subject to stricter legal regulations, the following business management measures always require the consent of both partners: | |
|  |  |  |
|  | 1. | Sale, letting, leasing or other transfer of all or a substantial part of the company’s assets; |
|  |  |  |
|  | 2. | Agreements of any kind between the company, its executive organs, its partners, persons closely connected to the executive organs or to the partners, or anyone else with at least 10% participation in the above mentioned entities. |
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|  | 3. | Establishing and closing branches; |
|  |  |  |
|  | 4. | Liquidation of the company; |

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|  | 5. | Conclusion of a transaction of any kind outside the company’s normal business operations, at a value of more than € 5,000 per transaction. |
|  |  |  |
|  | 6. | Establishment of signature power or general power of attorney |
|  |  |  |
|  | 7. | Establishment of connections with corporations, conclusion of secret partnership agreements, of management agreements and other agreements which may give third parties the power to manage the company. |

**Article 8: Partners’ Assembly (Shareholder Meeting)**

|  |  |
| --- | --- |
| 1. | Partners’ resolutions are adopted at partners’ assemblies if not otherwise stipulated by law or these Articles of Association. |
|  |  |
| 2. | The partners’ assembly is convened by the managers, each manager being separately authorized to convene the assembly. Notice is given by registered letter giving the place, time and agenda, and mailed to the last address of the partner provided to the company. The time allowed for the notice, if there is no particular need for haste, is at least two weeks after mailing, not including the day of the assembly. |
|  |  |
| 3. | The partners’ assembly constitutes a quorum if at least 70% (seventy percent) of the authorized share capital is represented. Otherwise, an additional assembly must be convened without delay respecting the time al-lowed for notice as per paragraph 2, which assembly will constitute a quorum regardless of the number of participants. This must be stipulated in the second notice. |
|  |  |
| 4. | Partners’ resolutions, if not otherwise stipulated by law or the Articles of Association, will be adopted by a simple majority of votes. Abstention from voting will be considered a negative answer. Every € 50 of a business share grants one vote. |
|  |  |
| 5. | Insofar as no other partners’ resolution was adopted, the partners’ assembly will take place at the company’s registered place of business. At the assembly the representation by executive organs or executive employees of the partners, the other partners or people obliged to maintain professional secrecy is permissible. |
|  |  |
| 6. | The assembly will elect a chairman by a simple majority. The chairman will also take care that the resolutions are recorded in writing. Within a period of four weeks after the assembly he will send the partners a protocol of the assembly. |

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| 7. | The partners may deviate from the provisions regarding the partners’ assembly and its formalities if it is agreed by all partners. With the consent of all involved, resolutions can also be adopted by circular resolution, by phone, fax or electronically. In this case care must be taken that the text of the resolution be immediately documented in writing. If all partners take part in a deviating form of resolution, their consent is assumed if they do not immediately protest against this form of resolution. |
|  |  |
| 8. | Except in cases of nullity, in particular when obligatory laws are broken - the partners may only protest against the resolution by submitting a claim in court within a period of two months from the date the resolution was adopted. |

**Article 9: Balance Sheet, Appropriation of Earnings**

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| --- | --- |
| 1. | Within three months after the end of the business year, the managers must prepare a balance sheet with a Profit and Loss Account for the previous year, while respecting legal provisions, and submit it to the partners’ assembly with the proposed appropriation of earnings. Insofar as legally permissible the period for this will be six months. |
|  |  |
| 2. | The appropriation of earnings is subject to legal provisions. This means that in principle the partners’ assembly will decide about the appropriation and distribution of the earnings by resolution (Section 29 of the Limited Liability Companies Law in the version of the Balance Sheet Directives Law). |
|  |  |
| 3. | Garamond Energy Inc. can demand that every quarter balance sheets are filed as required by the Turnaround SEC regulation to be filed with the Garamond Energy Inc. obligation for 10-Q. |

**Article 10: Disposal of Partnership Shares**

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| --- | --- |
| 1. | The disposal of a partnership share or parts thereof requires written permission by the company to be valid, which shall only be given by the management after all partners have given their consent. |
|  |  |
| 2. | The above regulations apply also to the establishment of a beneficial interest in respect to the partnership shares as well as to pledging and assignment for security of partnership shares. |

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| 3. | Every partner is obliged, if intending to sell, to inform the other partner in good time before beginning negotiations with third parties, and to accordingly submit a sales offer. He must leave the other partner a reflection time of at least one month. In case of sale, the other partner has the right of first refusal. |

**Article 11: Termination**

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| 1. | Each partner may terminate the partnership in the company by a notice of six months before the end of the business year, but not before December 31, 2010. |
|  |  |
| 2. | In consequence of the termination - subject to the provisions of Paragraph 3 - the terminating partner shall leave the company after the end of the notice period and the company shall continue according to Articles 12 and 13. |
|  |  |
| 3. | If the other partners join the termination by a partners’ resolution, the company will be in liquidation at the date of termination. The terminating party will take part in the liquidation. |

**Article 12: Confiscation of Partnership Share, Retirement**

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| --- | --- | --- |
| 1. | The confiscation of business shares is permissible. It does not require the consent of the involved partner if: | |
|  |  |  |
|  | a) | insolvency proceedings are opened concerning his assets, or the opening is refused for lack of assets, or |
|  |  |  |
|  | b) | his business share is taken in execution (by a third party); |
|  |  |  |
|  | c) | there is significant cause. A significant cause is in particular when, due to the misconduct of a partner, the other partners cannot be required to continue their business relationship with him. No fault is necessary for this. |
|  |  |  |
| 2. | Instead of confiscating the partnership share, the partners’ assembly may decide to transfer the business share to one or several partners or to a third party named by the partners’ assembly. In the partners’ resolution each co-partner may require that in the case of assignation, the share of the retiring partner shall be transferred in proportion to his share in the company (accrual). Should an exact proportional division not be possible, the shares shall be divided as closely as possible. | |
|  |  |  |
| 3. | If there is a right to confiscate, such confiscation or a partners’ resolution according to Paragraph 2 can only occur within six months from of the time the cause becomes | |

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|  | known, but only as long as the cause for confiscation still exists. This includes the knowledge by one of the managers (regardless of the type of representation authority) of the company, insofar as the cause is not linked to the very person of this manager. |
|  |  |
| 4. | The resolution concerning confiscation or retirement is adopted by the partnership assembly at which the partner to be dismissed has no right to vote. |
|  |  |
| 5. | Confiscation or retirement are subject to remuneration. The remuneration will be payable by the buyer of the share, observing Section 30 of the Limited Liability Companies Law (forbidding that the share capital is being paid back by the company to the partner). The amount of remuneration will be determined according to the regulations et forth below. |

**Article 13: Remuneration for confiscated or assigned shares**

|  |  |
| --- | --- |
| 1. | If business shares are confiscated or assigned in accordance with these Articles of Association, the entitled partner or his successors will be remunerated for it. For this purpose the management will immediately prepare a compensation balance sheet. In this balance sheet all assets and liabilities shall appear at their real value at the time of the partner’s retirement. The company’s goodwill - if permissible - is not to be taken into account. The retired partner will not participate in pending transactions. |
|  |  |
| 2. | If the parties involved cannot reach an agreement as to the value, it will be determined by an expert. The expert will be appointed upon demand of one of the parties by the President of the Bayreuth Chamber of Industry and Commerce. The costs of the valuation will be borne by the retired party and the company in equal shares. |
|  |  |
| 3. | The remuneration will be paid in five equal annual installments. The first installment is due for payment six months after the confiscation resolution or the date of retirement of the partner involved, and the following installments on the corresponding calendar day of the subsequent years. The outstanding installment will bear annual interest of 2% - two percent - over the basic interest rate as described in the Euro Introduction Law commencing with the confiscation resolution or the date of retirement. The interest will be calculated at current account bank rates and shall be due for payment together with the following installment. |

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| 4. | The compensation can be pre-paid fully or partially, and partial pre-paid amounts will be deducted from the following installment due. No security may be demanded. |

**Article 14: Exclusivity/Prohibition of Competition**

KONVERT GmbH, [...] gives the right to sell world wide. No other company or person can get the same rights for the world-wide distribution.

KONVERT GmbH appoints the company to be the sole marketing agent for the United States of America and the Chinese market. KONVERT GmbH will not use any marketing channels on those markets except already established contacts.

The parties involved acknowledge that KONVERT GmbH, [...] has already granted third parties the right to sell the Technology and products in various areas, as described in detail in the agreement dated May 02, 2007. KONVERT GmbH explicitly reserves the right, as long as those agreements are valid and in their material extent, to execute and fulfill those agreements with third parties on its own account. No compensation in that respect has been agreed upon.

The foregoing exclusive dealing requirements are valid as long the contract from May 2nd 2007 is valid (including amendments or following contracts).

By a partners’ resolution to which both partners must consent, the partners and managers may also regulate whether there are further prohibitions of competition, whether to give exemptions and whether the exemption occurs against remuneration or without remuneration.

Should one of the partners - for whatever reason - retire from the company, he has the obligation not to exploit business secrets of which he learned pursuant to the execution of this partnership agreement, either himself or by transfer to third parties at the expense of the company founded or on the account of the other partner.

**Article 15: Additional Contributions to the Company**

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| 1. | All sales and similar transactions will be made directly between KONVERT GmbH, [...] and the business partner. The sales price of each such transaction will include a 10% commission (not including Value Added Taxes as per law), which will be paid by KONVERT GmbH directly to the newly founded company. The company has the right to make higher price offers, as long as the market accepts them. In such case, the company would profit fully from the difference between the purchase price offered by it and the regular sales prices. KONVERT GmbH and the company will mutually coordinate their prices. |
|  |  |
| 2. | KONVERT GmbH will grant all necessary technical assistance and support by the company to any end user and buyer of the Technology and products in order to support the marketing of the technology and the products during sales. |
|  |  |
| 3. | Garamond Energy Inc. will establish a financial program in order to support the end user in the acquisition of KONVERT GmbH products. However Garamond Energy Inc. reserves the right to put such financial support only at the disposal of selected and adequate end users. Moreover Garamond Energy Inc. has the responsibility of providing the permits and tests necessary for the sale of the diesel oil produced by the use of the marketed products and technology. Garamond Energy Inc. is free to decide where they should do the marketing (i.e. also obtaining permits). |

**Article 17: Publications**

The company’s publications will be made only in the Electronic Federal Journal (elektronischer Bundesanzeiger).

**Article 18: Tax Clause**

The executive organs of the company must respect the trading and tax law principles of orderly business management and shall maintain the care in business transactions that would be taken by an orderly and conscientious businessman.

The management shall in particular not be authorized to grant advantages to the partners or persons and companies close to them beyond the profit distribution resolution duly adopted, neither to violate the prohibition of additional or retroactive payments, nor to breach other acknowledged tax law principles which, when

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disregarded, cause covert profit distribution. In case of non compliance, the amount of the imbalance shall be covered by the partner to whom the advantage was credited and the usual bank interests paid from the time the advantage was granted until the payment is settled. Transactions in breach of the above stipulations are void ab initio.

Insofar as the tax administration or tax courts recognize the payment received as income received by the partner concerned despite the above tax clause, without considering the repayment as negative income, the partner will only have to repay the advantage remaining after deducting the additional income tax payable by him plus the usual bank interest.

**Article 19: General Instructions**

|  |  |
| --- | --- |
| 1. | Insofar as not otherwise stipulated in this agreement, the German Law regarding Private Limited Companies (GmbH) shall prevail. The agreement is formulated according to the provisions of German Company Law and is subject to the jurisdiction of German courts. |
|  |  |
| 2. | Should any of the provisions of this agreement be or become invalid or unenforceable, the other parts of the agreement shall remain valid nevertheless and shall be binding on the parties to the agreement. The partners undertake in such case to immediately and retroactively change the interpretation, whether completely or by replacing any invalid provision retroactively, so that it becomes as close as possible to the intended purpose. |

**Article 20: Cost**

The costs of notarizing the partnership agreement, the publication, the application for registration and registration of the Company in the Trade Registry as well as the costs of consultancy services in respect of the establishment shall be borne by the Company up to an estimated amount of € 2,000; any establishment costs above that amount shall be borne by the partners. This applies without prejudice to the legal personal liability of the parties.

-End of Annex 2-

**LicA#29**

Exhibit 10.2

REDACTED

Certain identified information, indicated by [\*\*\*], has been excluded from the exhibit because it is both (i) not material and (ii) would likely cause competitive harm if publicly disclosed.

OPTION AND LICENSE AGREEMENT

FOR THE LICENSING AND DEVELOPMENT

OF [\*\*\*] INHIBITORS

This LICENSE AND OPTION AGREEMENT FOR THE LICENSING AND DEVELOPMENT OF [\*\*\*] INHIBITORS (the “Agreement”) is effective as of this day of October 2018 (the “Effective Date”) by and between Vaccisafe AG, a stock corporation organized under the laws of Germany, having a place of business at […], Germany (“Vaccisafe ”), and Kobe Pharma Co., Ltd., a Japanese corporation organized under the laws of Japan, having a place of business at […], Japan (“KP)”; Vaccisafe and KP are sometimes hereinafter individually referred to as a “Party” and collectively as the “Parties”).

RECITALS

(1) KP has developed and owns certain technology relating to small molecules that inhibit the biological activity of [\*\*\*], as listed [\*\*\*]; and

(2) KP is the owner or otherwise controls certain proprietary technology, including the patent applications filed or to be filed by KP claiming the Subject Compounds, as listed in [\*\*\*], and any issued patents or pending patent applications resulting therefrom, all such patent rights and technology as necessary or useful to make, use or sell Licensed Product(s) (as defined below), and related chemical, biological, and non-clinical data and relevant information, as listed and summarized in [\*\*\*]; and

(3) Vaccisafe is interested in, either by itself or by an Affiliate, developing the Subject Compounds to appropriate form(s), method(s) of use, mode(s) of administration or dosage(s) of one or more pharmaceutical composition(s) of the Subject Compounds to be used in the therapy, prognosis, diagnosis and prevention of any human diseases; and

(4) Vaccisafe and KP have discussed (under a “Bilateral Confidential Disclosure Agreement” dated November 9, 2017) and on July 11, 2018 agreed upon an Outline of Terms, binding only to the extent as set forth therein, according to which KP grants Vaccisafe an exclusive option to enter into a full licensing agreement, both the option and the license in accordance with the terms and conditions set forth herein;

Based on the foregoing considerations, the Parties hereto agree as follows:

ARTICLE 1

INTERPRETATION AND DEFINITIONS

1.1. Interpretation Principles. As used in this Agreement, the capitalized terms listed in Section 1.2 shall have the meanings set forth therein or in the specific Section of this Agreement, to which the respective definition refers. Unless the context of this Agreement otherwise requires: (a) words of any gender include the other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement; and (d) the term “including” means “including without limitation”.

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1.2. Definitions.

“Affiliate” means any person or entity that controls, is controlled by, or is under common control with a Party. For purposes of this definition, the term “control” means (i) the possession, directly or indirectly, of the power to direct the management or policies of an entity, whether such control is obtained through ownership of voting securities, by contract or otherwise, or (ii) the ownership, directly or indirectly, of at least fifty percent (50%) of the voting securities or other ownership interest of an entity. A person or entity shall only be considered an Affiliate for so long as such control exists.

“BCDA” means the Bilateral Confidential Disclosure Agreement effective between the Parties as of November 9, 2017.

“Business Day(s)” means a day which is neither a Saturday nor a Sunday or a bank holiday in […], Germany or Tokyo, Japan.

“Combination Product” means a product that contains a Subject Compound as an active pharmaceutical ingredient together with one or more other compounds that are active pharmaceutical ingredient(s).

“Commercially Reasonable Efforts” means those efforts, activities and measures, with respect to the efforts to be expended by the respective Party which, with respect to any objective, are reasonable, diligent, good-faith efforts to accomplish such objective as a similarly situated (with respect to size, stage of research and other aspects) pharmaceutical company would use to accomplish a similar objective under similar circumstances exercising reasonable business judgement and considering the scientific, medical and commercial potential and characteristics of the Subject Compound and Licensed Product as well as the associated risks in the development, obtaining of Regulatory Approvals and governmental pricing and reimbursement approvals, and commercialization.

“Control” or “Controlled” means with respect to any (i) item of information, including, without limitation, Know-how, or (ii) intellectual property right, the possession (whether by ownership or license, other than pursuant to this Agreement) by a Party of the ability to grant to the other Party access or a license as provided herein under such item or right without violating the terms of any agreement or other arrangements with any Third Party.

“CTA” means a clinical trial application to any Regulatory Authority.

“KP Patent Rights” means any of the following: (a) any issued and unexpired patent, including substitutions, extensions, re-registrations, reissues, renewals, or similar governmental grants of exclusive rights to practice an invention; (b) any patent application, including continuation, continuation-in-part, divisional, and provisional applications that claim priority to, or common priority with a previously filed patent application or issued patent; (c) any foreign counterparts to any of the foregoing, in each case that are necessary for Vaccisafe to research, develop, manufacture, use, or sell the Subject Compounds and Licensed Products for use in the Field in the Territory. The KP Patent Rights shall include the patent rights owned or controlled by KP identified in [\*\*\*].

“KP Technology” means Know-how that is owned by KP or its Affiliates during the Term that is necessary or useful for Vaccisafe to research, develop, manufacture, seek Regulatory Approval for, and distribute the Subject Compounds and Licensed Products for use in the Field in the Territory. The KP Technology shall include the regulatory documentation, and Know-how identified in [\*\*\*].

“Field” means the treatment, diagnosis, prognosis, or prevention of any disease in humans.

“First Commercial Sale” means, with respect to any Licensed Product and any country of the world, the first sale by Vaccisafe or any of its Affiliates, sub-licensees of any Licensed Product for use in the Field in that country, after such Licensed Product has been granted Regulatory Approval by the competent Regulatory Authorities.

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“IND” means an Investigational New Drug application submitted to the United States Food and Drug Administration (the “FDA”).

“Know-how” means any confidential technical information, techniques, processes, methods, data, assays, substances and materials, and other information in a Party’s possession that is not generally available to the public.

“Licensed Product(s)” means any pharmaceutical product that contains a Subject Compound as an active pharmaceutical ingredient.

“Net Sales” means [\*\*\*] using generally accepted accounting standards:

[\*\*\*]

Notwithstanding the foregoing, Net Sales shall not include any consideration received by Vaccisafe, or any of its Affiliates or sub-licensees in respect of the sale, use or other disposition of a Licensed Product (i) solely between the foregoing parties, or (ii) in a country as part of a clinical trial prior to the receipt of all Regulatory Approvals required to commence commercial sales of such Licensed Product in such country.

“Regulatory Approval” means and includes all licenses, permits, authorizations and approvals of, and all registrations, filings and other notifications to, any Regulatory Authority, necessary for the manufacture, production, distribution, marketing, sale and/or use of any Licensed Product within the Field and in a particular country or region of the Territory.

“Regulatory Authority” means any national, supra-national, regional, state or local regulatory agency, department, or other governmental entity in a country in the Territory, including the United States Food and Drug Administration or any successor thereto (FDA), and the European Medicines Agency or any successor thereto (EMA), that is responsible for regulating the manufacture, production, distribution, marketing, sale and/or use of any Licensed Product within the Field and in a particular country or region of the Territory.

“Representative” means any officer, director, employee, agent, advisor and representative.

“[\*\*\*]” means [\*\*\*].

“Subject Compound(s)” means the compounds identified and described by their respective chemical compound names in [\*\*\*].

“Term” means the period between the Effective Date, and: (i) Vaccisafe ’s payment of royalties accruing from its last obligation to pay royalties to KP under Section 6.6, or (ii) this Agreement is terminated earlier under Article 11.

“Territory” means worldwide.

“Third Party” means any entity or person other than the Parties and their respective Affiliates.

“Trademarks” means all registered or unregistered trademarks, service marks, trade dress, trade names, logos, insignias, domain names, symbols, designs, artwork, and combinations thereof, and other indicia of origin, including all applications for registration and registrations of any such marks and renewals for any of the foregoing.

“Valid Claim” means a claim of (i) any unexpired issued Patent Right that shall not have been dedicated to the public, disclaimed, nor held invalid or unenforceable by a court or government agency of competent jurisdiction in an unappealed or unappealable decision, or (ii) of any patent application filed in good faith being part of the KP Patent Rights that has not been cancelled, withdrawn or abandoned.

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ARTICLE 2

OPTION

2.1. Option Right. KP hereby grants to Vaccisafe an exclusive option to obtain an exclusive, worldwide, royalty-bearing license under the KP Patent Rights and KP Technology to research, develop, make, have made, use, import, offer for sale, distribute and sell the Subject Compounds and Licensed Product(s) (the “Option Right”).

2.2. Term of Option Right. The term of the Option Right granted under Article 2.1 shall commence on the Effective Date and shall expire [\*\*\*] (the “Option Period”). Vaccisafe may exercise its Option Right at any time during the Option Period by giving written notice to KP. If Vaccisafe does not notify KP that it has exercised the Option Right before the expiration of the Option Period, such Option Right will expire, as provided in this Section 2.2, without the need for further action by KP.

ARTICLE 3

RESEARCH AND DEVELOPMENT INITIATED DURING THE OPTION PERIOD

3.1. Duties of the Parties. Following the Effective Date, the Parties shall without undue delay perform the studies listed in Exhibit D as follows:

(a) Vaccisafe shall use Commercially Reasonable Efforts to:

(i) at its own cost and expense, perform the studies listed in Part 1 of Exhibit D to analyze the mode of action of the Subject Compounds, and

(ii) at KP’s cost and expense, not to exceed [\*\*\*], perform the agreed upon studies listed in Part 2 of Exhibit D that are necessary for obtaining an IND or CTA, respectively. If Vaccisafe reasonably anticipates that the total cost for the studies to be performed under this Section 3.1(a)(ii) will exceed [\*\*\*], it will promptly notify KP, and the Parties will discuss in good faith whether to increase the funding for such studies. Promptly after the receipt of an invoice issued by a contract research organization or contract manufacturing organization to Vaccisafe for any study to be performed by Vaccisafe under this Section 3.1(a)(ii), Vaccisafe shall issue a corresponding invoice for all agreed upon costs and expenses to KP. KP shall reimburse Vaccisafe for all such costs and expenses within [\*\*\*]of receiving such invoice.

(b) KP shall use Commercially Reasonable Efforts to conduct, at its own cost and expense, the studies listed in Part 3 of Exhibit D, including [\*\*\*]; and

(c) KP shall reasonably support and assist Vaccisafe in its due diligence efforts with respect to evaluating the Subject Compounds and the KP Technology to determine whether to execute its Option Right.

3.2. During the Option Period, Vaccisafe shall have the right under the KP Patent Rights and KP Technology to carry out all activities necessary and/or useful for the tasks assigned to Vaccisafe pursuant to Section 3.1(a).

3.3. Any results generated by either Party or both Parties during the Option Period, including any intellectual property generated solely by or on behalf of a Party in performing the activities described in Section 3.1(a) and Section 3.1(b) shall, subject to the licenses granted pursuant to Articles 4 and 12, be solely owned by such Party. If and to the extent both Parties contributed to such results, such results shall, subject to the licenses granted pursuant to Articles 4 and 12, be jointly owned by both Parties, and the Parties shall in good faith discuss and agree upon any patent prosecution, enforcement, and defense of such jointly owned intellectual property. In the case of results generated during the Option Period that are solely owned by one Party, if such Party does not wish to obtain or maintain applicable intellectual property rights, it shall provide the other Party a reasonable opportunity to obtain and/or maintain such rights.

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3.4. Technology Transfer. During the Option Period, KP shall make the KP Technology available to Vaccisafe through an electronic data room or other method agreed to by the Parties. Vaccisafe shall not use any of the KP Patent Rights or KP Technology furnished under this Agreement for any purpose other than as specifically authorized in this Agreement, or as otherwise specifically authorized in writing by KP. KP shall use its reasonable endeavors to answer all questions received from Vaccisafe regarding the KP Patent Rights and KP Technology as soon as reasonably possible after receipt.

3.5. During the Option Period, KP shall take reasonable steps to ensure that the existence and/or the scope of the KP Patent Rights and the KP Technology are not impaired, and shall refrain from acts that could reasonably be foreseen to impair the existence or scope of the KP Patent Rights or the KP Technology.

3.6. If Vaccisafe does not exercise the Option Right before the Option Period expires, the rights granted to Vaccisafe under Section 3.2 of this Agreement shall terminate automatically upon expiration of the Option Period and Vaccisafe shall: (a) upon a request from KP, return or destroy all Confidential Information disclosed by KP, (b) grant, free of charge, an exclusive, royalty-free, worldwide license to any intellectual property generated by Vaccisafe pursuant to this Agreement, whether solely or jointly with KP, during the Option Period to KP. with the right to grant sub-licenses, as necessary or useful to continue the development and commercialization of products containing the Subject Compound(s), and (c) transfer all data and results related to the Subject Compound(s) generated by Vaccisafe during the Option Period. Thereafter, KP shall be free to further develop the Subject Compound(s) by itself or in cooperation with any Third Party, or to license the Subject Compound(s) and/or the KP Technology to any Third Party for further development and/or commercialization.

ARTICLE 4

LICENSE

4.1. License Grant. Effective as of, and subject to Vaccisafe exercising the Option Right in accordance with Section 2.2 of this Agreement, KP hereby grants to Vaccisafe , and Vaccisafe hereby accepts, an exclusive license in the Field to use the KP Patent Rights and KP Technology to develop, have developed, make, have made, manufacture, have manufactured, register, have registered, use, have used, import, have imported, export, have exported, distribute, have distributed, market, have marketed, offer and have offered for sale, sell and have sold, and commercialize the Subject Compounds and/or Licensed Product(s) in the Territory, in accordance with the terms and conditions of this Agreement.

4.2. Sub-licensing.

4.2.1. Right to Sublicense. Vaccisafe shall be entitled to sub-license (including the right to grant further sub-sublicenses, including sub-licenses in multiple layers) all or any of its rights in the Field under this Agreement to any Affiliate or Third Party. Any sublicense granted by Vaccisafe shall be subject to the sub-licensing agreement containing terms and conditions that are not less restrictive in favor of KP than, and not inconsistent with those contained in this Agreement. Notwithstanding any sub-license it may grant, Vaccisafe shall remain responsible for the performance of all of its duties and obligations under this Agreement, and shall be liable to KP for any breach of the terms of this Agreement by a sublicensee.

4.2.2. Approval of Sublicensees. Following Vaccisafe ’s execution of this Agreement, and on the anniversary of the date of the execution by Vaccisafe each year of the Term thereafter, Vaccisafe shall provide KP with a list of proposed sub-licensees for review and approval. KP shall review the list and notify Vaccisafe of any potential sub-licensees that are not approved. If KP does not notify Vaccisafe that it has denied approval of a specific sub-licensee within thirty (30) days of receiving the list from Vaccisafe , such sub-licensee shall be deemed approved. If Vaccisafe wishes to engage a sub-licensee that is not on the then-current list of approved sub-licensees, it may request approval of such sub-licensee by submitting a written request to KP at any time. If KP does not notify Vaccisafe that it does not approve of such sub-licensee within fifteen (15) days, such sub-licensee shall be deemed approved. Any denial of approval by KP shall be made in good faith based on reasonable concerns related to the particular sub-licensee, and if requested, KP shall discuss its reasons with Vaccisafe . For clarity, approval of a sub-licensee by KP under this Section 4.2.2 does not relieve Vaccisafe of any liability or responsibility for the acts or omissions of its sub-licensees as otherwise provided in this Agreement.

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4.3. Documents and Declarations. KP shall execute all documents, give all required declarations required to give effect to the licenses granted hereunder, and shall reasonably cooperate with Vaccisafe to the extent such documents, declarations and/or cooperation are required to record or register the licenses granted hereunder at the various patent offices in the Territory for the benefit of Vaccisafe .

ARTICLE 5

FURTHER DEVELOPMENT AND COMMERCIALIZATION OF LICENSED PRODUCTS

5.1. Commercially Reasonable Efforts of Vaccisafe . Vaccisafe shall, following the exercise of its Option Right, use Commercially Reasonable Efforts to, [\*\*\*], develop, manufacture, register and market Licensed Products where commercially reasonable throughout the Territory.

5.2. Manufacturing. Following the exercise of its Option Right, Vaccisafe shall be solely responsible for manufacturing the Subject Compound and/or Licensed Product(s) for all clinical trials and for commercialization purposes.

5.3. Steering Committee.

5.3.1. Formation, Meetings, Procedures. The Parties shall form a joint steering committee (the “Steering Committee”) to monitor and review their respective activities during the Option Period. The Steering Committee shall be comprised of four (4) professionally and technically qualified representatives, two (2) from each Party. The Steering Committee shall meet for the first time within [\*\*\*] after the Effective Date, and thereafter [\*\*\*], until Vaccisafe exercises its Option Right, or the Option Period expires. The meeting place of the in person meeting shall alternate between the offices of KP in Tokyo, or at another place designated by KP, and the offices of Vaccisafe in [...], or at another place designated by Vaccisafe, or as otherwise agreed to by the Steering Committee. Steering Committee meetings may also be conducted by telephone, or by videoconference. Each Party shall provide the other Party with written notice of its Representatives for the Steering Committee within ten (10) Business Days after the Effective Date, and, thereafter, without undue delay upon any replacement. Each Party may invite guests to the meetings, in order to discuss special technical or commercial topics. At least [\*\*\*] prior to each meeting of the Steering Committee, the Parties will exchange written copies of all materials, development documentation, and data and other information, as far as reasonably required to support the activities of the Steering Committee.

5.3.2. Activities of the Steering Committee. The activities of the Steering Committee shall include: (i) the review and discussion of the Development Plan and the progress being made in relation to the various topics listed therein, (ii) the monitoring of KP’s, Vaccisafe’s, or any of its sub-licensee’s development activities regarding the Subject Compounds and any Licensed Products, (iii) the exchange of development and safety information, (iv) sharing information by each of the Parties about improvements to the KP Technology, and (v) coordination of activities relating to the KP Patent Rights and other IP applications regarding joint inventions.

5.3.3. Minutes. The Steering Committee shall keep accurate and complete minutes of its meetings. The responsibility for preparing the minutes setting forth decisions made at each Steering Committee meeting shall alternate between the Parties with the Vaccisafe Representatives preparing the minutes of the first Steering Committee meeting. The minutes of each meeting of the Steering Committee shall be prepared within [\*\*\*] of its completion, and will only become official when agreed upon by all Steering Committee members. If no issue is taken with any set of minutes within [\*\*\*] of their receipt by all Steering Committee members, they shall be deemed to have been accepted. All records of the Steering Committee shall be available at all times to each Party.

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5.3.4. Decisions. All decisions of the Steering Committee shall be made in good faith in the best interest of the successful and responsible development and commercialization of the Subject Compounds and the Licensed Products according to this Agreement. The Parties shall use reasonable efforts to take decisions unanimously. In the event that the Steering Committee is unable to agree on any matter after good faith attempts to resolve such any disagreement in a mutually acceptable fashion, then the vote of [\*\*\*]shall be decisive.

5.3.5. Joint Project Team. If Vaccisafe exercises its Option Right, the Steering Committee shall be reconstituted as a Joint Project Team to facilitate information sharing between the Parties. The role of the KP personnel on the Joint Project Team shall be solely that of observers to monitor the development and commercialization of the Subject Compounds and Licensed Product(s), and to answer questions from Vaccisafe about the KP Technology. Meetings of the Joint Project Team can be called by either Party on an ad hoc basis, but in no case more than once in each calendar quarter. Such meeting may be held by teleconference or videoconference. KP personnel on the Joint Project Team may fully participate in all discussions during the meeting, but will have no authority to make decisions related to the development or commercialization of the Subject Compounds or Licensed Products. All information disclosed to KP personnel on the Joint Project Team shall be treated as Confidential Information under this Agreement.

5.4. Use of Names. Except as otherwise provided herein, no Party has any right, express or implied, to use in any manner the name or other designation of the other Party, or any other trade name, trademark or logos of the other Party for any purpose in connection with the performance of this Agreement, or otherwise. In particular, KP does not grant Vaccisafe any license to use any of KP’s trademarks to designate any Subject Compound or Licensed Product. Vaccisafe shall have the sole right to select the Trademarks used in connection with the Subject Compounds and Licensed Products, and shall own and retain all right, title and interest in and to such Trademarks, and all goodwill associated with or attached to such Trademarks arising out of the use thereof by Vaccisafe , its Affiliates and any sub-licensees shall inure to the benefit of Vaccisafe . Only Vaccisafe will be authorized to initiate, at its own discretion, legal proceedings against any infringement or threatened infringement of such Trademarks.

5.5. Covenant not to Compete. During the Option Period, neither Party may develop or commercialize any compound or product that derives its intended therapeutic effect from [\*\*\*] other than the Subject Compounds. If Vaccisafe exercises its Option Right, during the Term Vaccisafe shall not develop or commercialize any compound that derives its intended therapeutic effect from [\*\*\*] other than the Subject Compounds and competes with any of the Licensed Products, either on its own or with a Third Party.

ARTICLE 6

CONSIDERATION

6.1. Up-front Payment. In consideration for KP granting the license and rights pursuant to this Agreement, Vaccisafe shall, subject to its exercise of the Option Right, pay to KP a one-time-only, non-refundable, non-creditable lump sum amount of [\*\*\*] payable within [\*\*\*] after the date of its exercise of the Option Right.

6.2. Development Milestone Payments. Vaccisafe shall make the following additional one-time-only payments to KP, each upon the achievement of the following events by Vaccisafe , its Affiliate, or its Third Party sub-licensee:

[\*\*\*]

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6.3. Sales Milestone Payments. Vaccisafe shall, in addition to the payments specified in Sections 6.1 and 6.2, pay KP the following one time sales milestone payments on the aggregated annual Net Sales of the Licensed Products in the Territory:

[\*\*\*]

For the avoidance of doubt, the term “aggregated annual Net Sales of the Licensed Products in the Territory”, as used in this Agreement, shall mean [\*\*\*].

6.4. Royalties. Vaccisafe shall pay to KP, as further consideration for the rights and licenses granted by it under this Agreement, royalties on Net Sales of the Licensed Products in the Territory equal to [\*\*\*] of annual Net Sales. Such royalty payments shall be determined irrespective of whether such Net Sales result from the commercialization of the Licensed Products by Vaccisafe or its Affiliates, or by any Third Party sub-licensees; annual Net Sales of the relevant Licensed Product shall mean the total of all Net Sales of a particular Licensed Product anywhere in the Territory in any single calendar year.

6.5. Royalties for Combination Product. If a Licensed Product is sold as part of a Combination Product for a single invoiced amount (in each case, a “Combination Sale”), the Net Sales amount for the Licensed Product sold in such a Combination Sale shall be that portion of the gross amount invoiced for such Combination Sale (less all permitted deductions) reasonably attributable (in terms of value) to the Licensed Product included in the Combination Sale, based on the relative prices of the separate components of the Combination Sale when sold separately in the country where such Combination Sale occurs (if such components are sold separately in such country) or (if such components are not sold separately in such country) on such other objective and reasonable factors agreed to by the Parties after good faith discussions.

6.6. Royalty Payment Term. Vaccisafe ’s obligation to make royalty payments terminates on a country-by-country and Licensed Product-by-Licensed Product basis by the later of (i) the Licensed Product is no longer covered by a Valid Claim in an issued patent within the KP Patent Rights in the relevant country, or (ii) [\*\*\*] after the First Commercial Sale of the respective Licensed Product in the relevant country; provided, however, that if the Licensed Product:

(a) is no longer covered by a Valid Claim in an issued patent within the KP Patent Rights in the relevant country,

(b) no longer enjoys market exclusivity from legal or regulatory protections (e.g. data exclusivity) obtained by the original holder of the Regulatory Approval in the relevant country, and

(c) one or more generic competitors enter the market in the relevant country and as a result, the prescription volume of the Licensed Product declines by [\*\*\*] or more in such country. For the purposes of this Section 6.6(c), the decline in prescription volume shall be measured by comparing the total number of units sold by Vaccisafe , its Affiliates, and sub-licensees during the applicable calendar quarter against the average of the total number of units sold by Vaccisafe , its Affiliates, and sub-licensees during the [\*\*\*] immediately before the first sale of a product by the first generic competitor in such country, then the royalty rate shall be reduced to [\*\*\*] for Net Sales of such Licensed Product in the relevant country.

6.7. Third-Party License Payments.

6.7.1. Notification. If Vaccisafe , its Affiliates, or its sub-licensees reasonably believe that one or more of them is/are required to obtain and maintain a license to Third Party patent rights, or a license of other proprietary rights owned or controlled by a Third Party in order to research, develop, manufacture, use, import, offer for sale, distribute or sell a Licensed Product in the Field, Vaccisafe shall notify KP of such circumstance before executing any license agreement with the Third Party. The Parties shall meet promptly and discuss the necessity of obtaining the proposed license and the terms of proposed Third Party license agreement. Vaccisafe shall have the final decision making authority regarding whether to execute the Third Party license agreement, but shall consider in good faith the comments, concerns, and objections raised by KP.

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6.7.2. Payment Offset. Vaccisafe shall be entitled to offset [\*\*\*] of the amounts paid to all Third Party licensor(s) under the applicable license(s) from the amounts to be paid to KP under this Agreement. The amounts paid to all Third Party licensors in a particular country during [\*\*\*] may be offset against the royalties otherwise payable to KP for Net Sales of Licensed Products in that country for [\*\*\*]. [\*\*\*].

6.7.3. Minimum Royalty Payment. During any calendar quarter in which royalties are due to KP and a payment offset under Section 6.7.2 of this Agreement is claimed by Vaccisafe , the aggregated amount of the offset for all Third Party license payments in a country shall not reduce the royalties paid to KP below [\*\*\*].

6.8. Payments to KP.

6.8.1. Payment Method. All payments due to KP under this Agreement will be made in US Dollars by bank wire transfer in immediately available funds to an account designated by KP. Vaccisafe shall be responsible for paying all transfer and other fees related to completing all bank wire transfers required under this Agreement. Within [\*\*\*], KP will provide Vaccisafe all information necessary to make such bank wire transfers. Thereafter, any change to such bank wire transfer information will be transmitted to Vaccisafe by a notice in accordance with Section 13.3.

6.8.2. Currency Exchange. In the event that any Net Sales subject to royalty payments according to this Agreement are calculated in any currency other than US Dollars, for purposes of calculating payments payable by Vaccisafe under Section 6.5, and Section 6.6 of this Agreement, such Net Sales shall be converted into US Dollars at the rate of exchange between the currency in which such Net Sales and licensing payments were received and the US Dollar prevailing at Federal Reserve Bank of New York, at noon on the last banking day of the calendar quarter in which such Net Sales have been effected.

6.8.3. Payments for Milestone Events. Vaccisafe shall inform KP of the occurrence of a milestone event without undue delay, however, no later than within [\*\*\*] following [\*\*\*]. Milestone payments are payable within [\*\*\*] after Vaccisafe ’s receipt of an invoice issued by KP for such milestone payment.

6.8.4. Royalty Payments. Payment of royalties under Section 6.5, and Section 6.6 of this Agreement shall be paid on a [\*\*\*] basis. Each payment by Vaccisafe under Section 6.5, and Section 6.6 shall be paid within [\*\*\*]. Within [\*\*\*], Vaccisafe will deliver a report specifying in the aggregate and on a country-by-country basis the following information for such calendar quarter: (a) total gross invoiced amount from sales of each Product by Vaccisafe , its Affiliates, and its Sublicensees; (b) amounts deducted by category (e.g., normal and customary trade, cash and other discounts, allowances and credits actually allowed and taken directly with respect to sales of the Product) from gross invoiced amounts to calculate Net Sales; [\*\*\*].

6.8.5. Taxes. All payments by Vaccisafe to KP are exclusive of value added tax, which shall, if applicable, be invoiced separately. The Parties shall use reasonable efforts to obtain any available exemptions from withholding taxes and to assist each other in that regard. Any tax paid or required to be withheld by Vaccisafe on behalf of KP on account of any upfront, milestone, royalty or other payments payable to KP under this Agreement will be deducted from the amount of such payments otherwise due. To the extent that Vaccisafe is able to do so, Vaccisafe will secure and send to KP proof of any such taxes withheld and paid by Vaccisafe on behalf of KP, and will, at KP’s request, provide reasonable assistance to KP in recovering or crediting, as applicable, such taxes. Vaccisafe shall use Commercially Reasonable Efforts to enable KP to take advantage of any applicable legal provision or tax treaty with the object of paying the sums due to KP without imposing or withholding any tax.

6.8.6. Late Payments. In the event of any delay in effecting any payment due to KP under this Agreement by the due date, Vaccisafe shall pay KP, in addition to the overdue amount, interest calculated on a daily basis on the overdue payment, from the day after such payment was due to the date of actual payment, at a rate of [\*\*\*] as applicable from time to time.

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6.9. Book Keeping and Auditing. For the Term and for [\*\*\*], Vaccisafe shall maintain complete and accurate books and records of account, in accordance with generally accepted account principles, of all transactions and other business activities conducted pursuant to this Agreement that are necessary to confirm the accuracy of all payments by Vaccisafe to KP under this Article 6. Upon reasonable written notice to Vaccisafe , KP, or a certified public accountant designated by KP and reasonably acceptable to Vaccisafe , shall have the right to audit such books and records of account of Vaccisafe (provided always that in the case of review by a certified public accountant, the relevant public accountant enters into an appropriate confidentiality agreement with Vaccisafe ), in order to confirm the accuracy and completeness of all such payments. KP shall bear all costs and expenses incurred in connection with any such audit; provided, however, that if any such audit reveals an inaccuracy of [\*\*\*] or more based on the amount of payments actually due during the audited period, then, in addition to paying the full amount of such underpayment, plus accrued interest, Vaccisafe shall reimburse KP all such reasonable costs and expenses incurred with the audit.

ARTICLE 7

KP PATENT RIGHTS

7.1. Ownership. Vaccisafe hereby acknowledges that KP is, as of the Effective Date, the owner of all of the KP Patent Rights, and Vaccisafe shall acquire no rights, title or interest whatsoever in or to any of the KP Patent Rights other than the licenses granted to it under this Agreement. Vaccisafe shall not utilize any of the KP Patent Rights for any purpose whatsoever, except as specifically authorized in this Agreement. Vaccisafe shall not in its own name register, or attempt to register, any of the KP Patent Rights, or otherwise assert any ownership rights with respect to any of the KP Patent Rights, in any country within the Territory.

7.2. Obligation to Prosecute and Maintain. During the Option Period, KP shall, at its sole expense, be responsible for prosecuting and maintaining the patents and the patent applications comprised within the KP Patent Rights. If Vaccisafe exercises its Option Right, then thereafter Vaccisafe shall be responsible, at its sole expense and using counsel of its choice, for prosecuting and maintaining the KP Patent Rights claiming the Subject Compounds. KP shall take all steps, and execute all documents and authorizations that are necessary to transfer such responsibility to Vaccisafe and KP shall reasonably support Vaccisafe in the prosecution and maintaining of such KP Patent Rights. KP shall remain responsible for prosecuting and maintaining the other patent rights claiming KP Technology that are licensed to Vaccisafe .

7.3. Information and Consultation. During the Option Period, KP shall keep Vaccisafe reasonably informed of and shall consult with Vaccisafe on an ongoing basis regarding the prosecution and maintenance of the KP Patent Rights containing claims that cover the Subject Compounds, and of any actions that are required to be taken in relation thereto. In particular, KP shall provide Vaccisafe with a copy of material communications from any patent authority in the Territory regarding the KP Patent Rights, and shall, to the extent reasonably practical, provide Vaccisafe with drafts of any material filings or responses to be made to such patent authorities a reasonable amount of time in advance of submitting such filings or responses.

7.4. Abandonment of Patent Rights. In the event that KP elects not to continue prosecuting or maintaining any of the KP Patent Rights, KP shall notify Vaccisafe in writing [\*\*\*] before any relevant deadline relating to or any public disclosure of the relevant KP Patent Rights. Upon receipt of a notice from KP indicating that it intends to cease prosecuting or maintaining any of the KP Patent Rights, Vaccisafe shall have the right to continue, at its own expense, prosecution or maintenance (as the case may be) of the relevant KP Patent Rights and KP shall at the request and cost of Vaccisafe do all such acts and execute all such documents as may be necessary to (i) transfer title to the relevant KP Patent Rights to Vaccisafe and (ii) assist Vaccisafe with the prosecution and maintenance of the relevant KP Patent Rights until such times as Vaccisafe ’s title as proprietor of the relevant KP Patent Rights has been registered at all of the appropriate patent offices.

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7.5. Third Party Infringement of KP Patent Rights.

7.5.1. Notification. If either Vaccisafe or KP becomes aware of any activity that it believes represents an infringement of any of the KP Patent Rights, the Party obtaining such knowledge shall promptly advise, to the extent that such information is available to the respective Party, the other of all relevant facts and circumstances relevant to the potential infringement. Vaccisafe and KP shall thereafter consult and cooperate fully to determine a course of action, including but not limited to the commencement of legal action to enjoin any infringement of the relevant KP Patent Rights. However, Vaccisafe shall have the first right, but not the obligation, to bring, defend, or maintain any suit or action, in its own name, against any actual, threatened, or suspected infringement of any of the KP Patent Rights in the Territory.

7.5.2. Controlling Party. If Vaccisafe decides to exercise such right and so to bring, defend or maintain any such suit or action in its own name and at its own expense, Vaccisafe shall be responsible for taking all actions, in the courts, administrative agencies, or otherwise, including a settlement, to prevent or enjoin any and all such infringements and other unauthorized uses of the KP Patent Rights, and KP shall take no action with respect to any such infringement or unauthorized use of the Patent Rights, without the prior written authorization of Vaccisafe ; provided, however, that Vaccisafe shall not take any action or agree to any settlement that impairs, diminishes, limits, or forfeits any KP Patent Rights without written consent from KP, such consent not to be unreasonably withheld or delayed. KP shall provide, at the request and cost of Vaccisafe , such assistance as Vaccisafe shall reasonably request in connection with any action to prevent or enjoin any such infringement or unauthorized use of any of the KP Patent Rights.

7.5.3. Damage Awards. Any damage award or settlement payments, made in connection with any action relating to infringement of the KP Patent Rights in the Territory, whether obtained by judgment, settlement or otherwise shall be allocated (i) first, to the Parties to recover their respective reasonable costs and expenses incurred in connection with the action, and (ii) second, the amount of any recovery remaining shall then be allocated between KP and Vaccisafe depending on the economic effect of the infringement action on the commercialization of the Subject Compounds and/or the Licensed Products by Vaccisafe or its sub-licensees under the license granted to Vaccisafe .

7.6. Transfer of Title to KP Patent Rights. If Vaccisafe desires to transfer, all or a substantial part of the KP Patents Rights licensed to Vaccisafe under this Agreement to a Third Party, and the proposed Third Party transferee requires that Vaccisafe hold title to the KP Patents as a condition to consummating the proposed transaction, Vaccisafe may request discussions with KP to determine the feasibility of transferring title to the KP Patent Rights from KP to Vaccisafe . Any request from Vaccisafe shall include a detailed description of the circumstances underlying the request and a timeline for KP to make its decision. After making such request, Vaccisafe shall promptly provide all information and answer any questions reasonably requested by KP. KP shall have the sole discretion to decide whether to transfer title to any KP Patent Rights to Vaccisafe , and if undertaken, the scope of the transfer, and any conditions that must be satisfied before such transfer of title is completed. All decisions by KP regarding whether to transfer title, the scope of the transfer, and the conditions for the transfer are final and undisputable, and therefore not subject to the dispute resolution procedure provided in Section 13.5 of this Agreement, or as provided under any other laws or regulations.

ARTICLE 8

CONFIDENTIALITY

8.1. Confidentiality Obligations. All information disclosed by one Party to the other Party pursuant to this Agreement and all information disclosed pursuant to the BCDA shall be “Confidential Information” of the disclosing Party for all purposes hereunder. Each Party agrees that, for the Term and for [\*\*\*] thereafter, such Party shall, and shall ensure that its, its Affiliates’, and its sub-licensees’ Representatives shall, keep completely confidential (using at least the same standard of care as it uses to protect proprietary or confidential information of its own, but in no event less than reasonable care) and not publish or otherwise disclose, and not use for any purpose except as expressly permitted hereunder, any Confidential Information of the other Party. The foregoing obligations shall not apply to any information disclosed by a Party hereunder to the extent that the receiving Party can demonstrate with competent evidence that such information:

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(i) was already known to the receiving Party or its Affiliates, other than under an obligation of confidentiality, at the time of disclosure;

(ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(iii) became generally available to the public or otherwise part of the public domain after its disclosure to the receiving Party other than through any act or omission of the receiving Party, its Affiliates, or its sub-licensees in breach of this Agreement or the BCDA;

(iv) was subsequently lawfully disclosed on a non-confidential basis to the receiving Party or its Affiliates by a Third Party other than in contravention of a confidentiality obligation of such Third Party to the disclosing Party; or

(v) was independently developed by the receiving Party without use of the Confidential Information of the disclosing Party, as established by contemporaneous written records of the receiving Party.

Notwithstanding the definition of “Confidential Information” above and any licenses granted to such information, all results generated by either Party pursuant to Article 3 shall be deemed Confidential Information of such Party.

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

(i) Filing or prosecuting or maintaining Patent Rights as expressly permitted under this Agreement;

(ii) Submissions to a Regulatory Authority and request for Regulatory Approvals relating to the Licensed Products as provided for in the Development Plan or otherwise permitted under this Agreement;

(iii) Prosecuting or defending litigation or arbitration as permitted under this Agreement;

(iv) Disclosure, in connection with the performance of this Agreement, to Affiliates, Representatives, sub-licensees, research collaborators, or subcontractors, each of whom prior to such disclosure must be bound by obligations of confidentiality and nonuse equivalent or greater in scope to those set forth in this Article 8.

Further, a Party may disclose the other Party’s Confidential Information to the extent such disclosure is required by valid court order or legal process, provided that, to the extent consistent with such order or process, such Party gives the other Party advance notice of such required disclosure, limits the disclosure to that actually required, and cooperates in the other Party’s attempts to obtain a protective order or confidential treatment of the information required to be disclosed.

8.3. Confidentiality of Agreement Terms. Each Party acknowledges that the terms of this Agreement shall be treated as Confidential Information of the other Party. Notwithstanding the foregoing, such terms may be disclosed by a Party to investment bankers, investors, and potential investors or acquirers, solely in the context of a potential transaction and for the limited purpose of evaluating such potential transaction. In addition, a copy of this Agreement and any ad hoc announcement pertaining hereto may be filed by a Party with the Securities and Exchange Commission and/or any applicable securities exchange as required by applicable laws or stock exchange regulations. In connection with any such filing, such Party shall provide the other Party a reasonable opportunity to review the proposed filing to identify and request the removal of sensitive financial and trade secret information, and shall endeavor to obtain confidential treatment of economic and trade secret information, if included. In any event, the Parties agree to take all reasonable action to avoid disclosure of Confidential Information except as permitted hereunder.

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ARTICLE 9

WARRANTIES AND LIABILITIES

9.1. Mutual Representations and Warranties. The Parties represent and warrant that they have the full right and authority to enter into this Agreement and that they have no obligations or commitments inconsistent with this Agreement.

9.2. Warranties of KP. KP warrants and represents that:

(i) as of the Effective Date, it owns the right, title and interest in the KP Patent Rights and owns or has the right to license the KP Technology;

(ii) as of the Effective Date, it does not own or otherwise control any patent rights other than the KP Patent Rights which are necessary or reasonably useful for or directed to the development, manufacture or commercialization of the Subject Compounds;

(iii) it has the right to grant the licenses contained herein;

(iv) as of the Effective Date, it is not aware of any claim or threatened claim that any of the KP Patent Rights is invalid or that the development of the Subject Compounds would infringe any intellectual property rights of any Third Party;

(v) as of the Effective Date, it is not aware of any Third Party having any right, title or interest in or to any of the KP Patent Rights or the KP Technology.

9.3. Disclaimer. KP makes no representation or warranty and specifically disclaims any guarantee that the development of the Subject Compound(s) and/or Licensed Products will be successful, in whole or in part. KP expressly disclaims any warranties or conditions, express, implied, statutory or otherwise with respect to any of the KP Patent Rights or KP Technology, except as set forth in Section 9.2, including any warranty of merchantability or fitness for a particular purpose.

9.4. Limitation of Liability. The Parties’ liability in case of simple negligence shall be excluded. Except in case of gross negligence or willful misconduct, neither Party shall be liable to the other Party for any indirect, punitive or consequential damages or loss of profits, whether based on contract or tort, or arising under applicable law or otherwise.

ARTICLE 10

INDEMNIFICATION AND INSURANCE

10.1. KP’s Indemnification Obligations. KP shall defend, indemnify and hold Vaccisafe harmless against [\*\*\*].

KP indemnification obligation under this Section 10.1 shall be subject to each of the following conditions: (i) Vaccisafe shall furnish KP with written notice of any such Claims and Liabilites for which it will seek indemnification within [\*\*\*] of the date on which Vaccisafe receives notice thereof; (ii) subject to KP confirming in writing that its indemnification obligation will apply to the relevant Claims and Liabilities, KP shall thereafter be solely responsible for investigating, defending, settling and discharging such Claims and Liabilities, provided that KP shall not settle or discharge any Claims and Liabilities in a manner that admits fault or liability by Vaccisafe without first obtaining consent from Vaccisafe ; and (iii) Vaccisafe shall at KP’s costs furnish KP with all assistance reasonably requested by KP or its counsel. Vaccisafe ’s failure to comply with its obligations pursuant to this Section 10.1 shall not constitute a breach of this Agreement nor relieve KP of its indemnification obligations pursuant to this Section 10.1, except to the extent, if any, that KP’s defense of the claim, action or proceeding was materially impaired thereby.

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10.2. Vaccisafe ’s Indemnification Obligations. Vaccisafe shall defend, indemnify and hold KP harmless against [\*\*\*]

Vaccisafe ’s indemnification obligation under this Section 10.2 shall be subject to each of the following conditions: (i) KP shall provide Vaccisafe with written notice of any such Claims and Liabilities for which it seeks indemnification within [\*\*\*] after KP receives notice thereof; (ii) subject to Vaccisafe confirming in writing that its indemnification obligation will apply to such Claims and Liabilities, Vaccisafe shall be solely responsible for investigating, defending, settling and discharging such Claims and Liabilities, provided that Vaccisafe shall not settle or discharge any Claims and Liabilities in a manner that admits fault or liability by KP or materially affects the scope of the KP Patent Rights without first obtaining consent from KP; and (iii) KP shall at Vaccisafe ’s cost provide Vaccisafe with all assistance reasonably requested by Vaccisafe or its counsel. KP’s failure to comply with its obligations pursuant to this Section 10.2 shall not constitute a breach of this Agreement nor relieve Vaccisafe of its indemnification obligations, except to the extent, if any, that Vaccisafe ’s defense of the claim, action or proceeding was materially impaired thereby.

10.3. Insurance. Both Parties shall, at their sole cost and expense, obtain and maintain in full force and effect during the continuance of this Agreement and thereafter in accordance with Section 10.5 of this Agreement, a policy of commercial general liability insurance with coverage adequate in relation to the risks attached to the activities conducted by the respective Party. The Parties hereby specifically acknowledge and agree that the insurance coverage limits set forth in this Section 10.4 shall not be construed to create any limit on each Party’s liability hereunder and/or indemnification obligation under Sections 10.1 and 10.3 of this Agreement.

10.4. Survival. KP’s indemnification obligation under Section 10.1, Vaccisafe ’s indemnification obligation under Section 10.2, and the Parties’ obligation to maintain general liability insurance under Section 10.3 shall survive for fifteen (15) years after the expiration or termination of this Agreement.

ARTICLE 11

TERM AND TERMINATION

11.1. Expiration. This Agreement shall expire at the end of the Term without the need for further action by either Party. Thereafter, Vaccisafe shall retain an irrevocable, fully paid-up and royalty free right to use the KP Technology in the Field. For clarity, termination under Section 11.2 through 11.4 of this Agreement shall not be considered an “expiration”, and the foregoing right to use KP Technology thereafter shall not apply.

11.2. Termination by Vaccisafe for Convenience. Vaccisafe may terminate this Agreement at any time before it pays the first development milestone payment for Regulatory Approval in the United States, the European Union, or Japan, as provided in Section 6.2(iii) — (v), by giving written notice to KP not less than [\*\*\*] before the date on which the termination is to become effective. After paying the first development milestone payment for Regulatory Approval in the United States, the European Union, or Japan, Vaccisafe may terminate this Agreement, as a whole or on a country-by-country basis, at any time by giving written notice to KP not less than [\*\*\*] before the date on which the termination is to become effective. Any written notice by Vaccisafe to KP to the effect that Vaccisafe decided to finally discontinue the development and/or commercialization of the Licensed Products in all countries in the Territory shall be deemed to constitute notice of termination according to the foregoing sentence of this Section 11.2.

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11.3. Termination for Breach. In the event that either Party (the “Breaching Party”) commits a material breach or default of any of its obligations hereunder, the other Party (the “Non-Breaching Party”) may give the Breaching Party written notice of such material breach or default, and request that such material breach or default be cured as soon as reasonably practicable. If the Breaching Party fails to cure such breach or default within ninety (90) calendar days after the date of the Non-Breaching Party’s notice or, if such breach or default is not capable to be cured within such ninety (90) day period, fails to make good faith efforts to cure such breach or default within a reasonable period of time after such ninety (90) day period, the Non-Breaching Party may terminate this Agreement by giving written notice of termination to the Breaching Party. If it is not possible for the Breaching Party to cure the alleged breach, despite good faith efforts, this Agreement may be terminated by the Non-Breaching Party effective immediately upon giving written notice to the Breaching Party. Termination of this Agreement in accordance with this Section 11.3 shall not affect or impair the Non-Breaching Party’s right to pursue any remedy, in law or in equity, including seeking injunctive relief and the right to recover damages, for harm suffered or incurred by the Non-Breaching Party as a result of such breach or default.

11.4. Termination in Case of Insolvency. If a Party files a voluntary petition, or if an involuntary petition is granted against such Party and appeal proceedings are not commenced within a period of ten (10) Business Days from the date of such petition under the bankruptcy provisions of applicable law, or if such Party is declared insolvent, undergoes voluntary or involuntary dissolution, or makes an assignment for the benefit of its creditors, or fails or is unable to pay its debts as they come due, or suffers the appointment of a receiver or trustee over all, or substantially all, of its assets or properties, and whether or not any of the aforesaid acts be the outcome of a voluntary act of that Party, such Party shall provide the other Party with prompt written notice and the Parties shall mutually discuss in good faith the effects of any of the foregoing on this Agreement and any reasonable consequences such as amendments to or a termination of this Agreement.

ARTICLE 12

CONSEQUENCES OF TERMINATION

12.1. Sell Off. Except as set forth in Sections 12.3 and 12.4 hereof, immediately upon the termination of this Agreement for any reason, Vaccisafe shall cease all manufacturing, producing, distributing, marketing and selling all Licensed Products, provided, however, that, if this Agreement is terminated for any reason other than a breach by Vaccisafe , Vaccisafe shall have the right to distribute and sell its existing inventory of Licensed Products for not more than one (1) year after the date of expiration or termination, subject to Vaccisafe’s continuing obligation to make all payments required under Article 6 of this Agreement that accrue as a result of the sale of such existing inventory.

12.2. Accrued Payment Claims. Termination or expiration of this Agreement shall not relieve Vaccisafe of its obligations to pay all royalties and other amounts payable to KP which have accrued prior to, but remain unpaid as of, the date of expiration or termination, or that accrue thereafter.

12.3. Continued Rights and Obligations of KP. Except as otherwise specifically provided in this Agreement, upon expiration or termination of this Agreement for any reason whatsoever, KP shall have no further obligations to Vaccisafe .

12.4. Continued Rights and Obligations of Vaccisafe . Except as otherwise specifically provided in this Agreement, upon expiration or termination of this Agreement for any reason whatsoever, Vaccisafe shall have no further obligations to KP.

12.5. Substitution of Sub-licenses. Upon termination of this Agreement for any reason, all sub-licensees that are granted sublicenses by Vaccisafe pursuant to this Agreement, and are not in material breach of the terms of such sublicense shall have the right to obtain equivalent licenses directly from KP, unless the respective sublicense agreement contains terms which are reasonably unacceptable to KP. Further, if this Agreement is terminated by Vaccisafe pursuant to Section 11.2 or by KP pursuant to Section 11.3 or Section 11.4, KP shall not have any obligation to negotiate or execute a substitute license with an existing Vaccisafe sub-licensee, but any negotiations undertaken by KP shall be conducted in good faith with the intention of agreeing upon commercially reasonable terms and conditions. KP shall not be required to negotiate a substitute license agreement if the sub-licensee is in material breach under the sublicense Agreement.

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12.6. Termination by Vaccisafe for Convenience or by KP for Vaccisafe ’s Breach or Insolvency. If this Agreement is terminated by Vaccisafe in its entirety (i.e. not only on a country-by-country basis) pursuant to Section 11.2 or by KP pursuant to Section 11.3, or Section 11.4, Vaccisafe shall, upon a request from KP (to be exercised by written notice within ninety (90) calendar days after the effective date of termination), and at no cost to KP, deliver to KP or its designee: (a) all development data and any other relevant information controlled by Vaccisafe regarding the Subject Compounds and Licensed Products, and (b) all Regulatory Approvals granted to Vaccisafe prior to the effective date of termination. KP shall be entitled to use such development data and Regulatory Approvals to continue development and commercialization of the Subject Compounds and/or Licensed Products solely in the Field. If Vaccisafe terminates this Agreement for convenience pursuant to Section 11.2 or KP terminates this Agreement for Vaccisafe ’s insolvency pursuant to Section 11.4, KP’ right to use such development data and Regulatory Approvals shall be without further obligation to Vaccisafe .

ARTICLE 13

GENERAL PROVISIONS

13.1. Assignment. Subject to the other terms of this Agreement, neither Party shall have the right or the power to assign this Agreement or any of its rights or obligations under this Agreement, without the prior written authorization of the other Party, such written authorization not to be unreasonably withheld or delayed; provided, however, that the prior written authorization of the other Party shall not be required for a Party to assign this Agreement or any of its rights or obligations hereunder to an Affiliate. Any permitted assignment hereunder by either Party, whether to an Affiliate pursuant to this Section 13.1, or pursuant to the prior written authorization of the other Party, shall not relieve such Party of any of its obligations under this Agreement, including, but not limited to, Vaccisafe ’s obligation to make upfront, milestone and royalty payments pursuant to Sections 6.1 through 6.6 with respect to any and all Net Sales derived by any of the Vaccisafe ’s assignees or sub-licensees from the distribution, marketing and sale of any of the Licensed Products.

13.2. Force Majeure. Neither Party shall be liable for any failure to perform, or any delay in the performance of, any of its obligations under this Agreement to the extent that such Party’s performance is prevented by the occurrence of an event of force majeure. For purposes of this Section 13.2, an event of force majeure shall mean and include, war, civil war, insurrection, rebellion, civil unrest, fire, flood, earthquake, adverse weather conditions, strike, lockout, labor unrest, unavailability of supplies, materials or transportation, acts of the public enemy, and, in general, any other cause or condition beyond the reasonable control of the Party whose performance is affected thereby. In the event that a Party’s performance is affected by the occurrence of any event of force majeure, that Party shall furnish immediate written notice thereof to the other Party. If the affected Party reasonably believes that the event of force majeure will continue for more than one hundred eighty (180) calendar days, the Parties shall discuss in good faith actions that may be taken to mitigate or relieve its effects.

13.3. Notices. All notices, reports and other communications between the Parties under this Agreement shall be sent by registered mail, postage prepaid and return receipt requested, or by facsimile, with a confirmation copy sent by registered mail or courier, addressed as follows:

To: KP

Kobe Pharma Co., Ltd.

[\*\*\*]

To: VACCISAFE

Vaccisafe AG

[\*\*\*]

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13.4. Governing Law. This Agreement shall be governed by, and interpreted in accordance with the laws of the Federal Republic of Germany without reference to conflicts of laws principles. The validity of the intellectual property rights shall be subject to an evaluation under the law of the country in which the intellectual property rights were applied for or have been issued.

13.5. Dispute Resolution. Any dispute relating to the validity, performance, construction or interpretation of this Agreement, which cannot be resolved amicably between the Parties, shall be submitted to arbitration in accordance with the Rules of the International Chamber of Commerce (ICC). Unless otherwise agreed to by the Parties, each Party shall appoint one (1) neutral arbitrator, and the two appointed arbitrators shall mutually agree upon the appointment of a third arbitrator to serve as the chairperson of the arbitration panel. The decision of the arbitrators shall be final and binding upon the Parties and enforceable in any court of competent jurisdiction. All arbitration proceedings initiated under this Section 13.5 shall be conducted in the English language in Zurich, Switzerland. Each Party shall have the right to seek preliminary and permanent injunctive relief in any court of competent jurisdiction, in order to prevent or enjoin any misappropriation, misuse, unauthorized disclosure or infringement of any of the patent rights and/or the Confidential Information of either Party.

13.6. Independent Contractors. The Parties each acknowledge and agree that their relationship under this Agreement is that of independent contractors. Nothing contained in this Agreement is intended implicitly or explicitly, nor is to be construed, as creating or constituting a partnership, joint venture, employment, or any form of agency relationship between them. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any Third Party.

13.7. Headings. The captions to the several Sections and Articles of this Agreement are not a part of this Agreement, but are included merely for convenience of reference only and shall not affect its meaning or interpretation.

13.8. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

13.9. Severability. If any provision of this Agreement is determined by any court or administrative tribunal of competent jurisdiction to be invalid or unenforceable, the Parties shall negotiate in good faith a replacement provision that, to the maximum extent permitted by applicable law, is equivalent in effect to such invalid or unenforceable provision. Unless otherwise provided in this Agreement the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement.

13.10. Entire Agreement and Amendments. This Agreement, including all Exhibits attached hereto, constitutes the entire Agreement between the Parties, and supersedes all prior agreements, understandings and communications between the Parties, with respect to the subject matter hereof, including the BCDA which shall remain in force until the Effective Date and then terminate with effect ex nunc. No modification or amendment of this Agreement shall be binding upon the Parties unless in writing and executed by the duly authorized representative of each of the Parties; this shall also apply to any change of this clause.

13.11. No Waiver. The failure by either Party to assert any of its rights, including, the right to terminate this Agreement due to a breach or default by the other Party, shall not be deemed to constitute a waiver by that Party of its right to enforce each and every provision of this Agreement at a later time.

13.12. Press Releases. Each Party shall give notice to the other Party prior to issuing any press release relating to this Agreement within due time to allow for reasonable consideration. The Party issuing the press release shall give due consideration and weight to any comments or concerns raised by the other Party and shall, if requested, remove any information that the other Party deems to be its Confidential Information. Notwithstanding the foregoing, neither Party shall issue a press release announcing the execution of this Agreement outside of a joint press release prepared jointly by the Parties. A draft of a joint press release shall be provided by Vaccisafe .

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In Witness whereof, this Agreement has been signed by the Parties hereto on September 27, 2018 at 1-2-58 Hriomachi, Shinagawa-ku, Tokyo 140-8710, Japan and on October \_\_\_\_, 2018 at Am Klopferspitz 19, 82152 [...], Germany, in two (2) originals, each Party acknowledging receipt of one original.

Kobe Pharma Co., Ltd.

By: /s/ Hiro Watanabe

Name: Hiro Watanabe

Title: Vice President, Venture Science Laboratories

Vaccisafe AG

By: /s/ Dr. Max Schmeller

Name: Dr. Max Schmeller

Title: CEO

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**LicA#30**

EXHIBIT 10.1

**EXHIBIT 10.1**

Execution Copy

**CONFIDENTIAL TREATMENT REQUESTED**

**The confidential portions of this exhibit have been delivered separately to the Securities and Exchange Commission pursuant to a confidential application for confidential treatment in accordance with Rule 24b-2 under the Securities Exchange Act of 1934, as amended.**

**REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY AN [\*\*\*].**

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this “**Agreement**”), is made as of July 9, 2015 (the “**Effective Date**”), by and among Helicon Pharmaceuticals, Inc., a corporation organized under the laws of Delaware (“**Helicon Pharmaceuticals**”), Helicon Pharma S.A.S., a French corporation and wholly owned subsidiary of Helicon Pharmaceuticals (“**Helicon Pharma**” and, collectively with Helicon Pharmaceuticals, “**Helicon**”) and LiveWell Pharmaceuticals Luxembourg S.à r.l., a société à responsabilité limitée (private limited liability company) duly formed and validly existing under the laws of the Grand-Duchy of Luxembourg (“**LiveWell**”).

**WHEREAS**, Helicon has developed the drug MNO-521 (together with any improvements or enhancements thereto, “**MNO-521**”), which incorporates a reformulated topically active corticosteroid, dexamethasone phosphate, for delivery into the ocular tissues through Helicon’s proprietary innovative drug delivery system, the Helicon® II Delivery System (together with any improvements or enhancements thereto, the “**Helicon® II Delivery System**,” and, together with MNO-521 and any improvements or enhancements thereto, the “**Product**”); and

**WHEREAS**, LiveWell desires to acquire (i) the exclusive right to Manufacture, sell, distribute, Commercialize and otherwise Exploit the Product in the Territory in the Field, (ii) the exclusive right to Develop the Product in the Territory in the Field, other than for the United States, and (iii) a non-exclusive license to Develop the Product in the Field for the United States, in each case under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, do agree as follows:

**ARTICLE 1  
DEFINITIONS**

1.1           Definitions. For purposes of this Agreement, the following terms, whether in the singular or the plural, shall have the meanings designated to them under this Article 1, unless otherwise specifically indicated:

|  |
| --- |
|  |
|  |

(a)          “**Act**” shall mean the Federal Food, Drug and Cosmetic Act, as amended, and the regulations promulgated thereunder from time to time.

(b)          “**Affiliate**” shall mean, as to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For the purpose of this definition, “control”, “controlled by” or “under common control with” means the possession of the power to direct or cause the direction of management and policies of such Person, whether through direct or indirect ownership of voting securities or otherwise.

(c)          “**Applicable Laws**” shall mean all applicable federal, state, local or foreign laws, statutes or ordinances, common law, or any rules, regulations, standards, judgments, orders, writs, injunctions, decrees, arbitration awards and agency requirements, including without limitation the Act.

(d)          “**Audited Party**” shall have the meaning set forth in Section 8.2(a).

(e)          “**Auditing Party**” shall have the meaning set forth in Section 8.2(a).

(f)          “**Authorized Generic**” shall mean the Product comprised of drug and device in released, finished form that is: (i) packaged and sold without the Product Trademark or a LiveWell Trademark, (ii) Manufactured, sold, distributed or Commercialized pursuant to a Marketing Authorization with the consent of LiveWell and (iii) intended to be dispensed as if the Product were a Generic Substitute.

(g)          “**Business Day**” shall mean any day except Saturday, a Sunday or any other day on which banks in the State of New York or Luxembourg are closed for business.

(h)          “**Calendar Quarter**” shall mean the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31; *provided*, *however*, that (i) the first Calendar Quarter of the Term shall extend from the Effective Date until September 30, 2015; and (ii) the last Calendar Quarter of the Term shall end upon the termination of this Agreement.

(i)          “**Calendar Year**” shall mean the respective periods of twelve (12) consecutive calendar months ending on December 31; *provided*, *however*, that (i) the first Calendar Year of the Term shall extend from the Effective Date until December 31, 2015; and (ii) the last Calendar Year of the Term shall end upon the termination of this Agreement.

(j)          “**Collaboration Results**” shall mean all know-how (whether or not patentable) conceived or reduced to practice by or for either Party or any of its Affiliates in the course of performing the activities under this Agreement.

(k)          “**Commercialize,**” “**Commercializing,**” “**Commercialization**” or “**Commercialized**” means all activities directed to the Promotion, selling or offering for sale of the Product, including planning, market research, pre-marketing activities, Promoting, importing, exporting, and distributing. For clarity, “Commercialization” shall not include any activities related to Manufacturing or Development of the Product.

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(l)          “**Commercially Reasonable Efforts**” shall mean the efforts and resources normally used by a Party for a pharmaceutical product of its own discovery with a similar market potential at a similar stage in its development or commercialization, taking into account the competitiveness of the marketplace, such Party’s proprietary position with respect to such product, applicable regulatory circumstances, the profitability to such Party of such product, the likelihood of success of commercialization, and other relevant factors.

(m)         “**Competitive Product**” shall mean **[\*\*\*]**.

(n)          “**Confidential Information**” shall have the meaning set forth in Section 13.1.

(o)          “**Contract**” shall mean any agreement, contract, license, lease, commitment, arrangement or understanding, written or oral, including any sales order and purchase order currently outstanding that is legally binding and enforceable against the parties thereto.

(p)          “**Controlled**” shall mean possession by a Party of the right to grant to the other Party a license, sublicense or other right to use, of the scope provided for in this Agreement, under intangible or intellectual property rights (including patent rights, design rights, copyrights, know-how, trade secrets, data and rights to access or cross-reference regulatory filings) without violating the terms of any agreement or other arrangement with any Third Party existing at the time such Party would be first required hereunder to grant the other Party such license, sublicense or other right.

(q)          “**Cover,**” “**Covered,**” and “**Covering**” shall mean, with respect to an invention, product, or process, in the absence of a license granted to a Valid Claim included in the applicable Patent, the Development, Manufacture, Commercialization or Exploitation of such invention, product, or process (as applicable) would infringe such Valid Claim (or, in the case of a Valid Claim that has not yet issued, would infringe such Valid Claim if it were to issue).

(r)          “**Develop,**” “**Development,**” and “**Developing**” means those research and development activities, including research, pre-clinical and other non-clinical activities, test method development and stability testing, toxicology, formulation development, clinical trials, and regulatory activities that are necessary or useful to permit the marketing and sale of a product, including all research and other activities conducted to obtain any Marketing Authorizations. For clarity, “Development” shall not include any activities related to Manufacturing or Commercialization of a Product.

(s)          “**Development Field**” shall mean the treatment of non-infectious anterior uveitis.

(t)          “**Development Milestone**” shall have the meaning set forth in Section 7.1(b).

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(u)          “**Development Milestone Payment**” shall have the meaning set forth in Section 7.1(b).

(v)          “**Disclosing Party**” shall have the meaning set forth in Section 13.1.

(w)         “**Effective Date**” shall have the meaning set forth in the Preamble.

(x)          “**MNO-521**” shall have the meaning set forth in the Recitals.

(y)          “**Ex-U.S. Development Plan**” shall have the meaning set forth in Section 4.7(b).

(z)          “**Exploit**” or “**Exploitation**” means to import, export, use, sell, or offer for sale (and, for clarity, shall not include make or have made).

(aa)        “**Helicon**” shall have the meaning set forth in the Preamble.

(bb)       “**Helicon® II Delivery System**” shall have the meaning set forth in the Recitals.

(cc)        “**Helicon Patents**” shall have the meaning set forth in Section 1.1(iii).

(dd)        “**Helicon Pharma**” shall have the meaning set forth in the Preamble.

(ee)        “**Helicon Pharmaceuticals**” shall have the meaning set forth in the Preamble.

(ff)         “**FDA**” shall mean the United States Food and Drug Administration, or any successor entity thereto.

(gg)       “**Field**” shall mean the treatment, prevention or cure of uveitis.

(hh)       “**Force Majeure Event**” shall have the meaning set forth in Section 16.1.

(ii)         “**GAAP**” shall mean U.S. generally accepting accounting principles.

(jj)         “**Generic Substitute**” shall mean, with respect to any particular country in the Territory, the marketing and sale in such country of a Substitutable Product, which is marketed and sold without any trademark or under any trademark other than the Product Trademark or any LiveWell Trademark.

(kk)        “**Indemnitee**” shall have the meaning set forth in Section 15.3.

(ll)         “**Indemnitor**” shall have the meaning set forth in Section 15.3.

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(mm)        [\*\*\*].

(nn)         “**Joint Inventions**” shall have the meaning set forth in Section 11.3.

(oo)         “**Joint Patents**” means any Patents arising or resulting from Joint Inventions.

(pp)         “**JSC**” shall have the meaning set forth in Section 3.1.

(qq)         “**License Fees and Milestone Payments**” shall mean the payments to be made by LiveWell pursuant to Sections 7.1 and 7.2.

(rr)          “**Litigating Party**” shall have the meaning set forth in Section 11.7(g).

(ss)         “**Losses**” shall have the meaning set forth in Section 15.1.

(tt)          “**Major Market Countries**” shall mean the countries set out on Schedule 1.1(tt) hereto.

(uu)        “**Manufacturing,**” “**Manufacture**” or “**Manufactured**” means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, and shipping and holding (prior to distribution) of the Product or any intermediate or component thereof, including process development, process qualification and validation, scale-up, commercial manufacture and analytic development, product characterization, stability testing, quality assurance and quality control. For clarity, “Manufacturing” shall not include any activities related to Commercialization or Development of a Product.

(vv)        “**Marketing Authorization**” shall mean, with respect to any country, the regulatory authorization required to market and sell the Product for use in the Field in that country as granted by the relevant Regulatory Authority.

(ww)       “**Members**” shall have the meaning set forth in Section 3.2(a).

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(xx)        “**Net Sales**” shall mean, for a particular period, in a particular country in the Territory, the gross amount invoiced by or on behalf of LiveWell or its Affiliates or distributors for sale of the Product for such period in such country, less the following deductions [\*\*\*]. To the extent any such deductions apply to the Product as well as any other products of LiveWell or its Affiliates, such deductions shall be fairly and equitably allocated to the Product and such other products of LiveWell or its Affiliates, such that the Product does not bear a disproportionate portion of such deductions. Any of the deductions listed above that involves payment by LiveWell or its Affiliates or distributors shall be taken as a deduction in the Calendar Quarter in which the payment is accrued by such entity.  To the extent accrued deductions are subsequently reduced or increased, adjustments will be made to that Calendar Quarter.  The transfer of Product by LiveWell to an Affiliate or a distributor will not be deemed a sale, except in the case of an Affiliate or distributor whose primary business is wholesale distribution of pharmaceutical products, in which case the per unit sales price of Product sold to such Affiliate or distributor shall be deemed to be the average sales price per unit of the Product sold by the applicable Party, its Affiliates or distributors to Third Parties in arm’s length transactions during the Calendar Quarter in which the sale took place.

(yy)        “**New York Court**” shall have the meaning set forth in Section 16.7(c).

(zz)         “**Non-Field Rights**” shall have the meaning set forth in Section 2.4.

(aaa)      “**Non-Litigating Party**” shall have the meaning set forth in Section 11.7(g).

(bbb)      “**Party**” shall mean either LiveWell or Helicon.

(ccc)      “**Patents**” shall mean patents and patent applications and all substitutions, divisions, continuations, continuations-in-part, any patent issued with respect to any such patent applications, any reissue, reexamination, utility models or designs, renewal or extension (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent, and all counterparts thereof in any country.

(ddd)        “**Person**” shall mean any individual, corporation, partnership (whether general, limited or limited liability), association, joint venture, limited liability company, unlimited liability company, joint stock company, unincorporated organization, trust or other legal entity or organization, having legal personality, or the right to sue in its own name.

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(eee)        “**Product**” shall have the meaning set forth in the Recitals and for the sake of clarification shall mean a combination of products for use in the Field that are comprised of a drug (including MNO-521) and a device (including the Helicon® II Delivery System), which shall include (i) the Authorized Generic of such Product, (ii) any improvements or enhancements to the Product, including such improvements or enhancements to its components, namely, MNO-521 and the Helicon® II Delivery System resulting from the Development activities conducted by either party hereunder, and (iii) the components of such combination product, namely MNO-521 and the Helicon® II Delivery System.

(fff)        “**Product Contracts**” shall have the meaning set forth in Section 9.2(k).

(ggg)      “**Product IP**” shall mean, collectively, the Product Know-How, the Product Patents, the Product Trademarks, the Marketing Authorizations and all other intellectual property rights of any nature whatsoever (including rights to patents, patent applications, supplementary protection certificates, registered designs, copyright, trademarks, know-how, confidential information and trade secrets, including the right to modify, transfer and license such rights) owned or licensed or otherwise Controlled by Helicon or any of its Affiliates and that (i) is related to the Product or the Manufacture, sale, distribution or Commercialization of the Product or (ii) is necessary or useful to its Development, Manufacture, sale, distribution, Commercialization, Exploitation or other use, and, for greater certainty, shall include any such intellectual property rights arising or otherwise resulting from the Development activities conducted by or on behalf of Helicon pursuant to the terms of this Agreement.

(hhh)        “**Product Know-How**” shall mean any information, know-how, trade secrets, inventions (whether patentable or not), data and result that is Controlled by Helicon or any of its Affiliates on the Effective Date or at any time during the Term and that (i) is related to the Product or the Manufacture, sale, distribution or Commercialization of the Product or (ii) is necessary or useful to its Development, Manufacture, sale, distribution, Commercialization, Exploitation or other use and, for greater certainty, shall include any information, know-how, trade secrets, inventions (whether patentable or not), data and result arising or otherwise resulting from the Development activities conducted by or on behalf of Helicon pursuant to the terms of this Agreement.

(iii)        “**Product Patents**” shall mean all United States and international Patents that at any time during the Term of this Agreement are owned by Helicon or an Affiliate of Helicon or to which Helicon or an Affiliate of Helicon has the right to grant licenses in the Field (“**Helicon Patents**”), the claims of which may be infringed, absent a license, by the Manufacture, Commercialization, distribution, use, sale, offer for sale or importation of the Product in the Field, including, but not limited to, the Patents set out in Schedule 9.2(c) hereto, which may be updated from time to time to include further inventions related to the Product.

(jjj)        “**Prosecution and Maintenance**” or “**Prosecute and Maintain**” shall mean (i) with regard to a particular Product Patent, the preparation, filing, prosecution and maintenance of such Product Patent, as well as reexaminations, reissues, requests for patent term extensions and the like with respect to such Product Patent, together with the defense of oppositions, inter partes reviews and other similar proceedings with respect to such Product Patent, or (ii) with regard to a particular Product Trademark, the preparation, filing, prosecution, maintenance and renewal of such Product Trademark, together with the defense of oppositions and similar proceedings with respect to such Product Trademark.

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(kkk)        “**Product Trademark**” shall mean the trademark “HELICON” including United States Patent and Trademark Office Trademark Registration No. 2,934,679, and any such names, trademarks, trade names, trade dress or logos used with respect to the Product during the Term of this Agreement and which are owned or licensed or otherwise Controlled by Helicon or any of its Affiliates.

(lll)        “**Promote,**” “**Promotional,**” “**Promotion,**” “**Promoting**” and “**Promoted**” mean those activities normally undertaken by a company to encourage sales or appropriate use of the Product, including details, product sampling, detail aids, coupons, discount cards, journal advertising, direct mail programs, direct-to-consumer advertising, convention exhibits and other forms of marketing, advertising, public relations or promotion.

(mmm)   “**Recalls**” shall have the meaning set forth in Section 12.4.

(nnn)     “**Receiving Party**” shall have the meaning set forth in Section 13.1.

(ooo)      “**Recoverable Amounts**” shall have the meaning set forth in Section 11.7(e).

(ppp)     “**Reduced** **Royalty**” shall have the meaning set forth in Section 7.4.

(qqq)     “**Regulatory Authority(ies)**” shall mean any regulatory authority, agency, department, bureau, or other governmental entity, including the FDA and corresponding foreign authorities, which is responsible for issuing approvals, licenses, registrations, clearances, or authorizations necessary for the Development, registration, Manufacture, testing, formulation, assembly, packaging, labelling, use, receipt, shipment, storage, import, export, transport, Commercialization, Promotion, marketing, distribution or sale of the Product in a country.

(rrr)       “**Regulatory Exclusivity**” shall mean any rights or protections which are recognized, afforded or granted by the FDA or any other Regulatory Authority in any country or region of the Territory, in association with the Marketing Authorization of the Product, providing the Product: (a) a period of marketing exclusivity, during which a Regulatory Authority recognizing, affording or granting such marketing exclusivity shall refrain from either reviewing or approving a marketing authorization application or similar regulatory submission, submitted by a Third Party seeking to market a Competitive Product, or (b) a period of data exclusivity, during which a Third Party seeking to market a Competitive Product is precluded from either referencing or relying upon, without an express right of reference from the dossier holder, the Product’s clinical dossier or relying on previous Regulatory Authority findings of safety or effectiveness with respect to such Product to support the submission, review or approval of a marketing authorization application or similar regulatory submission before the applicable Regulatory Authority.

(sss)    “**Right of Last Refusal**” shall have the meaning set forth in Section 2.4.

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(ttt)        “**Royalties**” shall have the meaning set forth in Section 7.3.

(uuu)      “**Sales-Based Milestone Payment**” shall mean each of the following payments:

(i)           a [\*\*\*] payment in respect of the first Calendar Year in which [\*\*\*] in the Territory earned from the date of this Agreement equal or exceed [\*\*\*]; and

(ii)          a [\*\*\*] payment in respect of the first Calendar Year in which [\*\*\*] in the Territory earned from the date of this Agreement equal or exceed [\*\*\*].

For the avoidance of doubt, a Sales-Based Milestone Payment with respect to a level of cumulative Net Sales shall be payable only once with respect to such level of [\*\*\*]; *provided* that one or more additional Sales-Based Milestone Payments may be payable in respect of a Calendar Year where more than one level of [\*\*\*] triggering a Sales-Based Milestone Payment is reached. By way of example, if [\*\*\*] in the Territory equal [\*\*\*] in the first Calendar Year and [\*\*\*] in the second Calendar Year, a Sales-Based Milestone Payment of [\*\*\*]would be payable with respect to the first Calendar Year and a Sales-Based Milestone Payment of [\*\*\*] would be payable with respect to the second Calendar Year, and if [\*\*\*] in the Territory equal [\*\*\*] in the first Calendar Year and [\*\*\*] in the second Year, no Sales-Based Milestone Payments would be payable with respect to the first Calendar Year and Sales-Based Milestone Payments in the amount of [\*\*\*] would be payable with respect to the second Calendar Year.

(vvv)        “**Sublicensee(s)**” shall mean a sub-licensee in respect of the rights and licenses granted hereunder, appointed in accordance with the terms and conditions of this Agreement.

(www)       “**Substitutable Product**” shall mean a product comprised of a drug and device, wherein said drug with respect to which there has been made an authorized claim of A-rated therapeutically equivalent or otherwise therapeutically equivalent, as defined in the Orange Book, with respect to the United States, or the foreign equivalent thereof in the relevant country in the Territory (outside the United States), or similar determination of interchangeability with MNO-521, permitting the pharmacy to switch such product with MNO-521 for use in the Field together and in combination with an approved or cleared device that is substantially comparable to the Helicon® II Delivery System, which determination has been made by the appropriate Regulatory Authority or by Applicable Laws, or other claim of substitutability with the Product for use in the Field in the relevant country in the Territory for the purpose of payor reimbursement, which has been established by a grant of the competent Regulatory Authority or by Applicable Laws.

(xxx)        “**Term**” shall have the meaning set forth in Section 14.2.

(yyy)        “**Territory**” shall mean the entire world.

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(zzz)      “**Third Party**” shall mean any Person other than Helicon or LiveWell or their respective Affiliates.

(aaaa)     “**Third Party Licenses**” shall have the meaning set forth in Section 11.7(e).

(bbbb)    “**Transaction Protocol**” shall mean that certain Transaction Protocol (License Agreement), by and between Ocul B.V., Ocul Franca SA (n/k/a Helicon Pharma) and Mrs. […], dated as of July 23, 1999.

(cccc)     “**United States**” or “**U.S.**” shall mean the United States of America and its territories and possessions, including the District of Columbia and Puerto Rico.

(dddd)    “**University of Miami License Agreement**” shall mean that certain Amended and Restated License Agreement, by and between University of Miami and Helicon Pharma (f/k/a Ocul France SA), dated as of December 16, 2005, as amended.

(eeee)     “**U.S. Development Plan**” shall have the meaning set forth in Section 4.3.

(ffff)       “**U.S. Marketing Authorization**” shall mean the New Drug application (NDA) for the Product that is a combination product of MNO-521 and the Helicon® II Delivery System, together with any other Marketing Authorizations required to market and sell the Product in the Development Field in the United States.

(gggg)    “**LiveWell**” shall have the meaning set forth in the Preamble.

(hhhh)    “**LiveWell Stock**” shall have the meaning set forth in Section 14.11(c).

(iiii)         “**LiveWell Trademark**” shall mean one or more trademarks owned or otherwise controlled by LiveWell and used in connection with the Product.

(jjjj)        “**Valid Claim**” shall mean (a) a claim of an issued and unexpired Patent that (i) has not been rejected, revoked or held to be invalid or unenforceable by a court or other authority of competent jurisdiction, from which no appeal can be taken or (ii) has not been finally abandoned, disclaimed or admitted to be invalid or unenforceable through reissue or disclaimer; or (b) a claim included in a pending patent application of a Patent that (i) has not been pending for more than five (5) years from the effective date of filing such Patent application or (ii) has not been finally determined to be unallowable by the applicable court or other authority of competent jurisdiction (from which no appeal is or can be taken).

(kkkk)    “**Western Europe**” shall mean the countries set out on Schedule 1.1(kkkk) hereto.

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**ARTICLE 2  
LICENSE GRANT TO LIVEWELL; RESPONSIBILITIES**

2.1           License Grant to LiveWell. Subject to the terms and conditions of this Agreement, Helicon hereby grants to LiveWell and its Affiliates during the Term:

(a)          an exclusive (even as to Helicon and its Affiliates) license, including the right to grant sublicenses (in accordance with Section 2.3), under the Product IP for LiveWell and its Affiliates to Manufacture, have Manufactured, use, sell, offer for sale, import, distribute, Commercialize and otherwise Exploit the Product in the Field in the Territory;

(b)          an exclusive (even as to Helicon and its Affiliates) license, including the right to grant sublicenses (in accordance with Section 2.3), under the Product IP for LiveWell and its Affiliates to Develop the Product in the Field in the Territory outside the United States; and

(c)          a sole license (being exclusive except as to Helicon and its Affiliates), including the right to grant sublicenses (in accordance with Section 2.3), under the Product IP for LiveWell and its Affiliates to Develop the Product in the Field in the United States,

and LiveWell, on behalf of itself and its Affiliates, hereby accepts such rights and licenses to carry out such activities under the terms and conditions set forth in this Agreement.

2.2           Limited Scope. Notwithstanding the foregoing, Helicon shall retain all rights to the Product as necessary to exercise its rights and perform its obligations to the extent expressly set forth in, and subject to, this Agreement. For the avoidance of doubt and without limiting any other rights retained by Helicon hereunder, Helicon retains all rights not expressly granted to LiveWell under this Agreement, and the rights and obligations of the Parties under this Agreement shall be limited to only the Product and shall not include any rights or obligations with respect to any other product of Helicon.

2.3           Sublicensing. LiveWell shall have the right to grant sublicenses of the licenses granted pursuant to Section 2.1 to Third Parties. For clarity, granting a sublicense shall not relieve LiveWell of any of its obligations hereunder. Each sublicense granted hereunder shall be subject to the terms of this Agreement.

2.4           Right of Last Refusal for Use Outside the Field. Helicon hereby grants LiveWell a right of last refusal (the “**Right of Last Refusal**”) to obtain rights to Manufacture, have Manufactured, use, sell, offer for sale, import, distribute, Commercialize and otherwise Exploit the Product outside the Field in the Territory (the “**Non-Field Rights**”), on the following terms:

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(a)          During the Term, Helicon shall be free to do further research on the Product in all fields (subject to the limitations set forth in this Agreement with respect to the Field) and enter into discussions with Third Parties for the Product outside the Field. Prior to entering into material discussions with any Third Party regarding a possible agreement for Non-Field Rights, Helicon will provide written notice to LiveWell. LiveWell shall have [\*\*\*] from such notification to provide written notice of its interest in negotiating for such rights and shall have [\*\*\*] from such notification to negotiate in good faith and enter into an agreement for such Non-Field Rights on mutually acceptable terms. In the event that LiveWell provides notice of its interest in such Non-Field Rights and the Parties negotiate reasonably and in good faith, but the Parties are unable to agree upon mutually acceptable terms, then and only then, in the event that Helicon or any of its Affiliates proposes to grant, sell, assign or otherwise transfer all or any portion of the same Non-Field Rights to a Third Party, Helicon acknowledges and agrees that prior to entering into any binding agreement for the grant of the same Non-Field Rights with any Third Party, Helicon will notify LiveWell and provide to LiveWell a copy of the fully negotiated final draft of such proposed agreement with such Third Party and offer to LiveWell the opportunity to enter into an agreement with Helicon (or any of its Affiliates) for substantially the same rights and on substantially the same or equivalent terms as set forth in such draft.

(b)          Provided that LiveWell has timely complied with all the terms set forth in Section 2.4(a), LiveWell shall have [\*\*\*] from the date Helicon notifies LiveWell of its intent to enter into any binding proposed agreement as set forth in Section 2.4(a), to provide Helicon written notice of its decision with respect to the exercise of its Right of Last Refusal. If LiveWell exercises its Right of Last Refusal within such [\*\*\*] period, LiveWell and Helicon shall negotiate, in good faith and acting reasonably, enter into an agreement for substantially the same rights and on substantially the same or equivalent terms as set forth in the draft agreement provided to LiveWell pursuant to the terms of Section 2.4(a). If and only if LiveWell fails to exercise its Right of Last Refusal within such [\*\*\*] period, Helicon will be free to enter into such agreement with such Third Party; it being understood and acknowledged by Helicon that any material modification of the terms of such proposed agreement with the Third Party after it had been declined by LiveWell shall reinstate Helicon’s obligations under this Section 2.4. If Helicon or any of its Affiliates fails to enter into such agreement with such Third Party within [\*\*\*], LiveWell’s Right of Last Refusal shall be reinstated.

(c)          Each subsequent time that Helicon proposes to grant, sell assign, or otherwise transfer all or any portion of the Non-Field Rights to a Third Party, LiveWell’s Right of Last Refusal shall be reinstated and both Parties shall comply with the requirements set forth in Sections 2.40 and 2.4(b).

(d)          For greater certainty, for the purposes of this Section 2.4, “Non-Field Rights” shall include the right to Manufacture, have Manufactured, use, sell, offer for sale, import, distribute, Commercialize and otherwise Exploit the Helicon® II Delivery System alone or in conjunction with another drug or pharmaceutical product outside the Field in the Territory.

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2.5           Competitive Products. [\*\*\*] neither Party shall, nor shall it permit its Affiliates to, directly or indirectly (including by means of license), Develop, make or have made, promote, market, sell or distribute in the Territory any Competitive Product, except pursuant to the terms of this Agreement; *provided*, *however*, that [\*\*\*], then LiveWell (and its then Affiliates) shall be permitted to continue to make or have made, promote, market, sell or distribute such Competitive Product in the Territory and such making or having made, promotion, marketing, sale or distribution shall not be considered a breach of the terms of this Section 2.5. Notwithstanding anything herein to the contrary, nothing shall prevent LiveWell or its Affiliates from Developing, making or having made, promoting, marketing, selling or distributing an Authorized Generic in the Field in the Territory.

2.6           Assistance of Helicon. LiveWell shall have the right from time to time during the Term to request the assistance of Helicon in relation to technical services that assist LiveWell in the Manufacturing of the Product, including the components of the Product, MNO-521 and the Helicon® II Delivery System.

2.7           Limitations on LiveWell’s License. Notwithstanding the license granted to LiveWell by Helicon pursuant to Section 2.1 of this Agreement, subject to Section 2.4, LiveWell hereby covenants and agrees not to promote, sell or distribute, anywhere in the Territory, without the prior written consent of Helicon, any components of the Helicon® II Delivery System other than for use in connection with MNO-521 in the Field.

**ARTICLE 3  
JOINT STEERING COMMITTEE**

3.1           Joint Steering Committee. On or within thirty (30) days after the Effective Date, the Parties shall establish a Joint Steering Committee (“**JSC**”) to serve as a forum for the discussion and exchange of information and coordination of activities between the Parties solely with respect to the Product. In particular, the JSC shall be responsible for:

(a)          discussing and monitoring Development and Commercialization activities in relation to the Product, or to any improvement or further Development thereof that the Parties may agree to undertake subject to the terms and conditions of this Agreement, including discussing and coordinating clinical studies, including stability studies or other Development work required to obtain any Marketing Authorizations or for marketing purposes;

(b)          facilitating the exchange of information between the Parties under this Agreement regarding the implementation of Development activities;

(c)          discussing and reviewing pricing, sales forecasts, trademark usage, marketing strategies and plans to seek and obtain Marketing Authorizations;

(d)          monitoring the progress and results of LiveWell’s Manufacturing, sale, distribution, Commercialization and Exploitation of the Product in the Field in the Territory;

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(e)          reviewing and discussing the strategy for obtaining, maintaining and enforcing Product IP protection for the Product in the Territory;

(f)          resolving any disputes with respect to audits conducted by the Parties under this Agreement;

(g)          approving the U.S. Development Plan and the ex-U.S. Development Plan; and

(h)          such other functions as may be mutually agreed upon by the Parties from time to time.

3.2           Membership and Governance of the JSC.

(a)          The JSC shall be comprised of four (4) members (the “**Members**”), with Helicon appointing two (2) Members and LiveWell appointing two (2) Members as their respective representatives on the JSC. The initial Members of the JSC shall be notified by each Party to the other Party in writing on the Effective Date or as soon as reasonably possible thereafter.

(b)          Each Party shall be entitled to remove any Member appointed by it and to appoint any person to fill the vacancy arising from the removal or retirement of such Member. Each Party shall give the other Party prior written notice of any changes in the identity of its Members. The Parties shall ensure that all of their appointed Members are of a suitable level of expertise, seniority and decision-making authority to deal with the issues that may arise in connection with matters to be considered by the JSC.

(c)          The JSC shall exercise its authority in good faith and in accordance with the terms of this Agreement. The JSC shall have no authority to bind the Parties unless the Parties expressly delegate matters to the JSC or ratify the decision of the JSC.

(d)          From time to time, the JSC may establish one or more subcommittees to oversee particular projects or activities related to this Agreement, and such subcommittees will be constituted as the JSC agrees. The Parties may replace their respective subcommittee representatives at any time, with prior written notice to the other Party. Any such subcommittee shall be run on the same basis as the JSC (i.e., including, without limitation, an agreed equal amount of representatives appointed by each Party) except that any issue within the purview of such a subcommittee that is not settled or determined by the applicable subcommittee shall be submitted to the JSC for resolution. The chairperson of each subcommittee shall report on subcommittee efforts at each JSC meeting, and either Party may invite its own representatives on such subcommittee to also report on such efforts.

3.3           Meetings of the JSC.

(a)          At least twenty-one (21) days prior to each regularly scheduled meeting of the JSC, written notice shall be given to each Member by the Party convening the meeting and at least fourteen (14) days prior to each such meeting, each Party shall provide to the other all written information expected to be disclosed at such meeting. In addition, special meetings of the JSC may be called on such shorter notice period as may be agreed between the Parties.

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(b)          LiveWell shall designate a LiveWell Member as the chairperson of the JSC. The chairperson of the JSC shall set meeting agendas for the JSC, which shall include any matter that either Party requests to be included. Such agendas shall be circulated to all Members at least seven (7) business days prior to the date of the relevant meeting. The JSC chairperson shall be responsible for recording, preparing and (within ten (10) business days) issuing draft minutes of the JSC meetings, which draft minutes shall be reviewed, modified and approved in writing by the Members.

(c)          The JSC shall have its first meeting within forty-five (45) days after the Effective Date, and thereafter shall hold meetings at least semiannually or as frequently as otherwise agreed by the Parties, by telephone or video conference. In the event that the Parties agree to hold face-to-face meetings, the venue for the meeting of the JSC shall alternate between the U.S. headquarters of Helicon and LiveWell, unless the Parties mutually agree otherwise. Each Party shall bear its own costs for its Members to attend JSC meetings and, as applicable, for its obligations to host such meetings.

3.4           Limited Purpose. The JSC shall have only the purpose as is specifically granted to it in this Article 3, and such powers shall be subject to the terms and conditions set forth herein. Each Party shall retain the rights, powers and discretion over the matters allocated to such Party herein, and no such rights, powers, or discretion shall be delegated to or vested in the JSC. The JSC shall not have the authority to: (i) modify or amend the terms and conditions of this Agreement; (ii) waive either Party’s compliance with the terms and conditions of under this Agreement; or (iii) determine any such issue in a manner that would conflict with the express terms and conditions of this Agreement. Without limiting the foregoing, (a) LiveWell will make the final determination with respect to the Manufacture, sale, distribution, Commercialization or Exploitation of the Product in the Field in the Territory and with respect to the Development of the Product in the Field in the Territory outside of the United States, and (b) Helicon will make the final determination with respect to the Development of the Product in the Development Field for the United States (except as otherwise set forth herein). Notwithstanding the foregoing, following the approval of the U.S. Marketing Authorization, if LiveWell conducts its own Development of the Product in the Field in the United States, LiveWell will make the final determination with respect to such Development.

**ARTICLE 4  
DEVELOPMENT**

4.1           Helicon and LiveWell Development Representatives. Promptly (and no later than thirty (30) days) after the Effective Date, each Party shall designate in writing a representative of such Party that shall have the responsibility of communicating with the other Party’s personnel regarding Development of the Product in the Field for the United States under this Agreement (including the provision of such individual’s name, job title, fax and phone number). Each Party may change such representative from time to time by written notice to the other Party containing the name and contact information for the new representative.

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4.2           Helicon’s Obligation to Develop the Product.

(a)          Helicon shall use Commercially Reasonable Efforts to (i) Develop the Product in the Development Field for the United States, and (ii) obtain the Marketing Authorizations in the Development Field in the United States, including the U.S. Marketing Authorization. [\*\*\*].

(b)          Notwithstanding anything to the contrary set forth in Section 4.2(a), in the event that (i) either Party, acting reasonably and in good faith, determines that additional Development work or activities [\*\*\*] are required in order to support the Marketing Authorizations in the Development Field in the United States or (ii) if a Regulatory Authority requires that additional Development work or activities [\*\*\*] are required in order to support the Marketing Authorizations in the Development Field in the United States, then the Parties shall discuss in good faith whether such additional Development work is feasible or desirable, taking into account, among other things, the anticipated costs of such additional Development work and the projected revenues from the Commercialization of the Product in the Field in the Territory. If LiveWell determines that such additional Development work is feasible and desirable, then the costs of such additional Development work shall be shared equally by each Party; *provided*, *however*, that if Helicon notifies LiveWell that Helicon is unwilling or is not able to bear fifty percent (50%) of the costs of such additional Development work, then the Parties shall negotiate, in good faith and acting reasonably, an alternative sharing of the costs of such additional Development work. In the event that the Parties are unable to agree on an appropriate sharing of the costs of such additional Development work, then (i) LiveWell may elect to bear one hundred percent (100%) of the costs of such additional Development work or (ii) if LiveWell does not elect to bear one hundred percent (100%) of the costs of such additional Development, then either party shall have the right to terminate this Agreement pursuant to Section 14.10. If LiveWell determines that such additional Development work is not feasible or desirable, then LiveWell may terminate this Agreement pursuant to Section 14.10. For the avoidance of doubt, unless this Agreement is validly terminated in accordance with Section 14.10, Helicon will be responsible, and shall have the obligation to, conduct any such additional Development work.

(c)          In the event LiveWell elects to bear one hundred percent (100%) of the costs of the additional Development work described in Section 4.2(a), (i) Helicon will be responsible, and shall have the obligation to, conduct any such additional Development work and LiveWell shall reimburse Helicon for the documented direct costs reasonably incurred by Helicon in connection with such additional Development work in accordance with the then-current U.S. Development Plan within [\*\*\*] of the receipt by LiveWell of invoices for such additional Development work and (ii) the Royalties will be adjusted as described in Section 7.5. LiveWell shall have the right to offset all costs paid by LiveWell for such additional Development work pursuant to this Section 4.2(c) against payments due from LiveWell to Helicon pursuant to Article VII.

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4.3           Development Plans. The Development activities with respect to the Product in the Development Field for the United States conducted in connection with this Agreement shall occur pursuant to a Development plan proposed by Helicon and agreed upon by the JSC (the “**U.S.** **Development Plan**”). Helicon shall propose the initial U.S. Development Plan to the JSC within sixty (60) days after the Effective Date, and the JSC shall discuss any amendments thereto and approve the initial U.S. Development Plan within ninety (90) days after the Effective Date. Prior to submission to the JSC, Helicon shall provide a draft of the U.S. Development Plan for LiveWell’s review and comment and Helicon shall use good faith efforts to include LiveWell’s comments in such U.S. Development Plan. On at least an annual basis, Helicon shall review, update and decide whether to amend the then-current U.S. Development Plan to reflect any changes, reprioritizations of, or additions thereto. Any changes to the U.S. Development Plan shall require approval by the JSC and once approved by the JSC, such updated or amended U.S. Development Plan shall become effective and supersede the prior U.S. Development Plan. The U.S. Development Plan shall include:

(a)          a reasonably detailed written plan of Development activities in the Development Field for the United States for the period of time during which Development activities will be conducted, including any related target timelines;

(b)          plans and timelines for preparing any and all materials that are necessary for any required or useful approvals or authorizations to Commercialize the Product in the Field for the United States, including the U.S. Marketing Authorization; and

(c)          a detailed budget, setting forth the level of spending with respect to the Development activities in the Development Field for the United States for the period of time during which Development activities will be conducted.

4.4           Updates on Product Development Progress. At least once every Calendar Quarter, both Parties shall provide each other with a summary of the activities conducted during the preceding Calendar Quarter with respect to the Development of the Product. In addition, at least once per year, Helicon shall prepare and provide a copy of a detailed report describing the progress made in implementing the U.S. Development Plan and at least once per year, LiveWell shall prepare and provide a copy of a detailed report describing the progress made in implementing the Ex-U.S. Development Plan. Each report shall include with respect to the applicable one (1) year period a description of the Development activities conducted both within and outside the United States with respect to the Product, as well as any proposed amendments or revisions to any development plan. Both Parties shall also provide each other with regular telephonic updates on the progress made in implementing the development plans and other information as may be reasonably requested.

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4.5           Development Costs.

(a)          Helicon shall be responsible for one hundred percent (100%) of all Development costs incurred by or on behalf of Helicon or any of its Affiliates with respect to any Development of the Product (i) in the Development Field for the United States, and (ii) outside of the Field. For the purposes of Development of the Product in the Development Field for the United States, such Development costs shall include the costs associated with the completion of [\*\*\*] and any additional costs agreed to by the Parties in accordance with Section 4.2. To the extent the applicable Regulatory Authority requires a post-marketing study or some other post-approval Development work in connection with the grant of a Marketing Authorization in the United States, the Parties shall meet to negotiate a development plan for such additional studies and shall agree to split the costs associated with such Development work.

(b)          LiveWell shall be responsible for one hundred percent (100%) of all Development costs with respect to (i) any Development of the Product in the Field for countries other than the United States, and (ii) any Development of the Product in the Field (but outside the Development Field) in the United States.

(c)          Within thirty (30) days of the end of each Calendar Quarter, Helicon will submit to LiveWell a report detailing Helicon’s and its Affiliates’ Development costs incurred during such Calendar Quarter for the Development of the Product in the Field for the United States, including copies of invoices and any other supporting evidence necessary to substantiate such Development costs.

4.6           Development Records. Helicon shall maintain current and accurate records of all work conducted by it under the U.S. Development Plan and all data, know-how and other results invented in connection with, generated by or that results from the conduct of such Development activities (which records shall include, as applicable, books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof (e.g., samples of materials and other graphic or written data generated in connection with the Development activities)). Such records shall properly reflect all work done and results achieved in the performance of the Development activities in sufficient detail and in good scientific manner appropriate for regulatory and patent purposes. All such records shall be retained by Helicon until the later of (a) three (3) years after the end of the Calendar Year in respect of which payment such work is conducted and (b) the period of time required by Applicable Law.

4.7           LiveWell’s Development Rights and Obligations.

(a)          LiveWell and its Affiliates shall have the exclusive (even as to Helicon and its Affiliates) right to Develop the Product in the Field for countries outside of the United States, in accordance with the terms of this Agreement, and LiveWell shall be responsible for all costs associated with such Development. Following the receipt of the U.S. Marketing Authorization, LiveWell and its Affiliates shall also have the right to Develop the Product in the Field for the United States and LiveWell shall be responsible for its own costs of any such Development.

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(b)          With respect to LiveWell’s (or its Affiliates’) Development of the Product in the Field for countries outside of the United States, following the transfer of the U.S. Marketing Authorization to LiveWell, LiveWell shall prepare a development plan setting out LiveWell’s plans for the development of the Product in the Development Field outside the United States, including timing and anticipated budget (the “**Ex-U.S. Development Plan**”). LiveWell shall propose the initial Ex-U.S. Development Plan to the JSC within [\*\*\*] and the JSC shall discuss any amendments thereto and approve the initial ex-U.S. Development Plan within ninety (90) days after such date. Prior to submission to the JSC, LiveWell shall provide a draft of the Ex-U.S. Development Plan for Helicon’s review and comment and LiveWell shall use good faith efforts to include Helicon’s comments in such Ex-U.S. Development Plan. On at least an annual basis, LiveWell shall review, update and decide whether to amend the then-current Ex-U.S. Development Plan to reflect any changes, reprioritizations of, or additions thereto. Any changes to the Ex-U.S. Development Plan shall require approval by the JSC and once approved by the JSC, such updated or amended Ex-U.S. Development Plan shall become effective and supersede the prior Ex-U.S. Development Plan.

(c)          LiveWell shall have the obligation to use Commercially Reasonable Efforts to Develop the Product in the Development Field for the Major Market Countries in accordance with such Ex-U.S. Development Plan. In the event LiveWell does not use Commercially Reasonable Efforts to Develop the Product for use in the Development Field for any of the Major Market Countries in accordance with such Ex-U.S. Development Plan, Helicon shall have the right to terminate LiveWell’s license for those Major Market Countries where LiveWell has not used Commercially Reasonable Efforts to Develop the Product in the Development Field in accordance with the Ex-U.S. Development Plan and Helicon shall be free to sell or license the Product in such Major Market Countries. Notwithstanding anything herein to the contrary, prior to [\*\*\*], (i) Helicon shall not be entitled to exercise its termination right under this Section 4.7(c) and (ii) LiveWell’s failure to satisfy its obligation under this Section 4.7(c) to use Commercially Reasonable Efforts to Develop the Product in the Development Field for the Major Market Countries in accordance with such Ex-U.S. Development Plan shall not constitute a breach of this provision or this Agreement and Helicon shall not be entitled to any damages and shall not have any recourse in connection with any such failure.

**ARTICLE 5  
COMMERCIALIZATION AND MANUFACTURING**

5.1           Commercialization Generally. LiveWell and its Affiliates shall have the exclusive (even as to Helicon and its Affiliates) right to Commercialize the Product in the Field in the Territory and to establish the strategy, including the price and sales strategy, for the Commercialization of the Product in the Field in the Territory. LiveWell and its Affiliates shall be responsible for establishing and approving (in its sole discretion) the form, content and terms and conditions of contracts and other arrangements regarding the sale of the Product in the Field in the Territory, including contracts with wholesalers, other distributors, and retailers (as applicable). Notwithstanding anything herein to the contrary, LiveWell shall be solely responsible for determining the prices of the Product in the Field in the Territory.

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5.2           Reimbursement for Medical Procedures. Before submitting any request, application or information to a governmental entity for the purpose of obtaining, maintaining or changing a Healthcare Common Procedure Coding System (HCPCS) code (J-Code) or Current Procedural Terminology (CPT) code for the Product or for the medical procedures involving the Product, LiveWell shall submit such proposed request, application or information to Helicon for prior written approval, which approval shall not be unreasonably withheld or delayed. LiveWell shall not make any material changes to such request, application or information after it has been approved by Helicon without the prior written consent of Helicon, except to the extent such changes are required by applicable laws or regulations. LiveWell shall promptly notify Helicon of all changes made to any such request, application or information that has been previously approved by Helicon and shall consult with Helicon with respect to any changes required by applicable laws or regulations.

5.3           Promotion Rights and Responsibilities. Notwithstanding anything herein to the contrary, during the Term, subject to, and in accordance with, the terms and conditions of this Agreement, LiveWell and its Affiliates shall have the exclusive right to Promote the Product under the Product Trademarks or the LiveWell Trademarks throughout the Territory in the Field; *provided* that, notwithstanding this exclusive right, during the Term of this Agreement, Helicon shall have the non-exclusive right, at its own expense, to publish journal articles and make presentations relating to or mentioning the Product in the Field with the prior written consent of LiveWell, such consent not to be unreasonably withheld, *provided* that LiveWell is provided with a copy of such journal articles and presentations a reasonable amount of time in advance of such publication or presentation and Helicon uses good faith efforts to include in such articles or presentations the comments of LiveWell thereon. For the sake of clarity, Helicon shall be free to publish journal articles and make presentations concerning Helicon’s technology relating to iontophoresis or any products outside the Field without the need of LiveWell’s consent.

5.4           Manufacturing Rights.

(a)          LiveWell shall have the exclusive right to Manufacture or have Manufactured the Product (including its components) for use in the Field in the Territory and for establishing the strategy for the Manufacture of the Product, including as to whether to Manufacture the Product (and its components) through its Affiliates or Third Parties and to select any such Third Party manufacturers and suppliers. LiveWell and its Affiliates shall be responsible for establishing and approving (in its sole discretion) the form, content and terms and conditions of contracts and other arrangements regarding the Manufacture of the Product in the Field in the Territory, including contracts with Third Party suppliers of the Product or components of the Product and Third Party packagers. On request by LiveWell, Helicon shall facilitate introductions with its Third Party suppliers and manufacturers of the Product and its components to enable LiveWell to purchase Product directly from such third party suppliers.

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(b)          In the event that LiveWell is manufacturing the Product, either itself or through an Affiliate or Third Party, and Helicon wishes to obtain supply of Product from such source, whether for Development purposes or for use outside of the Field, the Parties shall meet to discuss the appropriate strategy of providing supply of Product to Helicon, which may include (i) if LiveWell or its Affiliate is manufacturing the Product, the good faith negotiation of a supply agreement, on mutually agreeable terms (including provisions relating to priority of supply in supply shortage situations), pursuant to which LiveWell or its Affiliates supplies Product to Helicon at a purchase price of [\*\*\*] or some other mutually agreeable purchase price, or (ii) if LiveWell (or its Affiliate) obtains supply of Product from a Third Party manufacturer, (A) the negotiation of a supply agreement between LiveWell (or its Affiliate) and Helicon, pursuant to which LiveWell (or it Affiliate) supplies Product to Helicon on the same terms as LiveWell (or its Affiliate) receives supply from the Third Party manufacturer, with such mutually agreeable adjustments as may be agreed to between the Parties (including with respect to purchase price and priority in supply shortage situations), (B) facilitation of introductions to such Third Party manufacturer for the purposes of permitting Helicon to obtain direct supply from such manufacturer, or (C) the assignment to Helicon of the supply arrangements with such Third Party manufacturer and the concurrent negotiation of a supply agreement between Helicon and LiveWell (or its Affiliate) pursuant to which Helicon supplies Product to LiveWell (or its Affiliates) on the same terms as Helicon receives supply from the Third Party manufacturer, with such mutually agreeable adjustments as may be agreed to between the Parties (including with respect to purchase price and priority in supply shortage situations). If both Parties act reasonably and in good faith in determining an appropriate supply strategy and, if agreed, in negotiating a supply agreement between the Parties, the obligations of the Parties under this Section 5.4(b) shall have been satisfied.

**ARTICLE 6  
REGULATORY**

6.1           Marketing Authorizations.

(a)          United States. Helicon shall use Commercially Reasonable Efforts to seek and obtain the U.S. Marketing Authorization for the Product in the Development Field, with LiveWell’s assistance, support and cooperation; *provided*, *however*, that, except as set forth in Section 4.7, Helicon shall be responsible for one hundred percent (100%) of all costs with respect to seeking and obtaining such U.S. Marketing Authorization. LiveWell and Helicon shall mutually agree on a strategy and plan to obtain the U.S. Marketing Authorization. Upon obtaining such U.S. Marketing Authorization for the Product, Helicon shall, as promptly as practicable, transfer such U.S. Marketing Authorization, together with the regulatory dossier associated with such U.S. Marketing Authorization, to LiveWell (or its designee), at LiveWell’s cost and with LiveWell’s assistance, support and cooperation. Upon the transfer of such U.S. Marketing Authorization and its regulatory dossier, Helicon shall retain a right of reference to such U.S. Marketing Authorization and its regulatory dossier for the purposes of the products outside of the Field. Following such transfer, during the Term of this Agreement, LiveWell shall maintain such U.S. Marketing Authorization, at LiveWell’s cost. If LiveWell fails to maintain such U.S. Marketing Authorization for the Product or makes the decision to no longer maintain such U.S. Marketing Authorization, on Helicon’s request, LiveWell shall promptly transfer such U.S. Marketing Authorization to Helicon (or its designee), at Helicon’s cost.

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(b)          Outside the United States. LiveWell shall have the exclusive right to seek, obtain and maintain Marketing Authorizations for the Product in the Field in the Territory outside of the United States, at its own cost and shall use Commercially Reasonable Efforts to obtain Marketing Authorizations for the Product in the Development Field in the Major Market Countries in accordance with the Ex-U.S. Development Plan; *it* *being* *understood* that, notwithstanding the foregoing, LiveWell shall not be required to seek to obtain any such Marketing Authorizations prior to [\*\*\*]. Following the transfer of the U.S. Marketing Authorization, LiveWell shall also have the right to seek, obtain and maintain Marketing Authorizations for the Product in the Field in the Territory for the United States

(c)          Notwithstanding anything herein to the contrary, Helicon shall not, and shall not permit its Affiliates or representatives, to seek, apply for or obtain either a Premarket Approval (PMA), a Premarket Notification 510(k) or a CE mark for the Helicon® II Delivery System alone (i.e., on a stand-alone basis), unless either (i) such PMA, Premarket Notification 510(k) or CE mark is applied for in conjunction with a drug product or (ii) LiveWell has given its prior written consent (which may be withheld in its sole discretion).

6.2           Communications with Regulatory Authorities.

(a)          United States. As between the Parties, subject to the terms of this Section 6.2(a), in connection with seeking and obtaining Marketing Authorizations for the Product in the Development Field for the United States, Helicon shall have the sole responsibility and authority to communicate with any applicable Regulatory Authorities prior to obtaining such Marketing Authorizations. Without limiting the provisions of this Article 6, Helicon shall promptly provide LiveWell with copies of all written and electronic communications received by Helicon or its Affiliates from, or forwarded by Helicon or its Affiliates to, any applicable Regulatory Authorities with respect to obtaining Marketing Authorizations for the Product in the Development Field in the United States. With respect to such written and electronic communications forwarded by Helicon or its Affiliates to any Regulatory Authorities, prior to submission to the applicable Regulatory Authority, Helicon shall provide LiveWell with copies thereof so that LiveWell may review and comment on such communications and have a reasonable opportunity to influence the substance of such submissions. Helicon agrees to consider all such comments in good faith, taking into account the best interest of the Development of the Product in the Field on a global basis. Following the transfer to LiveWell (or its designee) of a Marketing Authorization for the Product in the Development Field in the United States, LiveWell shall have the sole responsibility and authority to communicate with any applicable Regulatory Authorities in the United States in connection with the Product in the Field in the United States or the Marketing Authorizations for the United States. Following the transfer of the Marketing Authorization, LiveWell shall consult with Helicon with respect to, or provide Helicon a right of review of or copies of, any correspondence with such Regulatory Authorities regarding the Marketing Authorizations in the United States.

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(b)          Outside the United States. LiveWell shall have the sole responsibility and authority to communicate with any applicable Regulatory Authorities outside the United States in connection with the Product in the Field outside of the United States or the Marketing Authorizations for countries outside the United States, including with respect to the application for such Marketing Authorizations. LiveWell shall provide Helicon a right of review of or copies of, any correspondence with such Regulatory Authorities regarding the Marketing Authorizations outside of the United States.

(c)          General. During the Term of this Agreement, each Party shall send the other Party, promptly upon receipt, copies of any correspondence or other materials received by such Party from a Regulatory Authority relating to the Product in the Territory. In addition, during the Term of this Agreement, each Party shall send the other Party, promptly upon submission, copies of any correspondence, submissions or filings made by such Party to a Regulatory Authority relating to the Product in the Territory. Promptly upon receipt of notification from the Regulatory Authority, a Party shall notify the other Party of any audit or inspection being conducted by a Regulatory Authority respecting or relating to the Product. If permitted by Applicable Law, the other Party shall be entitled to attend on such audit or inspection. Following such inspection or audit, the Party shall provide the other Party, promptly upon receipt, a copy of any report, findings or other results received from such Regulatory Authority with respect to such audit or inspection.

**ARTICLE 7  
COMPENSATION FOR PRODUCT**

7.1           License Fees and Milestone Payments Related to Signing and Development and Regulatory Milestones. In consideration for the license granted to LiveWell and its Affiliates hereunder, and in addition to any other payments provided for in this Agreement, LiveWell shall pay to Helicon Pharmaceuticals the following non-refundable and non-deductible license fees and milestone payments:

(a)          an initial license fee in the amount of one million dollars ($1,000,000), due and payable on the Effective Date;

(b)          milestone payments in the aggregate amount of up to [\*\*\*] (each a “**Development Milestone Payment**”), payable upon the achievement by Helicon of the milestone events as specified in Appendix B to this Agreement (each, a “**Development Milestone**”); and

(c)          a milestone payment in the amount of [\*\*\*], due and payable within fifteen (15) calendar days after the date of [\*\*\*].

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7.2           Milestone Payments Related to Sales Milestones. In consideration for the license granted to LiveWell and its Affiliates hereunder, and in addition to any other payments provided for in this Agreement, not later than [\*\*\*], LiveWell shall provide to Helicon Pharmaceuticals a report setting out [\*\*\*] and LiveWell shall pay to Helicon Pharmaceuticals any Sales-Based Milestone Payments payable with respect to such Calendar Year not later than [\*\*\*]. Following the payment by LiveWell of both Sales-Based Milestone Payments, LiveWell’s obligation under this Section 7.2 to provide annual reports to Helicon shall cease.

7.3           Royalties. In consideration for the license granted to LiveWell and its Affiliates hereunder, for each [\*\*\*] during the Term, not later than [\*\*\*] in the Term, LiveWell shall provide to Helicon Pharmaceuticals a report setting out [\*\*\*] and a calculation of the royalties payable hereunder (the “**Royalties**”) for such Calendar Quarter, in each case, on a country by country basis for each country in the Territory in which the Product is sold and for which Royalties are payable. Royalties shall be payable hereunder as follows: for each [\*\*\*] of the Term, LiveWell shall pay to Helicon Pharmaceuticals a Royalty in an amount equal [\*\*\*] in each country in the Territory occurring during such [\*\*\*] not later than [\*\*\*]. The Royalties payable pursuant to this Section 7.3 shall be subject to reduction as set forth in Section 7.4.

7.4           Reduction in Royalty Rate. Notwithstanding Section 7.3, on a country-by country basis, the Royalties payable pursuant to Section 7.3 shall be reduced to [\*\*\*] from and after the date on which (a) [\*\*\*] or (b) [\*\*\*]; *provided*,*however*, that in the case of clause (a), such Royalties shall only be reduced to [\*\*\*] in such country if (i) [\*\*\*] (“**Reduced Royalty**”), (ii) [\*\*\*] and (iii) [\*\*\*]; *provided further* that, once the condition in either clause (i) or (ii) ceases to be satisfied, the Royalty shall be further reduced to [\*\*\*] for such country. Once a Royalty payable in a country has been reduced pursuant to this Section 7.4, such Royalty shall not be subsequently increased, even if the conditions in clauses (a) and (b) in the immediately preceding sentence cease to be applicable in such country; *provided* that, in the event that, subsequent to such Royalty reduction, either (x) [\*\*\*], (y) [\*\*\*], or (z) [\*\*\*], then, following receipt by LiveWell of written notice from Helicon of the existence of such condition, the Royalty shall be reverted back to the applicable level (pursuant to the terms of Sections 7.3 and 7.4), until such time as the conditions in (x), (y) or (z) cease to be satisfied, at which time the Royalty shall be reduced to the prior level. Following the reduction of the Royalty to [\*\*\*] in any country in the Territory, LiveWell’s obligation under Section 7.3 to provide [\*\*\*] Royalty reports to Helicon shall cease with respect to such country.

7.5           Offset for Additional Development Costs; Reduced Royalty. In the event LiveWell elects to bear one hundred percent (100%) of the costs of additional Development work described in Section 4.2(a) (other than the Initial Development Work), (a) LiveWell shall have the right to offset all costs paid by LiveWell for such additional Development work pursuant to Section 4.2(b) against payments due from LiveWell to Helicon pursuant to this Article VII until one hundred percent (100%) of such costs have been paid and (b) subject to Section 7.4, the Royalties payable pursuant to Section 7.3 shall be reduced to [\*\*\*].

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7.6           Payments. All payments to be made pursuant to this Article 7 shall be made in U.S. dollars by wire transfer no later than the applicable payment due date. Such payments shall be made to the designated account of Helicon Pharmaceuticals in accordance with wiring instructions to be provided. Payments are to be wired to the account specified in Appendix A to this Agreement, which may be changed by Helicon Pharmaceuticals from time to time by written notice to LiveWell. Any payments due under this Agreement which are not paid by the date such payments are due under this Agreement shall bear interest to the extent permitted by applicable law at the lower of (i) [\*\*\*] or (ii) the maximum rate permitted by law; in each case calculated on the number of days such payment is delinquent.

7.7           Conversion of Foreign Currencies. To the extent that Net Sales are accrued in currencies other than United States dollars, such Net Sales shall be converted to United States dollars using the applicable monthly exchange rate for converting such local currency to Unites States dollars in accordance with LiveWell’s worldwide accounting systems and policies.

7.8           Collection Actions. In the event of any legal action to collect unpaid amounts due under this Article 7, the losing Party shall be reimburse the winning Party for all attorneys’ fees and reasonable costs incurred in such action.

7.9           Taxes. LiveWell may withhold the appropriate tax from any payment to be made to Helicon Pharmaceuticals under this Agreement provided that such withholding is required by Applicable Laws and LiveWell submits the amounts withheld to the applicable tax authorities. In such event, LiveWell shall furnish Helicon Pharmaceuticals with proof of payment of such tax together with official or other appropriate evidence issued by the applicable government authority. The Parties will cooperate to enable payments under this Agreement to be exempt from withholding tax, or to be paid subject to the reduced rate of withholding tax provided by an applicable double tax treaty in force at the relevant time. Without limiting the foregoing, the Parties agree to cooperate and produce on a timely basis complete and accurate tax forms or reports, including, but not limited to, an IRS Form W-8BEN or W-8ECI, an IRS Form W-9, and/or a certificate of residency, as applicable, reasonably requested by the other Party in connection with any payment under this Agreement. Each Party further agrees to provide reasonable cooperation to the other Party, at the other Party’s expense, in connection with any official or unofficial tax audit or contest relating to payments made under this Agreement. All sums payable under this Agreement are exclusive of value added tax or other similar applicable taxes or duties which shall be payable by the paying Party at the appropriate rate prescribed by law from time to time.

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**ARTICLE 8  
RECORDKEEPING; AUDITS**

8.1           Records. LiveWell shall maintain complete and accurate records in reasonably sufficient detail of Net Sales, License Fees and Milestone Payments and the Royalties and all other amounts due from it to Helicon under this Agreement, for a period of at least two (2) years after the end of the Calendar Year in respect of which payment is to be made hereunder, and during the Term of this Agreement, LiveWell shall maintain accurate data collection and reporting systems for the foregoing. Helicon shall maintain, for a period of at least two (2) years after the end of the Calendar Year in respect of which payment is to be made hereunder, complete and accurate records in reasonably sufficient detail of all proceeds received by Helicon and its Affiliates in respect of the Product and all Development costs incurred pursuant to the terms of this Agreement, and during the Term of this Agreement, Helicon shall maintain accurate data collection and reporting systems for the foregoing.

8.2           Audits.

(a)          During the Term and for a period of two (2) years thereafter, upon the reasonable request of a Party hereunder (the “**Auditing Party**”) and no more than once per year during the Term, the Auditing Party shall have the right to engage an independent, certified public accountant(s), reasonably acceptable to the other Party (the “**Audited Party**”), to perform an audit of the Audited Party’s books and records and those of its Affiliates for the preceding two (2) year period as may be necessary to confirm any amounts paid or payable under this Agreement for such period.

(b)          Such audits shall be conducted during normal business hours upon reasonable prior written notice from the Auditing Party in such a manner as to not unnecessarily interfere with the Audited Party’s or its Affiliate’s normal business activities. The accountants shall report its conclusions and calculation to both Parties; *provided*, *however*, that in no event shall the accountants disclose information except to the extent necessary to verify the accuracy of the payments due under this Agreement, and at the request of either Party such accountants shall execute appropriate non-disclosure agreements with such Party.

(c)          If an audit hereunder reveals an underpayment by LiveWell to Helicon, LiveWell shall promptly make up such underpayment. If an audit hereunder reveals an overpayment by LiveWell to Helicon, Helicon shall promptly refund LiveWell for the amount of such overpayment.  The Auditing Party shall bear the full cost of such audit under this Section 8.2, unless such audit, in the case of an audit initiated by Helicon, discloses an underpayment to Helicon of License Fees and Milestone Payments or Royalties of more than [\*\*\*] of the amount owed during the period being audited, in which case LiveWell shall bear the full cost of such audit, and, in the case of an audit initiated by LiveWell, discloses an overpayment by LiveWell of more than [\*\*\*] of the amount owed during the period being audited, in which case Helicon shall bear the full cost of such audit.

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8.3           Payments. All payments to be made pursuant to this Article 8 shall be made by wire transfer in U.S. dollars no later than the applicable payment due date. Such payments shall be made to the designated account of Helicon or LiveWell, as the case may be, in accordance with wiring instructions to be provided.

**ARTICLE 9  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

9.1           Representations, Warranties and Covenants of LiveWell. LiveWell represents, warrants and covenants to Helicon as follows:

(a)           (i) LiveWell is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated; and (ii) that LiveWell has the requisite legal and company authority to enter into this Agreement and that it is not bound by any other agreement, obligation or restriction, and shall not assume any other obligation or restriction or enter into any other agreement, which would interfere in any material respect or conflict with its obligations under this Agreement.

(b)           LiveWell is, and covenants that it shall continue to be, in compliance with all requirements of Applicable Laws relevant to its obligations and activities as set forth in this Agreement.

(c)          Assuming the due authorization, execution and delivery by Helicon, this Agreement is a legally valid and binding obligation of LiveWell, enforceable against LiveWell in accordance with its terms (except in all cases as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors’ rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court or other tribunal before which any proceeding may be brought).

9.2           Representations, Warranties and Covenants of Helicon. Helicon Pharmaceuticals and Helicon Pharma each represent, warrant and covenant to LiveWell, as follows:

(a)           (i)  Each of Helicon Pharmaceuticals and Helicon Pharma is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized; and (ii)  each of Helicon Pharmaceuticals and Helicon Pharma has the requisite legal and company authority to enter into this Agreement and that it is not bound by any other agreement, obligation or restriction, and shall not assume any other obligation or restriction or enter into any other agreement, which would interfere in any material respect or conflict with its obligations under this Agreement.

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(b)          Helicon owns or Controls intellectual property rights pertaining to the Product, Product Know-How and other Product IP, necessary to grant the license to LiveWell and its Affiliates hereunder and to perform its obligations hereunder. Helicon has not received any written notice from any Third Party which expressly alleges that the use or sale of the Product would infringe, misappropriate or otherwise violate a composition of matter or method of use claim of an issued U.S., European or other Patent of such Third Party or any other intellectual property rights of a Third Party and the Manufacture, Commercialization, Development, Exploitation, use or sale of the Product will not infringe, misappropriate or otherwise violate a composition of matter or method of use claim of an issued U.S., European or other Patent of such Third Party or any other intellectual property rights of a Third Party. There are no pending, or to the best of Helicon’s knowledge, threatened interferences and oppositions with respect to the Product Patents, and there is no pending, or to the best of Helicon’s knowledge, threatened litigation challenging the validity or enforceability of the Product Patents. The Product Patents are, or upon issuance will be, valid and enforceable. To the best of Helicon’s knowledge, no Third Party is infringing or misappropriating the Product Patents, Product Know-How and other Product IP.

(c)          Schedule 9.2(c) contains a complete and correct list of all Patents Controlled by Helicon relating to the Product.

(d)          Helicon and its Affiliates have taken reasonable steps to protect and preserve the confidentiality of all material confidential Product IP. All current and former employees, consultants, and contractors of Helicon and its Affiliates who are or have been involved in Developing the Product have executed and delivered and, to the best of knowledge of Helicon, are in material compliance with, agreements regarding the protection of Product IP and providing written assignments of all Product IP (other than moral rights) conceived or developed by such employees, consultants or contractors in connection with their services for Helicon or any of its Affiliates. No current or former employee, consultant or contractor has any right, claim to or interest in any of the Product IP (other than moral rights).

(e)          Helicon is, and covenants that it shall continue to be, in compliance in all material respects with all requirements of Applicable Laws relevant to its obligations and activities as set forth in this Agreement.

(f)          All Development activities conducted by or on behalf of Helicon and its Affiliates with respect to each of the Product, MNO-521 and the Helicon® II Delivery System, including all pre-clinical and clinical investigations, have been and are being conducted in compliance in all material respects with all Applicable Laws. To the best of Helicon’s knowledge, no event has occurred and no circumstances exist that may result in a violation of, conflict with, or failure on the part of Helicon and its Affiliates to comply with Applicable Laws in connection with the Product or its Development. Neither Helicon nor any of its Affiliates has received any written notification, correspondence or any other written communication from any Regulatory Authority, including the FDA, alleging any potential or actual material non-compliance by Helicon or any of its Affiliates under Applicable Law relating to the Product.

(g)          As of the Effective Date, the Product IP is free and clear of liens, charges and encumbrances.

(h)          Assuming the due authorization, execution and delivery by LiveWell, this Agreement is a legally valid and binding obligation of Helicon, enforceable against LiveWell in accordance with its terms (except in all cases as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors’ rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court or other tribunal before which any proceeding may be brought).

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(i)          Helicon shall promptly provide LiveWell with copies of all written notices and other material written communications from the FDA and/or any other Regulatory Authorities or regulatory agencies that relate to or reasonably impact the Product in the Field, MNO-521 or the Helicon® II Delivery System or that may affect LiveWell’s ability or right to Manufacture, sell, distribute, Commercialize and otherwise Exploit the Product as contemplated by this Agreement. Helicon covenants to disclose to LiveWell any Product-related information that comes into the possession or Control of Helicon or its Affiliates during the Term of this Agreement that is necessary or useful for LiveWell to exercise its rights or perform its obligations under this Agreement in relation to the Product.

(j)          Helicon has not granted to any Person any license, sublicense or other rights, entered into any agreement or understanding or undertaken any obligation that in any way conflicts or is inconsistent with this Agreement or the rights and licenses granted to LiveWell and its Affiliates under this Agreement. None of Helicon Pharmaceuticals, Helicon Pharma or any of their respective Affiliates shall grant to any Person any license, sublicense or other rights, enter into any agreement or understanding or undertake any obligation that in any way conflicts or is inconsistent with this Agreement or the rights and licenses hereunder.

(k)          Schedule 9.2(k) hereto sets out all Contracts relating to the Product, MNO-521 or the Helicon® II Delivery System or their Development (the “**Product Contracts**”), accurate and complete copies of which have been delivered to LiveWell by Helicon. Each of the Product Contracts are in full force and effect and enforceable in accordance with their terms against Helicon and, to the best knowledge of Helicon, against the other parties thereto (except in all cases as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors’ rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court or other tribunal before which any proceeding may be brought).  None of Helicon Pharmaceuticals, Helicon Pharma or any of their Affiliates is in default under any of the Product Contracts, and there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute such a default. No counterparty to any Product Contract has cancelled or otherwise terminated or, to the best of Helicon’s knowledge, threatened to cancel or otherwise terminate the applicable Product Contract.

(l)          As of the Effective Date, Helicon has disclosed or made available to LiveWell (a) all material scientific and technical information known to it or its Affiliates relating to (i) the safety and efficacy of the Product and (ii) the drug quality, including, stability, variability, and impurities of the Product and (b) all material regulatory materials submitted to or filed with any Regulatory Authority by or on behalf of Helicon or any of its Affiliates and the status of all material discussions with Regulatory Authorities in respect of the Product (if any). All such scientific and technical information and regulatory materials are accurate and materially complete. To the best of Helicon’s knowledge, no data generated by Helicon or any of its Affiliates with respect to the Product is the subject of any regulatory or other action, either pending or threatened, by any Regulatory Authority relating to the truthfulness of such data or the scientific adequacy of such data for its intended purpose. Neither Helicon nor any of its Affiliates has applied for or obtained a Premarket Approval (PMA) or a Premarket Notification 510(k) for the Helicon® II Delivery System.

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(m)          There is no action, suit or other proceeding pending or, to the best of Helicon’s knowledge, threatened anywhere in the Territory (i) relating to or involving the Product, MNO-521 or the Helicon® II Delivery System or (ii) that could prevent, enjoin or delay the transactions or activities contemplated by this Agreement. There is no order, injunction, judgment or decree of a Regulatory Authority relating to or involving the Product, MNO-521 or the Helicon® II Delivery System.

(n)          To the best of Helicon’s knowledge, there is no information, and no event or circumstance has occurred, that would reasonably be expected to lead to the denial of any application for Marketing Authorization in the Territory. Helicon is not aware of any safety issues relating to the Product, MNO-521 or the Helicon® II Delivery System.

(o)          Other than as disclosed in Schedule 9.2(o) hereto, none of the Product IP owned by Helicon or its Affiliates was developed by or on behalf of, or using grants or any other subsidies of, any Regulatory Authority or other governmental entity or any university, and no government funding, facilities, faculty, employees or students of a university, college, other educational institution or research center.

9.3           Disclaimer.

(a)          EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY AS TO THE QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OF NON-INFRINGEMENT, ARE HEREBY EXCLUDED AND DISCLAIMED BY EACH PARTY AND THEIR RESPECTIVE AFFILIATES.

(b)          Nothing in this Agreement shall be deemed to authorize either Party or its respective Affiliates to act for, represent or bind the other Party or any of its Affiliates other than as specifically provided in this Agreement.

**ARTICLE 10  
STATUS OF THE PARTIES**

10.1         No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating an employee-employer relationship or a principal-agent relationship or making the parties joint venturers or partners or, except as otherwise expressly provided herein (if at all), as granting to either Party the authority to bind or enter into any contracts or incur any obligations in the name of or on the account of the other Party or to make any guarantees or warranties on behalf of the other Party.

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**ARTICLE 11  
TRADEMARKS; INTELLECTUAL PROPERTY RIGHTS**

11.1         Product Trademarks.

(a)          LiveWell shall have the obligation to use the Product Trademark in connection with the Manufacture, Commercialization, sale, distribution or other Exploitation of the Product in the Field in the Territory; *provided* that LiveWell shall also have the right (but not the obligation) to select, register, maintain and use a LiveWell Trademark in conjunction with such Product Trademark in connection with the Manufacture, Commercialization, sale, distribution or other Exploitation of the Product in the Field in the Territory, including in relation to the combination Product or MNO-521, but not in relation to the Helicon® II Delivery System itself. LiveWell shall not use the Product Trademarks for any purpose other than for the use expressly authorized under this Agreement, and during the Term shall not register, challenge, oppose or use a trademark, trade dress or trade name that is the same as, confusingly similar to, or a derivative of or combination with, any Product Trademark. LiveWell acknowledges and agrees that, as between the Parties, Helicon shall retain all right, title and interest in and to the Product Trademarks except for the rights expressly granted to LiveWell herein, and all use of such Product Trademarks and goodwill associated therewith shall inure exclusively to the benefit of Helicon.

(b)          If, with respect to a particular country in the Territory, (i) the Product Trademark cannot, under Applicable Laws, be used for the Manufacture sale, distribution, Commercialization and Exploitation of the Product in such country, (ii) Helicon is unable to maintain registration of the Product Trademark in any particular country or such mark is otherwise unavailable or (iii) it is commercially unreasonable to use the Product Trademark for the Manufacture sale, distribution, Commercialization and Exploitation of the Product in such country, then, notwithstanding Section 11.1(a), LiveWell shall not be obligated to use the Product Trademark and shall have the right, but not the obligation, to select, register and maintain, during the Term of this Agreement, a LiveWell Trademark for use for the Manufacture, sale, distribution, Commercialization and Exploitation of the Product in such country (including in relation to the Helicon® II Delivery System), at its own expense.

(c)          Each of the Parties shall use the Product Trademark in accordance with sound trademark and trade name usage principles, in accordance with any Helicon trademark usage guidelines (as provided to LiveWell from time to time) and in accordance with all Applicable Laws as reasonably necessary to maintain the validity and enforceability of the Product Trademark.

11.2         Ownership of Collaboration Results. Except to the extent separately and expressly agreed between the Parties and subject to the terms hereof, including the licenses and other rights granted hereunder, the entire right, title and interest in and to all Collaboration Results (including all Patents and other intellectual property rights relating thereto) shall be owned solely by the Party that invented, created or developed such Collaboration Results, without any obligation to reimburse the other Party except for what is expressly provided hereunder. However, Helicon shall have a non-exclusive perpetual fully paid up royalty free license to practice or use any and all LiveWell Collaboration Results solely in connection with the Product outside the Field and solely to the extent necessary or useful for the development, manufacture and/or commercialization of the Product outside the Field.

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11.3         Joint Inventions. Any intellectual property arising or resulting from the inventive work by one or more employees of Helicon and of LiveWell, as to which such employees would be joint inventors under the patent laws of the United States (“**Joint Inventions**”), shall be jointly owned by the Parties (each Party having an undivided interest therein and the right to use without accounting to the other), and all of Helicon’s rights and interests therein shall be subject to the License if and to the extent that such intellectual property is useful or necessary for the exercise of the License. The laws of the United States with respect to joint ownership of inventions shall be applied in all jurisdictions of the world to the Parties’ joint ownership interests.

11.4         Patent Marking. LiveWell shall mark the Product (or packaging thereof) with the applicable patent and patent application numbers in accordance with all applicable laws and regulations.

11.5         Patent Term Extensions.Heliconwill, after discussing itsstrategy with LiveWell and reasonably considering LiveWell’s comments, in each country in the Territory, determine for which, if any, of the Patents within the Helicon Patents and Helicon’s Collaboration Results, and Joint Patents, Helicon will apply to extend the patent term with respect to the Product, as provided for in patent term extension laws or regulations in the Territory similar to the *Patent Term Restoration Act* or other similar laws and regulations affording an extension or restoration of patent terms in the United States, which similar laws and regulations shall include without limitation any Supplementary Protection Certificates. Helicon shall act with reasonable promptness in light of the development stage of the Product toapply for any such extension. LiveWell shall not make any submissions, filings or other communications with any governmental agency with respect to patent term restoration (or other similar grant of a monopoly right with respect to the Product) for any Patents within the Helicon Patents or Helicon’s Collaboration Results or Joint Patents in the Territory without Helicon’s express consent. LiveWell will cooperate fully with Helicon in making such filings at Helicon’s sole expense which may include without limitation, making available regulatory data and information.

11.6         Prosecution and Maintenance of Product IP. Helicon shall be obligated to Prosecute and Maintain Product Patents and Product Trademarks at its sole expense; *provided*, *however*, that Helicon shall provide LiveWell with copies of all correspondence regarding the prosecution of Product Patents with sufficient time for LiveWell to comment, and to the extent possible, at least forty-five (45) days prior to any response being due to the applicable patent office, and Helicon will consider in good faith reasonable comments provided by LiveWell. Helicon shall keep LiveWell informed as to material developments with respect to the Prosecution and Maintenance of Product Patents and Product Trademarks, including by promptly providing to LiveWell copies of any substantive documents that Helicon receives from any patent office (including notice of reissues, reexaminations, oppositions or requests for patent term extensions), and by providing LiveWell the opportunity to have reasonable input into the strategic aspects of such Prosecution and Maintenance. If Helicon elects not to Prosecute and Maintain Patents covering any Product Patent(s) or Product Trademark(s) in any country, then Helicon shall provide at least sixty (60) days’ prior written notice to LiveWell. Thereafter, upon LiveWell’s request, Helicon shall and hereby does assign all of its right, title and interest in and to such Product Patent(s) and/or Product Trademark(s), and LiveWell shall have the right, but not the obligation, to pursue, at its sole expense and in its sole discretion, the Prosecution and Maintenance of such Product Patent(s) and/or Product Trademark(s) in such country.

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11.7         Protection of Product IP.

(a)          Each Party shall notify the other Party promptly upon becoming aware that there exists an actual or potential infringement or misappropriation by Third Parties in the Territory of the Product IP in the Field, or that the Product or any intellectual property rights Covering the Product, might or actually infringe or misappropriate, or are dependent upon a Third Party intellectual property right in the Territory. The Parties shall meet to discuss and agree a joint strategy for prosecuting such infringement, including decisions on which Party will control resulting actions, assistance from the other Party and sharing of costs and revenues from such litigation. If the Parties fail to agree on the terms of such joint action within thirty (30) days from such notification, then Sections 11.7(b) and (c) shall apply.

(b)          LiveWell shall have the first opportunity, but not the obligation, to bring any suit or action for infringement of any Product IP. Any infringement action brought by LiveWell shall be solely at LiveWell’s expense. If requested, Helicon shall provide reasonable assistance in the prosecution of such suit or action at LiveWell’s expense, and Helicon shall have the right, but not the obligation, at its expense to join as a party in any infringement action brought by LiveWell; *provided*, *however*, that Helicon agrees to be joined as a party plaintiff if LiveWell finds it legally necessary to join Helicon. Helicon shall execute all such papers necessary and perform such other acts as may reasonably be required by LiveWell in connection with the filing or prosecution of the infringement suit or action at LiveWell’s expense. LiveWell shall have control over such suit or action; *provided* that LiveWell consults with Helicon with respect to any such suit or action; *provided*, *further*, that LiveWell may not settle or compromise such suit or action without the prior written consent of Helicon, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that monetary damages are awarded or obtained by LiveWell whether by judgment, award, decree, settlement or otherwise, as a result of any infringement action brought by LiveWell, the money actually received shall be retained by LiveWell and considered as Net Sales (solely for the purposes of calculating Net Sales and not for the purposes of calculating the Sales-Based Milestone Payments), after first deducting the expenses incurred by LiveWell in filing, prosecuting, maintaining and enforcing such suit or action, with an obligation on part of LiveWell to pay Royalties to Helicon, as set out in Article 7, in relation to any remaining balance.

(c)          In the event that (i) LiveWell fails to commence an infringement suit or take appropriate action for Product IP as set forth in Section 11.7(b), within the earlier of (A) ninety (90) days after Helicon’s written request for LiveWell to initiate such action or (B) forty-five (45) days prior to the expiry of any applicable statute of limitation, or (ii) LiveWell notifies Helicon in writing of its decision not to take such action, Helicon shall have the right, but not the obligation to bring an appropriate suit or action against the Third Party infringer within the relevant jurisdiction at Helicon’s expense. LiveWell shall have the right, but not the obligation, at its cost to join as a party; *provided*, *however*, that LiveWell agrees to be joined as a party plaintiff if Helicon finds it legally necessary to join LiveWell. LiveWell shall execute all such papers necessary and perform such other acts as may reasonably be required by Helicon in connection with the filing or prosecution of the infringement suit or action at Helicon’s expense. In the event that monetary damages are awarded or obtained by Helicon, whether by judgment, award, decree, settlement or otherwise, as a result of any infringement action brought by Helicon, the money actually received shall be split equally between the Parties, after first deducting the expenses incurred by Helicon in filing, prosecuting, maintaining and enforcing such suit or action.

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(d)          In the event that a Third Party commences or threatens to commence any suit or action against a Party, alleging infringement of such Third Party’s intellectual property rights by the Development, Manufacture, having Manufactured, use, marketing, Promotion, distribution, Commercialization, sale, offer to sell, having sold, export or import of the Products by LiveWell, its Affiliates or its Sublicensees or Helicon, its Affiliates or its Sublicensees, the Party against whom such proceedings is threatened or commenced shall give prompt notice to the other Party. Subject to the terms and conditions of Article 15, each Party shall be responsible for defense of all such claims against such Party; *provided* that Helicon may not settle or compromise any such claim without the prior written consent of LiveWell, which consent shall not be unreasonably withheld or delayed.

(e)          Subject to Section 11.7(f) below, in the event that, in order for LiveWell to perform its obligations or exercise its rights under this Agreement, including to Manufacture, Commercialize and Exploit the Product in the Territory, LiveWell, any of its Affiliates or any of its Sublicensees are required to obtain one or more licenses under patents or other intellectual property rights of Third Parties that, in the absence of such license(s), would be infringed by LiveWell’s (or its Affiliates’ or Sublicensees’) performance hereunder ( “**Third Party Licenses**”), [\*\*\*] of all amounts actually paid under such Third Party Licenses by LiveWell, its Affiliates and Sublicensees (**“Recoverable Amounts”**) shall be creditable against the License Fees and Milestone Payments and Royalties due to Helicon by LiveWell hereunder, and LiveWell shall thus be entitled to withhold such amounts from future payment obligations that otherwise would have been due to Helicon. LiveWell shall consult with Helicon prior to entering into any agreements on Third Party Licenses and provide Helicon with a reasonable opportunity to provide its views on the need or benefit to obtain such license agreement and the financial and other terms thereof. Notwithstanding anything in this Section 11.7(e), Helicon shall have the obligation to pay 100% of any and all royalties due on existing licenses from Third Parties to which Helicon (or its Affiliates) is a party as of the date hereof, including any such licenses set out under Schedule 9.2(k).

(f)          Notwithstanding Section 11.7(e) above, in the event that the requirement to obtain one or more Third Party Licenses constitutes a breach by Helicon of one or more of its representations, warranties or other obligations under this Agreement, [\*\*\*] of all Recoverable Amounts shall be creditable against the License Fees and Milestone Payments and Royalties due to Helicon by LiveWell hereunder and LiveWell shall thus be entitled to withhold such amounts from future payment obligations that otherwise would have been due to Helicon; *provided* that, in the case of the Royalties, (i) the Royalties may only be reduced with respect to the country in which such Third Party License applies and

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(ii) the Royalty rate then payable shall be reduced by no more than [\*\*\*] as a result of the deduction of the Recoverable Amounts.

(g)          The Parties shall reasonably cooperate with each other with respect to any litigation, action, suit, claim or proceeding under this Section 11.7. The Party prosecuting or controlling the defence of any proceeding under this Section 11.7 shall be referred to in this context as the “**Litigating Party**”. The other Party in this context shall be referred to as the “**Non-Litigating Party**”. In respect of any action commenced under Section 11.7(b) or (c), if the Litigating Party is unable to initiate or prosecute such action solely in its own name or it is otherwise advisable to obtain an effective remedy, the other Party will join such action voluntarily and will execute and cause its Affiliates and Sublicensees to execute all documents necessary for the enforcing Party to initiate litigation to prosecute and maintain such action.

**ARTICLE 12  
ADVERSE EVENT REPORTING, MEDICAL INFORMATION AND REGULATORY MATTERS; RECALLS**

12.1         Prompt Notification. Each Party shall notify the other Party of any adverse event reports or complaints associated with the use of the Product that comes to such Party’s attention, but in no event more than two (2) calendar days, in the event such reports or complaints come to such Party’s attention on any day other than a Friday, or three calendar days, in the event such reports or complaints come to such Party’s attention on a Friday, after receiving such information, as necessary to enable each Party to comply with all Applicable laws, each Party’s internal policies regarding the recording and reporting of such events and complaints and its obligations to third parties. Without limiting the foregoing, each Party shall provide a copy to the other Party of any information that such Party obtains or receives concerning the Product or package complaint. Additionally, Helicon shall transfer all requests it receives for medical information relating to the Product to LiveWell.

12.2         LiveWell Reporting Responsibilities.

(a)          LiveWell shall be solely responsible, at its sole expense, for recording, evaluating, summarizing and reviewing all adverse drug experiences and complaints associated with the Product in the Field in the Territory, and timely reporting all such information to the FDA and any other applicable professional or Regulatory Authority in accordance with Applicable Laws, including without limitation those that apply to the promotion and marketing of the Product in the Field in the Territory. LiveWell shall respond to all requests for medical information relating to the Product in the Field in the Territory received by LiveWell. In addition, LiveWell shall be responsible for all other reporting requirements under Applicable Laws arising from its Manufacture, sale, distribution, Commercialization and Exploitation of the Product in the Field in the Territory. Helicon shall provide LiveWell with all information, assistance and cooperation reasonably requested by LiveWell in undertaking such reporting.

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(b)          Helicon shall be solely responsible, at its sole expense, for recording, evaluating, summarizing and reviewing all adverse drug experiences and complaints associated with the Product outside the Field in the Territory, and timely reporting all such information to the FDA and any other applicable professional or Regulatory Authority in accordance with Applicable Laws, including without limitation those that apply to the promotion and marketing of the Product in the Field in the Territory. Helicon shall respond to all requests for medical information relating to the Product outside the Field in the Territory received by Helicon. In addition, Helicon shall be responsible for all other reporting requirements under Applicable Laws arising from its Manufacture, sale, distribution, Commercialization and Exploitation of the Product outside the Field in the Territory. LiveWell shall provide Helicon with all information, assistance and cooperation reasonably requested by Helicon in undertaking such reporting.

12.3         Pharmacovigilance Agreement. The Parties will, promptly after the Effective Date, enter into a pharmacovigilance agreement that will govern the Parties’ obligations under Sections 12.1 and 12.2 in further detail, and that will cover other matters typically contained in similar agreements for products of a similar nature.

12.4         Recalls. The Parties shall immediately contact each other in the event that either Party has reason to believe that the recall of the Product, MNO-521 or the Helicon® II Delivery System may be necessary. The Parties shall fully cooperate and shall resolve any issues with respect to all recalls, field corrections and market withdrawals (“**Recalls**”) of Product, MNO-521 or the Helicon® II Delivery System including the necessity of declaring the Recall, the manner in which the Recall should be conducted and the duration of the Recall. LiveWell shall be responsible for the administration of the Recall and for all costs and expenses of any such Recalls with respect to the Product in the Field; *provided* that (i) if such Recall is the result solely of (A) the failure by Helicon or its Affiliates or representatives to comply with any Applicable Law or (B) the negligent or willful act or omission of Helicon or its Affiliates or representatives, in which case the costs and expenses of such Recall shall be paid by Helicon, and (ii) if such Recall is the result of the negligent or willful act or omission of both Helicon and LiveWell, the Parties shall share the costs and expenses of such Recall in proportion to their relative fault. Helicon shall be responsible for the administration of the Recall and for all costs and expenses of any such Recalls with respect to the Product outside the Field.

**ARTICLE 13  
CONFIDENTIALITY; PUBLIC STATEMENTS**

13.1         Confidential Information. Each Party acknowledges and agrees that it shall have access to, or receive, the Confidential Information of the other Party in the course of performance of the services required under this Agreement. For the purposes of this Agreement, the “**Confidential Information**” shall mean any information (whether oral or written or otherwise in tangible or intangible form) received pursuant to this Agreement by one Party or any Affiliate thereof (“**Receiving Party**”) from or on behalf of the other Party or any Affiliate thereof (“**Disclosing Party**”), whether or not developed by the Disclosing Party, including but not limited to, any and all information which relates in any way to any ideas, designs, methods, discoveries, improvements, documents or other results of the Parties’ activities to be conducted hereunder, trade secrets, proprietary rights, business affairs, marketing strategies or information, customer information or employee information, and without limiting the foregoing, in the case of Helicon, proprietary or confidential information relating to the Product or the Product IP, and in the case of LiveWell, certain proprietary or confidential information or know-how with respect to LiveWell’s performance of its obligations hereunder. Confidential Information of the Disclosing Party shall not be subject to the obligations set forth in Section 13.2 to the extent that such information:

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(a)          is, at the time of disclosure, in the public knowledge;

(b)          becomes part of the public knowledge after disclosure, by publication or otherwise, except by breach of this Agreement by the Receiving Party or other obligation of confidentiality owed to the Disclosing Party;

(c)          is demonstrably in the Receiving Party’s possession at the time of disclosure and which was not acquired, directly or indirectly, from the Disclosing Party or any Third Party which was, at the time of such acquisition, subject to an obligation of confidentiality owed to the Disclosing Party;

(d)          is received by the Receiving Party from third parties, *provided* such information was not obtained, directly or indirectly, from the Disclosing Party or any Third Party which was, at the time such information was obtained, subject to an obligation of confidentiality owed to the Disclosing Party; or

(e)          was independently developed by the Receiving Party, without use of or access to the information provided by the Disclosing Party (as demonstrated by competent proof).

13.2         Confidentiality Obligations. Each Party acknowledges and agrees that the Confidential Information of the Disclosing Party constitutes valuable information and in certain instances trade secrets of the Disclosing Party. Each Receiving Party shall keep all Confidential Information of the Disclosing Party in confidence and shall not, at any time during or after the Term of this Agreement, without the Disclosing Party’s prior written consent, disclose or otherwise make available, directly or indirectly, any item of the Disclosing Party’s Confidential Information to anyone other than the Receiving Party’s employees, licensors, distributors, manufacturers, Affiliates and representatives who need to know the same in the performance of such Party’s obligations hereunder and who are bound by obligations of confidentiality, except, however, to the extent otherwise required by Applicable Laws or rules of a securities exchange, or to the extent necessary for such Party to confer with its legal, accounting or other advisors (in which case such disclosure shall be made under confidentiality). Each Receiving Party, its employees and representatives, shall use the Confidential Information of the Disclosing Party only in connection with the performance of the Receiving Party’s obligations or exercising the Receiving Party’s rights hereunder and for no other purpose. Each Receiving Party shall inform its employees and representatives of the trade secret, proprietary and confidential nature of the Confidential Information of the Disclosing Party and their obligation to use the Confidential Information only for such purposes as is entitled to use it hereunder.

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13.3         Return of Confidential Information. Upon termination of this Agreement, the Receiving Party agrees to promptly, and in any event not more than thirty (30) days following such termination, return to the Disclosing Party any and all of its Confidential Information; *provided* that the Receiving Party shall be entitled to retain one copy solely for archival purposes, provided that such Confidential Information continues to be subject to the confidentiality restrictions under this Agreement as long as so retained and such Confidential Information is not accessed by anyone other than the Receiving Party’s systems backup personnel or its legal and regulatory compliance personnel.

13.4         Public Statements. Each Party hereto agrees not to issue, and shall cause its Affiliates, representatives and agents not to issue, any press release or other public statement disclosing the existence of, or relating to this Agreement, including without limitation its terms and substance, without the prior written consent of the other Party; *provided*, *however*, that neither Party shall be prevented from complying with any duty of disclosure it may have under Applicable Laws, including applicable federal securities regulations, in which case the affected Party shall use reasonable efforts to notify the other Party in advance of such disclosure and take reasonable steps to limit or avoid such disclosure where available under Applicable Laws. LiveWell consents to Helicon’s press release concerning this Agreement, to be issued on or about the Effective Date, as set forth in Appendix C attached hereto. In addition, each Party may disclose the terms of this Agreement (i) in confidence on terms no less restrictive than those contained herein to the extent required in connection with a bona fide Third Party acquisition or financing; (ii) as advisable or required in connection with any government or regulatory filings, including without limitation filings with the FDA, provided that the filing party consults in advance of such disclosure in good faith with the Party whose Confidential Information is to be disclosed with respect to the specific disclosure and seeks confidential treatment to the extent reasonably practicable; and (iii) as required to be disclosed in such Party’s financial statements as reasonably required or recommended by such Party’s independent auditor.

**ARTICLE 14  
TERM; TERMINATION**

14.1         Effective Time. This Agreement shall become effective on the Effective Date.

14.2         Term of this Agreement. The term of this Agreement shall commence as of the Effective Date, and shall continue until terminated as set forth in this Article 14 (the “**Term**”).

14.3         Voluntary Termination by LiveWell upon Notice. LiveWell may terminate this Agreement at any time by providing ninety (90) days’ prior written notice to Helicon.

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14.4         Termination by Helicon for Cessation of U.S. Commercialization. If, following the commercial launch of the Product in the Development Field in the Territory, LiveWell or its Affiliates or Sublicensees cease selling and distributing the Product in the United States in the Field for a period of at least [\*\*\*], *provided* that such failure to sell or distribute does not result or arise (a) from the breach by Helicon of any representation, warranty, covenant or agreement in this Agreement or other negligent or wilful act or omission of Helicon, (b) from a Force Majeure Event, or (c) from any other event or a cause beyond LiveWell’s reasonable control (including a supply failure or supply shortage), then Helicon shall have the right to terminate this Agreement upon [\*\*\*] prior written notice to LiveWell, *provided* that LiveWell (or its Affiliate or Sublicensee) does not recommence selling or distributing the Product in the Field in the United States during such [\*\*\*] notice period and is continuing to so sell and distribute upon the termination of such [\*\*\*] notice period.

14.5         Termination for Breach. Either Party shall have the right to terminate this Agreement upon the material breach of any of the terms and conditions of this Agreement by the other Party, if such breach is not cured within [\*\*\*] after the breaching Party’s receipt of written notice from the other Party specifying the nature of such breach in reasonable detail.

14.6         Termination for Infringement or Violation of Law. LiveWell shall have the right to terminate this Agreement immediately upon a determination by a court of competent jurisdiction that LiveWell’s Manufacture, sale, distribution, Commercialization or Exploitation of the Product in accordance with the terms hereof results in a violation or infringement upon any trademark, tradename, copyright, Patent, trade secret or other rights held by any Person or a violation of Applicable Law.

14.7         Bankruptcy; Insolvency. Either Party may terminate this Agreement upon the occurrence of either of the following:

(a)          The entry of a decree or order for relief by a court of competent jurisdiction in respect of the other Party in an involuntary case under the Federal Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal, state or foreign insolvency or other similar law and the continuance of any such decree or order that is unstayed and in effect for a period of [\*\*\*]; or

(b)          The filing by the other Party of a petition for relief under the Federal Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal, state or foreign insolvency or similar law.

**\*\*\* CONFIDENTIAL TREATMENT REQUESTED**

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14.8         Rights in Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by Helicon are, and will otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code. The Parties agree that LiveWell as licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code including, without limitation, LiveWell’s right to retain all licenses granted herein, subject to payments when due to Helicon of all applicable License Fees and Milestone Payments and Royalties. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Helicon under the U.S. Bankruptcy Code, LiveWell will be entitled to a complete duplicate of (or complete access to, as appropriate) the Product IP and all embodiments of such Product IP, and same, if not already in its possession, will be promptly delivered to LiveWell (a) upon any such commencement of a bankruptcy proceeding upon its written request therefor, unless Helicon elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under (a) above, following the rejection of this Agreement by or on behalf of Helicon upon written request therefor by LiveWell.

14.9         Mutual Termination. The Parties may terminate this Agreement on mutually agreeable terms, as set out in a mutual termination agreement, including pursuant to Section 4.2 of this Agreement.

14.10         Additional Development Work. In accordance with, but subject to, Section 4.2 of this Agreement, on [\*\*\*] prior written notice to the other Party, (a) LiveWell may terminate this Agreement if LiveWell determines that any additional Development work required to be conducted under Section 4.2 is not feasible or desirable or (b) either Party may terminate this Agreement if (i) the Parties are unable to agree on an appropriate sharing of the costs of such additional Development work and (ii) LiveWell does not elect to bear one hundred percent (100%) of the costs of such additional Development work.

14.11         Consequences of Termination.

(a)          The termination of this Agreement shall not affect any rights or obligations of the Parties under this Agreement which by their terms are intended to survive such termination, including, without limitation, Section 11.1, this Section 14.11 and Articles 1, 7–8 (to the extent necessary to complete payment obligations accruing during the Term, or to exercise a Party’s audit rights as provided therein), 12, 13, 15 (as to activities conducted during the Term) and 16 hereto, which shall survive termination of this Agreement for as long as necessary to permit their full discharge. In addition, the termination of this Agreement shall not affect any rights or obligations of the Parties arising in any way out of this Agreement which are accrued prior to the date of termination.

**\*\*\* CONFIDENTIAL TREATMENT REQUESTED**

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(b)          Upon termination of this Agreement for any reason, LiveWell shall pay to Helicon all earned, but unpaid Development Milestone Payments and Sales-Based Milestones Payments. In addition, upon termination of this Agreement by LiveWell pursuant to Section 14.3 or 14.10 or by Helicon pursuant to Section 14.5, to the extent that Helicon has engaged in Development work but has not yet achieved the then next Development Milestone, then LiveWell shall reimburse Helicon for [\*\*\*] of any reasonable, documented out-of-pocket costs incurred by Helicon in connection with such Development work up to the amount of the then next Development Milestone Payment.

(c)          Upon termination of this Agreement for any reason (other than by Helicon pursuant to Section 14.10 or by LiveWell pursuant to Section 14.5), LiveWell shall retain all inventory of Product then in its possession (the “**LiveWell Stock**”) for a “sell-off” period not to exceed [\*\*\*] from the date of such termination during which LiveWell and its Affiliates shall have the right to sell, distribute and Commercialize the LiveWell Stock subject to the terms of this Agreement, including, but not limited to, the rendering of reports and making of payments required under this Agreement, and, for the avoidance of doubt, the licenses granted by Helicon to LiveWell pursuant to Section 2.1, including, but not limited to, the right to use all Product IP, shall continue until the end of such [\*\*\*] “sell-off” period with respect to the LiveWell Stock. During the [\*\*\*]“sell-off” period, LiveWell shall fully cooperate and coordinate with Helicon or its designee to ensure an orderly and seamless transfer of manufacturing marketing responsibilities. Following the expiration of this [\*\*\*] “sell off” period, LiveWell shall, with the assistance and cooperation of Helicon, transfer to Helicon (or its designee) any Marketing Authorizations held by LiveWell or its Affiliates in the Territory, at Helicon’s cost and Helicon shall have an exclusive perpetual fully paid up royalty free license to any Collaboration Results for use in any product in any field.

(d)          Except as expressly set out herein, the license granted to LiveWell hereunder shall not survive the termination of this Agreement; *provided* that, in the event of termination by LiveWell pursuant to Section 14.5, the licenses and rights granted to LiveWell pursuant to Section 2.1 herein shall become exclusive, perpetual, fully-paid up licenses and shall survive the termination of this Agreement. In the event of any such termination, Helicon shall, upon reasonable request from LiveWell and at LiveWell’s costs, cooperate with and assist LiveWell in the transition of the Product and any ongoing Development work from Helicon to LiveWell (or its designee), including with respect to the transfer of any Marketing Authorizations for the Product (including any application therefor), any contracts or agreements required for the Development or Commercialization of the Product and any ongoing studies or trials and, if required, complete the submission for the U.S. Marketing Authorization.

**\*\*\* CONFIDENTIAL TREATMENT REQUESTED**

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**ARTICLE 15  
INDEMNIFICATION; LIMITATION ON LIABILITY; INSURANCE**

15.1         Indemnification by LiveWell. LiveWell shall indemnify, defend and hold Helicon and its Affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from and against any and all losses, claims, suits, actions, damages, assessments, interest charges, penalties, costs and expenses (including without limitation reasonable attorneys’ fees) (hereinafter collectively, the “**Losses**”), arising out of (a) the breach by LiveWell of any of its obligations, representations, warranties or covenants in this Agreement, (b) the Manufacture, sale, distribution, Commercialization or Exploitation of the Product by, or on behalf of, LiveWell or its Affiliates in violation of Applicable Laws or (c) a negligent or willful act or omission on the part of LiveWell or any of its directors, officers, agents or employees in connection with this Agreement, except, in each case, to the extent such Losses are covered by Helicon’s indemnification of LiveWell pursuant to Section 15.2.

15.2         Indemnification by Helicon. Helicon Pharmaceuticals and Helicon Pharma shall, on a joint and several basis, indemnify, defend and hold LiveWell and its Affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from and against any and all Losses, arising out of (a) the breach by Helicon of any of its obligations, representations, warranties or covenants in this Agreement, (b) a negligent or willful act or omission on the part of Helicon or any of its directors, officers, agents or employees, (c) all liabilities to Third Parties relating to the Product arising or incurred on or prior to the Effective Date, or (d) any violation or infringement upon any trademark, tradename, copyright, Patent, trade secret or other rights held by any Person in the manufacture, use, sale, offering for sale, import or promotion of the Product, except to the extent such Losses are covered by LiveWell’s indemnification of Helicon pursuant to Section 15.1.

15.3         Indemnification Procedures. A Party (the “**Indemnitee**”) which intends to claim indemnification under this Article 15 shall promptly notify the other Party (the “**Indemnitor**”) in writing of any action, claim or liability in respect of which the Indemnitee or any of its directors, officers, employees or agents intend to claim such indemnification, *provided* that the failure to provide timely notice to the Indemnitor shall not release the Indemnitor from any liability to the Indemnitee to the extent the Indemnitor is not prejudiced thereby. Within fifteen (15) days after such notification is delivered by the Indemnitee to the Indemnitor, the Indemnitee shall permit, and shall cause its employees and agents to permit, the Indemnitor to assume the defense of any such action or claim with qualified counsel at the Indemnitor’s sole cost and expense, *provided, however*, that if the Indemnified Party shall have reasonably concluded that representation of both Indemnitor and Indemnitee by the same counsel would be inappropriate due to an actual conflict of interests between them, the Indemnitee shall be able to obtain its own counsel at the expense of the Indemnitor. If the Indemnitor does not deliver written notice to the Indemnitee of its intent to assume control of such defense within such fifteen (15) day period, the Indemnitee may assume such defense with qualified counsel if its choice at the sole cost of the Indemnitor. If the Indemnitor assumes such defense hereunder, the Indemnitee may participate in such defense through counsel of its own selection at the Indemnitee’s sole cost and expense. Neither party shall settle or consent to entry of judgment of any such claim or dispute without the other Party’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; *provided* that the Indemnitee shall be deemed to have granted such consent if either (i) such settlement does not adversely affect the Indemnitee, and does not impose any obligation or liability on the Indemnitee which cannot be assumed and performed in full by the Indemnitor, or (ii) such settlement involves only the payment of money by the Indemnitor or its insurer. The Indemnitor shall not be responsible for any attorneys’ fees or other costs incurred other than as provided in this Agreement. The Indemnitee, its employees and agents, shall provide reasonable and good faith assistance (including but not limited to documents and testimony) to the Indemnitor and its legal representatives, at the Indemnitor’s expense, in the investigation and defense of any action, claim or liability covered by this indemnification.

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15.4         LIMITATION ON LIABILITY. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO PARTY TO THIS AGREEMENT SHALL BE LIABLE TO OR OTHERWISE RESPONSIBLE TO THE OTHER PARTY OR ANY AFFILIATE OF THE OTHER PARTY FOR LOST REVENUES OR PROFITS, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF OR THEREOF, EXCEPT (A) IN CONNECTION WITH A BREACH OF ARTICLE 13, (B) FOR FRAUD, OR (C) TO THE EXTENT THAT SUCH DAMAGES WERE ACTUALLY PAID TO A THIRD PARTY PURSUANT TO A THIRD PARTY CLAIM.

15.5         Insurance. As from the Effective Date, and for a period of five (5) years after the termination of this Agreement, each Party shall maintain adequate liability insurance coverage to cover its liabilities related to its activities and obligations under this Agreement in such amounts and with such coverage as is customary for similar companies in the pharmaceutical business, including any legally mandatory insurance (or reasonable self-insurance sufficient to provide materially the same level of protection).

**ARTICLE 16  
MISCELLANEOUS PROVISIONS**

16.1         Force Majeure. Failure of either Party hereto to fulfill or perform its obligations under this Agreement shall not subject such Party to any liability if such failure is due to an event or a cause beyond its reasonable control, such as unforeseen nationwide labor conflict, acts of God, fire, earthquakes, floods, war, mobilization or unforeseen military call-up of a large magnitude, requisition, confiscation, commandeering, public decrees, riots, insurrections (a “**Force Majeure Event**”), *provided* that the affected Party uses commercially reasonable efforts to remove such Force Majeure Event and commence performance hereunder as soon as possible following the removal of such Force Majeure Event and that the affected Party gives the other Party prompt notice of the existence of such Force Majeure Event.

16.2         Notices. Unless otherwise specified herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered personally, by facsimile transmission or sent by a nationally recognized overnight courier service, and shall be deemed to have been given upon receipt. Any such notices shall be addressed to the receiving party at such party’s address set forth below, or at such other address as may from time to time be furnished by similar notice by either party:

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**If to LiveWell:**[\*\*\*]

**If to Helicon:** [\*\*\*]

16.3         Entire Agreement; Modification. This Agreement, including without limitation all exhibits and attachments hereto, contains the entire Agreement among the parties hereto with respect to the subject matter hereof and supersedes all previous agreements, negotiations, commitments and writings among the parties hereto with respect of the subject matter hereof, and may not be changed or modified in any manner unless in a written instrument duly approved by both Parties.

16.4         Severability. If any provision of this Agreement or any other document delivered under this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or enforceable nor the remaining provisions hereof, nor render unenforceable such provision in any other jurisdiction, unless the effect of rendering such provision ineffective would be to substantially deviate from the expectations and intent of the respective parties in entering into this Agreement. In the event any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the parties hereto shall use reasonable best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes hereof.

16.5         No Waiver; Cumulative Remedies. No failure or delay on the part of either Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the Party giving such waiver. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

16.6         Headings. All Article and Section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

16.7         Governing Law; Arbitration; Mediation.

(a)          This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of New York, without giving effect to choice of law rules.

**\*\*\* CONFIDENTIAL TREATMENT REQUESTED**

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(b)          If any dispute, controversy or difference arises between the Parties in connection with or arising out of this Agreement, the Parties shall first attempt to settle such matter amicably through mutual discussion, involving, to the extent necessary, senior executives of both Parties. Should the Parties fail to reach an amicable settlement within sixty (60) days of a formal written request by one Party to the other for such discussion, said dispute, controversy or difference shall be submitted to non-binding mediation in accordance with Section 16.7(c).

(c)          With respect to any proceeding, each of the parties irrevocably (i) agrees and consents to be subject to the exclusive jurisdiction of any federal or state court in New York, United States of America (any such court, the “**New York Court**”) and (ii) waives any objection which it may have at any time to the laying of venue of any proceeding brought in any such New York Court and waives any claim that such proceeding has been brought in an inconvenient forum and further waives the right to object, with respect to such proceeding, that such court does not have any jurisdiction over such Party. Notwithstanding the foregoing: (i) each of the parties shall be entitled to seek injunctive relief and specific performance in any court of competent jurisdiction, and (ii) if the court adjudicating such proceeding refuses for any reason to exercise jurisdiction over the dispute, the parties shall be free to bring such proceeding in any other Court in the State of New York as provided above and, in the event such other court(s) refuse for any reason to exercise jurisdiction over the dispute, of the parties shall be free to bring such proceeding in any other court of competent jurisdiction.

(d)          Notwithstanding the foregoing, neither LiveWell nor Helicon shall be required to pursue the escalation procedures set forth in this Section 16.7 if the result of following such escalation provisions set forth would result in the lapse of the statute of limitations applicable to a claim hereunder.

16.8         Counterparts. This Agreement and any amendment or supplement hereto may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become binding when any number of counterparts, individually or taken together, shall bear the signatures of both Parties. This Agreement may be executed and delivered by facsimile or any other electronic means, including “.pdf” or “.tiff” files, and any facsimile or other scanned copy of a signed copy of this Agreement shall constitute an original for all purposes.

16.9         Assignments. No party shall be permitted to assign this Agreement or any of its rights or obligations under this Agreement, directly or by operation of law or otherwise, without the other parties’ express, prior written consent, except that (i) Helicon may assign or sublicense this Agreement, in whole or in part, to an Affiliate or to its successor in connection with any merger, consolidation or sale or other disposal of all or substantially all of its assets without LiveWell’s consent and (ii) LiveWell may assign or sublicense this Agreement, in whole or in part, to an Affiliate or to its successor in connection with any merger, consolidation or sale or other disposal of all or substantially all of its assets and/or business to which this License Agreement relates without Helicon’s consent; *provided* that no such assignment shall relieve the assigning party of any of its obligations under this Agreement. Any such purported assignment in violation of this Agreement shall be null and void *ab initio*.

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16.10         Costs and Expenses. Except as otherwise specified herein, each Party shall bear its own expenses with respect to the transactions contemplated by this Agreement.

16.11         Affiliates. LiveWell may perform certain of its obligations and activities hereunder through one or more of its Affiliates, provided that LiveWell shall remain responsible for such Affiliates and for ensuring that such Affiliates performance such obligations and activities in accordance with the terms hereof.

(Signature Page to Follow)

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IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have entered into this Agreement effective as of the Effective Date.

LIVEWELL PHARMACEUTICALS LUXEMBOURG S.A R.L.

By: /s/ Lucian Froth

Name: Lucian Froth

Title: Manager

By: /s/ Maria Melana

Name: Maria Melana

Title: Manager

HELICON PHARMACEUTICALS, INC.

By: /s/ Rick Mortis

Name: Rick Mortis

Title: President & CEO

HELICON PHARMA S.A.S.

By: /s/ Rick Mortis

Name: Rick Mortis

Title: President

[Signature Page to Helicon License Agreement]

Appendix A: Wire Instructions

[\*\*\*]

\*\*\* CONFIDENTIAL TREATMENT REQUESTED

Appendix B: Schedule of Development-Based Milestone Payments

Development Milestone Percentage of Aggregate

Development Milestone Payment

[\*\*\*]

[\*\*\*] [\*\*\*]

[\*\*\*] [\*\*\*]

[\*\*\*] [\*\*\*]

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\*\*\* CONFIDENTIAL TREATMENT REQUESTED

Appendix C: Helicon Press Release

See attached.

Helicon Signs Licensing Agreement with LiveWell Pharmaceuticals for MNO-521 Combination Product in Uveitis

Company to Receive Upfront Cash Payment, Milestones and Royalties on Sales of Product

Waltham, MA, July 10, 2015 –Helicon Pharmaceuticals, Inc. (OTCQB: […]) ("Helicon" or the "Company"), a specialty pharmaceutical company that focuses on developing and commercializing therapeutics and drug delivery systems for treating diseases of the eye, today announced that it has entered into an exclusive, worldwide licensing agreement with a subsidiary of LiveWell Pharmaceuticals International, Inc. (NYSE/TSX: […]) (“LiveWell”) through which Helicon has granted LiveWell exclusive, worldwide commercial and manufacturing rights to its Helicon® II Delivery System and MNO-521 combination product ("Product") in the field of uveitis, as well as a right of last negotiation to license the Product for other indications.

Under the agreement, Helicon will receive an upfront cash payment, development-based milestone payments related to the completion of development for the indication of anterior uveitis and an approval-based milestone payment upon receipt of FDA approval of the Product. Additionally, the Company would receive royalties based on net sales, as well as additional milestone payments based on the achievement of certain cumulative sales milestones. Helicon shall be responsible for the development of the Product in the U.S. for the indication of anterior uveitis, together with the costs associated therewith. LiveWell has the right to develop the Product in the field outside of the U.S. and has agreed to fund 100% of any costs associated therewith.

“This licensing agreement provides a significant validation for the MNO-521 combination product and has transformative potential for Helicon. LiveWell is among the largest and most respected companies in the ophthalmology space, and we are thrilled to be working with them to advance our lead product candidate,” said Rick Mortis, President and Chief Executive Officer of Helicon. “We believe that the iontophoretic delivery of MNO-521 via the Helicon® II Delivery System represents a compelling new approach to the treatment of uveitis that could improve patient outcomes through increased adherence.”

About Helicon:

Helicon is a clinical-stage specialty pharmaceutical company that is focused on developing and commercializing therapeutics and drug delivery systems for treating diseases of the eye. MNO-521, the Company's first and only product in clinical trials, incorporates a reformulated topically active corticosteroid, dexamethasone phosphate that is delivered into the ocular tissues through Helicon's proprietary innovative drug delivery system, the Helicon(R) II Delivery System. For more information, please visit www.HeliconPharma.com.

Safe Harbor Statement:

Some of the statements in this press release are "forward-looking" and are made pursuant to the safe harbor provision of the Private Securities Litigation Reform Act of 1995. These "forward-looking" statements include statements relating to, among other things, the commercialization efforts and other regulatory or marketing approval efforts pertaining to Helicon’s products, including MNO-521, as well as the success thereof. Such approvals or success may not be obtained or achieved on a timely basis or at all. These statements involve risks and uncertainties that may cause results to differ materially from the statements set forth in this press release, including, among other things, certain risk factors described under the heading “Risk Factors” in our Annual Report on Form 10-K filed with the SEC on March 31, 2015, or described in our other public filings. Our results may also be affected by factors of which we are not currently aware. The forward-looking statements in this press release speak only as of the date of this press release. Helicon expressly disclaims any obligation or undertaking to release publicly any updates or revisions to such statements to reflect any change in its expectations with regard thereto or any changes in the events, conditions or circumstances on which any such statement is based.

CONTACT:

[…]

The XYZ Group for Helicon Pharmaceuticals

Schedule 1.1(tt)

Major Market Countries

[\*\*\*]

\*\*\* CONFIDENTIAL TREATMENT REQUESTED

Schedule 1.1(kkkk)

Western European Countries

United Kingdom

France

Germany

Spain

Italy

Austria

Belgium

Cyprus

Denmark

Finland

Greece

Iceland

Ireland

Liechtenstein

Luxembourg

Malta

Monaco

Netherlands

Norway

Portugal

Sweden

Switzerland

Schedule 9.2(c)

Product Patents

[\*\*\*]

\*\*\* CONFIDENTIAL TREATMENT REQUESTED

Schedule 9.2(k)

Product Contracts

Schedule 9.2(o)

Certain Government Grants and Other Funding

[\*\*\*]

\*\*\* CONFIDENTIAL TREATMENT REQUESTED

**LicA#31**

EXHIBIT 10.1

**Exhibit 10.1**

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (“Agreement”) is made effective April 3, 2018 by and between Teller Solutions, Inc., a Delaware corporation (hereinafter “Licensor” or “Teller”), and Mego Solutions Inc., a Delaware corporation (“Licensee”).

WHEREAS, Licensor owns the Licensed Technology, as such term is defined in Section 1 (c) below;

WHEREAS, Meister, Inc., a Delaware corporation (“Meister”), owns technology and intellectual property relating to blockchain and cryptocurrencies (“Meister Technology”);

WHEREAS, Licensee is owned 78% by Licensor, 15% by Meister and 7% by the Weishin Investment Group LLC;

WHEREAS, Licensee desires to license the Licensed Technology from Licensor, which Licensee will integrate with the Meister Technology in order to develop a combined technology for use in payment solutions, including mobile payment applications, blockchain solutions, and cryptocurrency products and services (“Mego Payment Technology”);

WHEREAS, Meister will enter into a license agreement with Licensee on even date herewith, pursuant to which Meister will license the Meister Technology to Licensee for use in the development of the Mego Payment Technology;

WHEREAS, the Mego Payment Technology will be licensed by Licensee to its operating subsidiary, Mego Payment Solutions USA, Inc. (“Operating Subsidiary”) for the purpose of conducting the Mego Business, as such term is defined in Section 4 below;

WHEREAS, in furtherance of the foTellering, Licensor desires to licensee the Licensed Technology to Licensee under the terms and conditions set forth below.

NOW, THEREFORE, intending to be legally bound, the parties hereto hereby agree that the above background provisions are a part of this Agreement and further agree as follows:

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| **1.** | **Definitions.** |

(a) “Confidential Information” means any data or information concerning Licensor, not made available to the general public, oral or written, which Licensee may receive during the Term (as defined in Section 5 below). Confidential Information includes any data or information that relates to Licensor’s past, present, or future research, development or business activities, including any unannounced product(s) and service(s), and including any information relating to services, developments, inventions, processes, plans, financial information, customer and supplier lists, forecasts, and projections, inventions, know-how, trade secrets and other proprietary Licensor information, including, without limitation, any source code, object code, and trade secrets relating to the Licensed Technology and any updates, upgrades or enhancements thereto.(b) “Intellectual Property Rights” means all rights in intellectual property, including the following rights protected, created, or arising under the laws of the United States of America or any other jurisdiction: (i) all trademarks, service marks, trade names, services names, brand names, trade dress rights, logos, corporate names, trade styles, logos, and other source or business identifiers and general intangibles of a like nature, together with the goodwill associated with any of the foTellering, along with all applications, general intangibles of a like nature, together with the goodwill associated with any of the foTellering, along with all applications, registrations, renewals, and extensions thereof; (ii) all copyrights and all mask works, databases, and design rights, whether or not registered or published, all registration and recordations thereof, and all applications in connection therewith, along with all reversions, extensions, and renewals thereof; (iii) all trade secrets; and (iv) all patents and applications therefor, including all continuations, divisionals, and continuations-in-part thereof and patents issuing thereon, along with all reissues, reexaminations, and extensions thereof.(c) “Licensed Technology” means the information, technology, creative expression, and know-how embodied in the technology and intellectual property described in Schedule “A”. Licensed Technology also includes all enhancements, modifications, additions, translations, compilations, or other technology delivered to Licensee by Licensor hereunder or under any support agreement entered into in connection with this Agreement.

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| **2.** | **Grant and Acceptance of License.** |

(a) ***Non-Exclusive***. During the Term and subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee accepts from Licensor, a non-exclusive, worldwide limited license to reproduce, modify, display, create derivative works of, use and otherwise exploit the Licensed Technology solely for the purpose of developing the Mego Payment Technology. Once developed, Licensee will license the Mego Payment Technology to the Operating Subsidiary pursuant to a licensing agreement approved in writing by Licensor solely for use in conducting the Mego Business (“Mego Payment Technology License”).

(b) ***Restriction on Licensing***. The Licensed Technology is licensed only to the Licensee, for the purpose described in subparagraph (a) above and may not be used for any other purpose, including the transfer or sublicensing thereof, without Licensor’s prior written consent. The parties agree that Licensee may license the Mego Payment Technology (which technology will encompass in whole or in part the Licensed Technology) to the Operating Subsidiary for the purpose of conducting the Mego Business, pursuant to such terms and conditions as set forth in the Mego Payment Technology License, which must be approved in writing by Licensor.

**3. Licensed Technology Restrictions.**The license granted under this Agreement with respect to the Licensed Technology is subject to the following restrictions:

(a) ***Source Code***. To the extent that any Licensed Technology is provided in source code format, Licensee shall maintain the source code versions of the Licensed Technology, and any source code derivatives thereof, under password control protection and shall not disclose such source code versions of the Licensed Technology or any source code derivatives or documentation thereof to any third parties.

(b) ***No Reverse Engineering***. Licensee agrees that without the prior written approval of Licensor and subject to such terms and conditions imposed by Licensor, Licensee will not, nor permit any person or entity to: (i) decompile, “unlock,” reverse-engineer, disassemble, or otherwise translate the object code versions of the Licensed Technology to human-perceivable form; (ii) otherwise discover or replicate the source code from which such object code may be generated; or (iii) except as expressly set forth in this Agreement, modify or make derivative works of the Licensed Technology. Licensee shall preserve and shall not otherwise obscure or permit deletion or alteration of any copyright notice or proprietary notices required by Licensor on any copies of the Licensed Technology.

**4. Licensor’s Covenant Against Competition.**Licensor hereby agrees that during the Term, Licensor shall not, directly or indirectly, own any interest in, manage, control, participate in (whether as a partner, shareholder, equity holder, member, or otherwise), render services for, license or sublicense the Licensed Technology, or in any other manner engage, directly or indirectly, in any Competitive Business. The term “Competitive Business” means any business which is in competition with the Mego Business. The term “Mego Business” means the business which will be conducted by the Operating Subsidiary and which is described as follows:

payment, blockchain and cryptocurrency solutions, including mobile payments, currency and token development, exchanges including ATMs, and cryptocurrency mining. The Mego Business focuses on the retail sector and provides solutions that drive efficiency, intelligence and improve the consumer experience. Licensor reserves the right to utilize the Licensed Technology, directly or indirectly, on its own behalf or in conjunction with others for any business or purpose which is not a Competitive Business including, without limitation, the right to enter into any license or sublicense arrangement with any third party which is not a Competitive Business. The restrictions contained in this Section 4 shall terminate immediately upon the expiration of the Term.

**5. Term; Termination.**

(a) ***Term***. The term of this Agreement shall commence on the Effective Date, and shall continue until the last day of the calendar month in which the one (1) year anniversary of the term falls (“Initial Term”). Thereafter, this Agreement will automatically renew for additional successive one (1) year terms unless either party notifies the other party in writing at least thirty (30) days prior to the expiration of such Term (“Renewal Term”). Notwithstanding the foTellering, the term of this Agreement shall terminate as provided for in subparagraphs (b) and (c) below. All references to the “Term” shall include the Initial Term and any Renewal Terms

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|  | (b) | ***Termination for Uncured Material Breach***. Licensor may terminate this Agreement if Licensee fails to cure any material breach of this Agreement by Licensee within 4 thirty (30) days of receiving written notice of the material breach from Licensor. In the event that Licensee fails to cure such a material breach within the thirty (30) day period, Licensor may immediately terminate this Agreement upon written notice to Licensee. For the purpose of this subsection 5(b), the term “cure” or “remedy” would include any other mutually agreed upon corrective action in lieu of termination. The rights granted to Licensee under this Agreement, including all license rights, will continue in full force and effect during any cure period specified in this subsection 5(b). |

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|  | (c) | ***Other Events of Termination.***Notwithstanding subsections 5(a) and 5(b) above, Licensor may immediately terminate this Agreement upon the occurrence of any of the following events: (i) breach of the confidentiality provisions of Section 10 below; (ii) use of the Licensed Technology outside the scope of the license granted hereunder; (iii) all or a substantial part of the assets of Licensee are being sold or otherwise transferred to any person; (iv) Licensee is being merged or consolidated with any other person; (v) a receiver, trustee, or liquidator of Licensee is appointed for any of its properties or assets; (vi) Licensee admits in writing its inability to pay its debts as they mature; (vii) Licensee makes a general assignment for the benefit of creditors; (viii) Licensee is adjudicated as bankrupt or insolvent; (ix) a petition for the reorganization of Licensee or an arrangement with its creditors, or readjustment of its debts, or its dissolution or liquidation is filed under any law or statute; or (x) Licensee fails to timely pay the Licensing Fees. |

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|  | (c) | ***Effects of Termination***. Upon termination of this Agreement, all rights and benefits granted to Licensee hereunder, including the license of the Licensed Technology, will immediately terminate and the Licensed Technology shall revert to Licensor and all of Licensor’s obligations hereunder shall cease. Notwithstanding the termination of the license of the Licensed Technology, the Mego Payment Technology License between the Licensee and the Operating Subsidiary shall continue in full force and effect pursuant to the terms and conditions thereof unless Licensor elects in writing to have Licensee terminate the Mego Payment Technology License. Licensor may elect to have such license terminated at any time within one hundred twenty (120) days of the termination of the license granted under this Agreement. If Licensor does not elect to have the Mego Payment Technology License terminated, then such licensing agreement shall continue in force and effect pursuant to the terms thereof and Licensor hereby agrees and consents to the continued use of any portion or all of the Licensed Technology that may be embodied in the Mego Payment Technology. Upon termination of this Agreement, Licensor shall have no obligation to refund any amounts paid to it pursuant to Section 6. (e) ***Survival***. The provisions regarding the ownership of the Licensed Technology and confidentiality shall survive the expiration and termination of this Agreement. Provisions of the Sections which, by their nature, would continue beyond termination of this Agreement shall also survive. Payments which accrue or are due before the termination of this Agreement shall survive termination of this Agreement. |

**6. Licensing Fees.**In consideration of the license granted herein, Licensee shall pay to Licensor the licensing fees set forth on the attached Schedule “B”.

**7. Ownership; No Implied Licenses.**Licensee acknowledges and agrees that: (i) Licensor owns the Licensed Technology, (ii) Licensor retains ownership of all of its Intellectual Property Rights in the Licensed Technology, and (iii) Licensee has no right, title, or interest in or to the Licensed Technology, except as expressly granted hereunder. The parties understand and agree that no license or other right is granted herein to either party, directly or by implication, estoppel, or otherwise, with respect to any of Licensor’s Intellectual Property Rights, except as specifically provided for in this Agreement, and that no additional licenses or other right shall arise from consummation of this Agreement or from any acts, statements, or dealings leading to such consummation. Licensor reserves all rights not specifically granted to Licensee hereunder. Licensee shall at its sole cost and expense, defend, indemnify and hold Licensor harmless with respect to any claims, costs, expenses (including reasonable attorney’s fees), liabilities and damages resulting from, arising from or related to any breach or threatened by Licensee under this Section.

**8. Infringement.**In the event that Licensee learns of any infringement, imitation, or any use of property similar to the Licensed Technology, Licensee shall promptly notify Licensor thereof and shall cooperate with any action Licensor deems advisable for the protection of the Licensed Technology.

**9. Warranty Disclaimer. LICENSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED TECHNOLOGY, ITS QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. ALL LICENSED TECHNOLOGY PROVIDED HEREUNDER IS “AS IS” AND LICENSOR MAKES NO WARRANTY THAT THE LICENSED TECHNOLOGY IS FREE FROM CLAIMS OF INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, OR OTHER PROPRIETARY RIGHTS OF OTHERS. THERE ARE NO WARRANTIES, EITHER EXPRESS OR IMPLIED AND ANY AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED AND NEGATED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS EMPLOYEES SHALL CREATE OR MAKE ANY MODIFICATION, EXTENSION OR ADDITION TO THIS WARRANTY. IN NO EVENT WHATSOEVER SHALL LICENSOR BE LIABLE TO THE LICENSEE OR TO THIRD PARTIES FOR ANY DAMAGES CAUSED, IN WHOLE OR IN PART, BY THE USE OF THE LICENSED TECHNOLOGY OR FOR ANY LOST REVENUES, LOST PROFITS, LOST SAVINGS OR OTHER DIRECT OR INDIRECT, INCIDENTIAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY LICENSEE OR ANY THIRD PARTY, EVEN IF LICENSOR IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. LICENSOR’S LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED AN AMOUNT EQUAL TO THE LICENSE FEES PAID UNDER SECTION 6 ABOVE.**

**10. Confidentiality.**Licensee acknowledges that the Confidential Information is a valuable asset of Licensor. Except by written permission by Licensor, Licensee agrees to hold all such Confidential Information in confidence for Licensor. Licensee, its shareholders, officers, directors, employees, agents and representatives shall not disclose or cause to be disclosed to any third party any part or all of the Confidential Information. Licensee may disclose Confidential Information to employees of Licensee to whom such disclosure is necessary, for which rights are granted hereunder. Licensee shall appropriately notify all employees to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by them. Licensee shall be responsible for any non-compliance or breach of this Agreement by its employees.

**11. Governing Law.**This Agreement shall be governed by, and construed and enforced solely in accordance with, the laws of the State of Delaware. Any suit, action, or proceeding concerning any disputes, controversies, or claims arising out of or relating to the Licensed Technology or this Agreement shall be instituted in any applicable court in the State of Delaware and Licensee irrevocably submits to the jurisdiction of such court for such purposes and shall accept service of process via certified mail.

**12. Assignment and Delegation.**This Agreement shall not be assignable by Licensee without Licensor’s prior written authorization, which authorization may be withheld without cause or reason in Licensor’s sole discretion, and Licensee shall not assign, subcontract, or otherwise delegate its rights or responsibilities hereunder without such authorization. Licensor may, in its sole discretion, assign, subcontract, or otherwise delegate its rights and responsibilities hereunder. This Agreement shall be binding upon, and inure to the benefit of, each party and its successors and permitted assigns.

**13. Indemnification by Licensee.**Licensee shall indemnify, defend and hold harmless Licensor and its employees, officers, directors and agents (each, a “Licensor Indemnified Party”) from and against any and all liability, loss, damage, cost and expense (including reasonable attorneys’ fees) (collectively “Liabilities”) which a Licensor Indemnified Party may incur, suffer or be required to pay resulting from, or arising in connection with: (i) the breach by Licensee of any covenant, representation or warranty contained in this Agreement, including any breach the confidentiality provisions under Section 10; or (ii) any Liabilities arising from the license granted hereunder, including, without limitation, any Liabilities arising from the use or transfer of Licensed Technology, or relating to the Licensor’s Intellectual Property Rights, including, without limitation, any claims for infringement.

**14. Injunctive Relief.**Notwithstanding anything to the contrary in this Agreement, Licensee acknowledges and agrees that its use of the Licensed Technology outside the scope of the license granted hereunder or otherwise in violation of this Agreement may cause significant injury to Licensor, the extent of which may be difficult to ascertain and for which there may be no adequate remedy at law, and, accordingly, such use is rebuttably presumed to cause irreparable harm to Licensor. Accordingly, Licensee agrees that Licensor, in addition to any other available remedies, shall have the right to seek (and to use such presumption in seeking) an immediate injunction and other equitable relief enjoining any such use in violation of this Agreement.

**15. Waiver.**No waiver by either party of any term or provision of this Agreement shall be deemed to constitute a waiver of any other term or provision of this Agreement. No waiver of any term or provision of this Agreement shall be deemed to constitute a continuing waiver thereof unless otherwise expressly provided herein.

**16. Severability.**Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

**17. Authority.**Each party executing this Agreement represents and warrants to the other that it has full right, power, capacity, and authority to execute, deliver, and perform its obligations hereunder.

**18. Integration.**This Agreement sets forth the entire agreement reached between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior or contemporaneous agreements, understandings, representations, and warranties between the parties, and may not be amended except by written instrument executed by the duly authorized officers of the parties hereto.

**19. Relationship of Parties.**Nothing in this Agreement shall be construed as creating an employer-employee relationship between Licensor or Licensee, nor any agency, joint venture or partnership relationship between the parties hereto. Neither party shall have the right to bind the other to any obligation, nor have the right to incur any liability on behalf of the other.

**20. Counterparts.**This License Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

**21. Non-Solicitation.**During the Term hereof and for one (1) year thereafter, Licensee shall not, directly or indirectly hire or solicit any employee of Licensor or anyone who was an employee, consultant or independent contractor of Licensor at any time within the six (6) month period immediately prior thereto or encourage any employee, consultant, independent contractor of Licensor to terminate such employment, or agency or other relationship. Notwithstanding the foTellering, any employee, consultant or independent contractor of Licensee who was an employee, consultant or independent contractor of Licensor prior to the commencement of this Agreement, may return to work for Licensor at any time.

**22. Use of Trademarks.**Licensee may use the Licensor’s Trademarks in conjunction with the use of the Licensed Technology, subject to Licensor’s prior written consent. Licensor’s Trademarks can be used only by the Licensee and may not be used by any third party without Licensor’s prior written consent. “Licensor’s Trademarks” shall include, but are not limited to, (i) the United States Patent and Trademark Office (“USPTO”) registrations for [...] (stylized), […], Virtual […], […] and design (horizontal), the […] design[…]; (ii) the European Community registrations for […]; and (iii) the Canadian Intellectual Property Office registration for VP Authenticate.

**23. Enforcement.**If, at the time of enforcement of the covenants contained in this Agreement a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed and directed to revise the restrictions contained  herein to cover the maximum period, scope and area permitted by law. In the event that any suit or action is instituted under or in relation to this Agreement, including without limitation to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, reasonable attorneys’ fees.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals the day and year first above written.

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| --- | --- | --- |
| **Teller Payment Architectures, Inc.** | |  |
| By: |  |  |
| Moro Also, CEO | |  |
|  |  |  |
| **Mego Payment Solutions Inc.** | |  |
| By: |  |  |
| Moro Also, Chief Executive Officer | |  |

LICENSE AGREEMENT

BY AND BETWEEN

TELLER PAYMENT ARCHITECTURES, INC.

AND MEGO PAYMENT SOLUTIONS INC.

DATED APRIL 3, 2018

**SCHEDULE A**

**LICENSED TECHNOLOGY**

**I. Background**

Teller owns certain payment system technologies, including, but not limited to, an online security mobile payment platform, known as […] designed for the under 18 age group in the global market, which enables online businesses to function in a manner consistent with the Children’s Online Privacy Protection Act and similar international children’s privacy laws. Teller has four issued patents with the USPTO entitled “[…],” “[…]”, “[…]” and “[…].” In addition, TELLER has filed for additional provisional and non-provisional U.S. patent application, as well as twelve nonprovisional U.S. patent applications, three of which are pending, four of which have been allowed, and five of which have been abandoned. TELLER has also been granted two patents, entitled “[…]” in each of Germany, Canada, and Australia. The Company also has patents pending in the Republic of Korea under the Patent Cooperation Treaty (collectively, the “Teller Technology”).

**II. Licensed Technology**

Pursuant to the terms and conditions of this Agreement, Licensor licenses the Teller Technology, together with Licensor’s Master/Sub account patent that enables its COPPA compliant payment architecture; its Dot.Net code 360,000 lines which run the back-end of its payments platform for […] and other payment platforms, the mobile application both Android, IOS and web app, website, the […] brand, and all other intellectual property related to […] (hereinafter the aforementioned technology and intellectual property rights are collectively referred to as the “Licensed Technology”).

The Licensed Technology shall be used solely for the purpose of developing the Mego Payment Technology, which will be licensed by Licensee to the Operating Subsidiary pursuant to the Mego Payment Technology License solely for the purpose of conducting the Mego Business. Licensor reserves the right to utilize any portion or all of the Licensed Technology, directly or indirectly, on its own behalf or in conjunction with others including, without limitation, entering into any license or sublicense arrangement with any third party for any purpose whatsoever provided that such purpose does not violate the provisions of Section 4.

**LicA#32**

EX-10.4

**Exhibit 10.4**

**CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [\*\*], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO ZONGO THERAPEUTICS INC. IF PUBLICLY DISCLOSED.**

**LICENSE AGREEMENT**

This License Agreement (this “**Agreement**”) is entered into as of this 27th day of June, 2017 (the “**Effective Date**”), by and between Zongo Therapeutics, Inc., a corporation existing under the laws of the State of Delaware, having a place of business at […], MA 02142 (“**Licensee**”), and **President and Fellows of Hutherfort** **College**, an educational and charitable corporation existing under the laws and the constitution of the Commonwealth of Massachusetts, having a place of business at […], Massachusetts 02138 (“**Hutherfort**”).

**WHEREAS**, the technology claimed in the Patent Rights (as defined below) was developed by researchers at Hutherfort, including researcher Dr. Palim Merotha;

**WHEREAS**, one or more of such researchers is an employee of the Merrill Morehead Medical Institute (“MMMI”) and MMMI has assigned to Hutherfort its rights in those Patent Rights on which an MMMI employee is an inventor, subject to certain rights retained by MMMI as specifically described below;

**WHEREAS**, the research was sponsored in part by the Federal Government of the United States of America and as a consequence this license is subject to overriding obligations to the Federal Government under 35 U.S.C. §§ 200-212 and applicable regulations;

**WHEREAS**, Licensee wishes to obtain a license under the Patent Rights;

**WHEREAS**, Hutherfort desires to have products based on the inventions described in the Patent Rights developed and commercialized to benefit the public;

**WHEREAS**, such products may be applicable to the improvement of the health of individuals throughout the world; and

**WHEREAS**, Licensee has represented to Hutherfort, in order to induce Hutherfort to enter into this Agreement, that Licensee shall commit itself to commercially reasonable efforts to develop, obtain regulatory approval for and commercialize such products, and thereafter make them available to the public.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

As used in this Agreement, the terms with initial letters capitalized, whether used in the singular or plural form, shall have the meanings set forth in this Article 1 or, if not listed below, the meaning designated in places throughout this Agreement.

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1.1 **“Abandoned Patent Rights”** has the meaning set forth in Section 6.3.

1.2 **“Achieved Milestone”** has the meaning set forth in Section 4.3.5.

1.3 **“Acquirer”** has the meaning set forth in Section 4.7.

1.4 **“Actual Series B Valuation Multiple”** means the number, not to exceed [\*\*], determined by dividing the Series B Pre-Money by the Series A Post-Money.

1.5 **“Additional Securities”** means shares of capital stock, convertible securities or warrants, options, or other rights to subscribe for, purchase or acquire from Licensee any capital stock of Licensee; provided that, “other rights to subscribe for, purchase or acquire” shall not include (i) preemptive or other rights to participate in new offerings of securities by Licensee after the Effective Date, (ii) obligations under a purchase agreement for preferred stock of Licensee to acquire additional shares of such preferred stock on the same terms as those purchased at an initial closing upon the passage of time or meeting (or waiver) of specified Licensee performance conditions or (iii) anti-dilution provisions that have not been triggered.

1.6 **“Affiliate”** means, with respect to a person, organization or entity, any person, organization or entity controlling, controlled by or under common control with, such person, organization or entity. For purposes of this definition only, “control” of another person, organization or entity will mean the possession, directly or indirectly, of the power to direct or cause the direction of the activities, management or policies of such person, organization or entity, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, control will be presumed to exist when a person, organization or entity (a) owns or directly controls fifty percent (50%) or more of the outstanding voting stock or other ownership interest of the other organization or entity or (b) possesses, directly or indirectly, the power to elect or appoint fifty percent (50%) or more of the members of the governing body of the other organization or entity. The parties acknowledge that in the case of certain entities organized under the laws of certain countries outside of the United States, the maximum percentage ownership permitted by law for a foreign investor may be less than fifty percent (50%), and that in such cases such lower percentage will be substituted in the preceding sentence.

Notwithstanding the foregoing definition, until the earlier of the consummation of a Change of Control of Licensee or [\*\*] after the closing of the initial public offering of securities of Licensee, (a) the Licensee’s investors shall not be considered to be Affiliates of the Licensee for purposes of this Agreement, including for purposes of Section 4.5, and (b) portfolio companies owned in whole or in part by the Licensee’s investors or any of them that have no legal connection to nor contract with the Licensee shall not be considered to be Affiliates of the Licensee for purposes of this Agreement, including for purposes of Section 4.5. A portfolio company owned in whole or in part by the Licensee’s investors or any of them that is not an Affiliate of the Licensee under the foregoing sentence and enters into a Sublicense agreement with Licensee shall not become an Affiliate of Licensee solely as a result of entering into such Sublicense agreement. A portfolio company that was not an Affiliate under the foregoing in this

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paragraph prior to [\*\*] after the closing of the initial public offering of securities of Licensee shall not become deemed an Affiliate of Licensee merely by the passage of time (i.e., they shall retain after such time-point their previous non-Affiliate-of-Licensee status for purposes of this Agreement, unless and until a new control relationship is formed (after such point in time) between Licensee and the applicable portfolio company).

1.7 **“Agreement”** shall have the meaning set forth in the preamble.

1.8 **“Anti-Dilution Shares”** shall have the meaning set forth in Section 4.1.2.

1.9 **“Base Editor”** means [\*\*].

1.10 **“Base Editor Product”** means [\*\*].

1.11 **“Base Editor Patent Rights”** means any patent application identified under the heading “Base Editor Patent Rights” in Exhibit 1.70 (“**Listed Base Editor Application**”), and all other patent applications and patents that fall within the Patent Rights definition of this Agreement based upon the presence of any Listed Base Editor Application in Exhibit 1.70. The Base Editor Patent Rights are further subcategorized as “C-to-T Base Editor Patent Rights,” “A-to-G Base Editor Patent Rights” and “C-to-G Base Editor Patent Rights” (each a “**Subcategory of Base Editor Patent Rights**”).

1.12 **“Bona Fide Proposal”** means a bona fide proposal by [\*\*] for the research, development and commercialization of a [\*\*] Proposed Product. A Bona Fide Proposal shall include, at a minimum, [\*\*].

1.13 **“Calendar Quarter”** means each of the periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31 during the Term.

1.14 **“Calendar Year”** means any twelve (12) month period commencing on January 1.

1.15 **“Cap Table”** shall have the meaning set forth in Section 4.1.4.1.

1.16 **“Challenging Party”** has the meaning set forth in Section 4.5.

1.17 **“Change of Control”** means, with respect to Licensee, (a) a merger or consolidation of Licensee with a third party which results in the voting securities of Licensee outstanding immediately prior thereto ceasing to represent at least fifty percent (50%) of the combined voting power of the surviving entity immediately after such merger or consolidation, (b) a transaction or series of related transactions in which a third party, together with its Affiliates, becomes the owner of more than fifty percent (50%) of the combined voting power of Licensee’s outstanding securities other than through issuances by Licensee of securities of Licensee in a bona fide financing transaction or series of related bona fide financing transactions, or (c) the sale, lease or other transfer to a third party of all or substantially all of Licensee’s assets or business to which this Agreement relates.

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1.18 **“Clinical Study”** means a Phase 1 Clinical Study, Phase 2 Clinical Study, Phase 3 Clinical Study, or such other study in humans that is conducted in accordance with good clinical practices and is designed to generate data in support or maintenance of an NDA or other similar application for Regulatory Approval (appropriate to the type of product candidate or product).

1.19 **“Competitor”** means any entity (a) listed in Exhibit 1.19 or (b) that is an Affiliate of an entity described under the foregoing clause (a). Licensee shall have the right to make good faith updates to the Competitors listed in Exhibit 1.19, by written notice to Hutherfort from time to time, to account for changes since the Effective Date in the entities that, upon the advice of patent counsel to Licensee, Licensee reasonably believes hold or claim to hold a blocking patent position on any Base Editor or any form of Base Editing (other than such position based on a [\*\*] or indication).

For purposes of determining the meaning of the term “Affiliate” in the foregoing clause (b) of this definition with respect to a competitor entity, the second paragraph of Affiliate set forth in Section 1.6 shall be replaced with the following: “Notwithstanding the foregoing definition, (a) a competitor entity’s investors shall not be considered to be Affiliates of such competitor entity and (b) portfolio companies owned in whole or in part by such competitor entity’s investors that have no legal connection to nor contract with such competitor entity shall not be considered Affiliates of such competitor entity for purposes of this Agreement, including for purposes of this Section 1.19. A portfolio company owned in whole or in part by such competitor entity’s investors that is not an Affiliate of such competitor entity under the foregoing sentence and enters into a licensing agreement with such competitor entity shall not become an Affiliate of such competitor entity solely as a result of entering into such licensing agreement.

1.20 **“Confidential Information”** shall have the meaning set forth in Section 11.1.1.3.

1.21 **“Covered”** means, with respect to a given product, process, method or service, that a Valid Claim would (absent a license thereunder or ownership thereof) be infringed by the making, using, selling, offering for sale, importation or other exploitation of such product, process, method or service. With respect to a claim of a pending patent application, “infringed” refers to activity that would infringe or be covered by such Valid Claim if it were contained in an issued patent. Cognates of the word “Covered” shall have correlative meanings.

1.22 **“Developed Country”** means any country other than a Developing Country on the Effective Date and any countries that cease to be Developing Countries after the Effective Date from and after the date that they cease to be Developing Countries in accordance with the definition below.

1.23 **“Developing Country”** means any low-income or lower-middle-income country, as defined by the World Bank, other than those countries listed in Exhibit 1.23.

1.24 **“Development Milestones”** means the development and regulatory milestones set forth in Exhibit 3.1.1 hereto.

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1.25 **“Development Plan”** means the plan for the development and commercialization of Licensed Products attached hereto as Exhibit 3.2 as such plan may be adjusted from time to time pursuant to Section 3.2.

1.26 [\*\*]

1.27 **“Dispute”** shall have the meaning set forth in Section 11.7.

1.28 **“Effective Date”** shall have the meaning set forth in the preamble.

1.29 **“Enabled Product”** means any product that (a) is made, identified, discovered, developed, optimized, characterized, selected, derived from or determined to have utility, in whole or in part, by the use or modification of any Patent Rights or any technology or invention described therein or Covered thereby and is (b) is not a Licensed Product.

1.30 **“EU”** means the European Union.

1.31 **“EU Major Market Countries”** means the United Kingdom, Germany, Italy, France and Spain.

1.32 **“Exempted Issuances”** means: shares of common stock issued or issuable, and options, warrants or other rights to purchase Common Stock sold, issued or issuable, by Licensee (i) to a corporation, partnership or other entity (other than a corporation, partnership or other entity that is an Affiliate (which definition for purposes of this Section 1.32 shall be deemed to exclude the second paragraph of Section 1.6)) of Licensee or to the shareholders of such corporation, partnership or other entity pursuant to the acquisition of such corporation, partnership or other entity by Licensee by merger, purchase of substantially all of the assets or similar transaction (but excluding any shares, options, warrants or other rights issued or issuable as incentive compensation); and (ii) to an academic institution, inventor, biopharmaceutical company, or intellectual property holding company (in each case, other than a corporation, partnership or other entity that is an Affiliate (which definition for purposes of this Section 1.32 shall be deemed to exclude the second paragraph of Section 1.6)) of Licensee in consideration of such person’s entering into a sponsored research, collaboration, technology or intellectual property license, development, OEM, marketing or other similar agreement with Licensee, including any such agreement entered into in settlement of litigation (but excluding any shares, options, warrants or other rights issued or issuable as incentive compensation); provided, however, that shares issued or issuable to an investor in Licensee in connection with any transaction contemplated under clause (i) or (ii) (other than shares issued to such investor as a shareholder of an entity as contemplated under clause (i)) shall not be Exempted Issuances.

1.33 **“Executive Officers”** shall have the meaning set forth in Section 11.7.

1.34 **“Explanation”** shall have the meaning set forth in Section 3.4.

1.35 **“FDA”** means the United States Food and Drug Administration.

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1.36 **“Field”** means the prevention or treatment of any and all human disease(s) and condition(s), [\*\*]. The Field excludes the field of agriculture (including improving the nutritional contents of food crops and/or food animals for use as food, where the ultimate product is regulated as a food rather than a drug, biologic, or other form of therapeutic). To avoid doubt, the Field also excludes research, development, commercialization or other use or exploitation of products for non-human animal or plant applications.

1.37 **“Financing Threshold”** means an aggregate total investment of [\*\*] U.S. Dollars ($[\*\*]) in cash since the date of incorporation or formation of Licensee, in one or a series of related or unrelated transactions, in each case, in exchange for Licensee’s capital stock.

1.38 **“First Commercial Sale”** means the date of the first sale by Licensee, its Affiliate or a Sublicensee of a Licensed Product to a third party for end use or consumption of such Licensed Product following receipt of any required Regulatory Approval in the country in which such Licensed Product is sold, excluding, however, any sale or other distribution for use in a clinical study.

1.39 **“FSFD”** means, with respect to a clinical study, the first dose of the first subject dosed in such clinical study.

1.40 **“Fully-Diluted Basis”** means, as of a specified date, the number of shares of common stock of Licensee then-outstanding plus the number of shares of common stock of Licensee issuable upon exercise or conversion of then-outstanding convertible securities or warrants, options, or other rights to subscribe for, purchase or acquire from Licensee any capital stock of Licensee (which shall be determined without regard to whether such securities or rights are then vested, exercisable or convertible) plus, without duplication, the number of shares reserved and available for future grant under any then-existing equity incentive plan of Licensee; provided that, for clarity, “other rights to subscribe for, purchase or acquire” shall not include (i) preemptive or other rights to participate in new offerings of securities by Licensee, (ii) obligations under a purchase agreement for preferred stock of Licensee to acquire additional shares of such preferred stock on the same terms as those purchased at an initial closing upon the passage of time or meeting (or waiver) of specified Licensee performance conditions or (iii) anti-dilution provisions that have not been triggered.

1.41 [\*\*]

1.42 **“Generic/Biosimilar Product”** means, with respect to a Licensed Product in a particular country, any pharmaceutical, biopharmaceutical (including gene therapies and cell therapies), or biologic product that: (a) (i) contains the same active pharmaceutical ingredient(s) as such Licensed Product, and is approved by the Regulatory Authority in such country with the same or substantially the same labeling as such Licensed Product for at least one indication in the Field or (ii) is approved by the Regulatory Authority in such country or jurisdiction as a substitutable generic or substitutable biosimilar for such Licensed Product for an indication in the Field or otherwise is approved in a manner that relied on or incorporated data submitted by Licensee, its Affiliates or Sublicensees, in connection with the regulatory filings for such

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Licensed Product, including through an ANDA or 505(b)(2) NDA, or any enabling legislation thereof, or any similar procedure provided for biosimilars or that may be applicable to gene therapy products in each case now or in the future; and (b) is sold in such country or jurisdiction by a third party that is not a Sublicensee or an Affiliate of Licensee, or a distributor of any of them. Any product or component thereof (including any Licensed Product or component thereof) licensed, marketed, sold, manufactured or produced by Licensee or its Affiliates or Sublicensees, or any distributor of any of them, will *not* constitute a Generic/Biosimilar Product (but the identical product marketed by another third party is a Generic/Biosimilar Product if it falls within the definition thereof as set forth herein).

1.43 **“Hutherfort”** shall have the meaning set forth in the preamble.

1.44 **“Hutherfort Confidential Information”** shall have the meaning set forth in Section 11.1.1.1.

1.45 **“Hutherfort Names”** shall have the meaning set forth in Section 11.4.

1.46 **“MMMI”** shall have the meaning set forth in the preamble.

1.47 **“MMMI Indemnitees”** shall have the meaning set forth in Section 9.1.3.

1.48 **“MMMI Names”** shall have the meaning set forth in Section 11.4.

1.49 **“IND”** means an FDA Investigational New Drug application, or equivalent application or submission for approval to conduct human clinical investigations filed with or submitted to a Regulatory Authority in conformance with the requirements of such Regulatory Authority.

1.50 **“Initial Public Offering”** means a firm-commitment underwritten public offering of equity securities by Licensee (or an Acquirer) or its (or their) Affiliate pursuant to an effective registration statement under the Securities Act of 1933, as amended.

1.51 **“Initiation of GLP Toxicology”** means the first dose in a non-human animal of a Licensed Product in toxicology testing conducted in accordance with Good Laboratory Practices under the guidelines of 21 U.S. CFR.§ 58.1 et seq. (or its successor regulation) with the intention of using the results of toxicology testing in support of the filing of an IND for which other IND-enabling activities have been completed or are underway at the time of determination of “achievement of Initiation of GLP Toxicology.”

1.52 **“Indemnitees”** shall have the meaning set forth in Section 9.1.1.

1.53 **“Law”** shall have the meaning set forth in Section 11.1.3.3.

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1.54 **“Licensed Product”** means on a country-by-country basis, (a) any product candidate or product the making, using, selling, offering for sale, importing or exporting of which in the country in question would (without the license granted hereunder) infringe directly, indirectly by inducement of infringement, or indirectly by contributory infringement, at least one pending Valid Claim of the Base Editor Patent Rights (were it to have issued) or issued Valid Claim of the Base Editor Patent Rights in that country, or (b) any Base Editor Product the making, using, selling, offering for sale, importing or exporting of which in the country in question would (without the license granted hereunder) infringe directly, indirectly by inducement of infringement, or indirectly by contributory infringement, at least one pending Valid Claim of the Supporting Technology Patent Rights (were it to have issued) or issued Valid Claim of the Supporting Technology Patent Rights in that country.

1.55 **“Licensee”** shall have the meaning set forth in the preamble.

1.56 **“Licensee Confidential Information”** shall have the meaning set forth in Section 11.1.1.2.

1.57 **“Licensee Patents”** shall have the meaning set forth in Section 1.69.

1.58 **“Loss of Market Exclusivity”** means, on a Licensed Product-by-Licensed Product, country-by-country, and Calendar Year-by-Calendar Year basis, the following has occurred:

(a) the Net Sales of such Licensed Product in such country in such Calendar Year are less than [\*\*] percent ([\*\*]%) of the peak [\*\*] Net Sales of such Licensed Product in such country in any preceding [\*\*];

(b) the decline in such Net Sales is attributable in material part to the marketing or sale in such country of a Generic/Biosimilar Product with respect to such Licensed Product by a third party that is not a Sublicensee or a distributor of any of Licensee or its Affiliates or Sublicensees for the applicable Licensed Product;

(c) Such Generic/Biosimilar Product is being marketed and sold by such third party in the Calendar Year for which a determination of Loss of Market Exclusivity is being made; and

(d) Licensee has used (or has commenced using or is in the course of using) reasonable commercial efforts to exclude such Generic/Biosimilar Product from marketing or sale by such third party in such country.

1.59 **“Maintenance Fees”** has the meaning set forth in Section 4.2.

1.60 **“[**\*\***] License”** has the meaning set forth in Section 2.5.10.

1.61 **“Milestone Event”** means any milestone event indicated in Section 4.3.1 or 4.3.2.

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1.62 **“NDA”** means a New Drug Application filed with the FDA or an equivalent application to any Regulatory Authority (including a Biologies License Application, or BLA, or its foreign equivalent) requesting Regulatory Approval for a new product.

1.63 **“Net Sales”** means the gross amount billed or invoiced by or on behalf of Licensee, its Affiliates, and Sublicensees (in each case, the “**Invoicing Entity**”) on sales, leases or other transfers of Licensed Products, less the following to the extent applicable with respect to such sales, leases or other transfers and not previously deducted from the gross invoice price: (a) customary trade, quantity or cash discounts to the extent actually allowed and taken (including discounts in the form of inventory management fees and chargebacks); (b) amounts actually repaid or credited by reason of rejection or return of any previously sold, leased or otherwise transferred Licensed Products; (c) customer freight and/or insurance charges that are paid by or on behalf of the Invoicing Entity; (d) to the extent separately stated on purchase orders, invoices or other documents of sale, any sales, value added or similar taxes, custom duties or other similar governmental charges levied directly on the production, sale, transportation, delivery or use of a Licensed Product that are paid by or on behalf of the Invoicing Entity, but not including any tax levied with respect to income; (e) rebates granted or given; and (f) a reasonable allowance for uncollectible accounts; provided that:

1.63.1 in any transfers of Licensed Products between an Invoicing Entity and an Affiliate of such Invoicing Entity not for the purpose of resale by such Affiliate and not for use in a clinical trial or compassionate use or as free marketing samples, Net Sales will be equal to the fair market value of the Licensed Products so transferred, assuming an arm’s length transaction made in the ordinary course of business, and

1.63.2 in the event that an Invoicing Entity receives non-cash consideration for any Licensed Products or in the case of transactions not at arm’s length with a non-Affiliate of an Invoicing Entity, Net Sales will be calculated based on the fair market value of such consideration or transaction, assuming an arm’s length transaction made in the ordinary course of business, not to exceed the list price of the Licensed Products in any event.

Transfers of Licensed Products by an Invoicing Entity to its Affiliate or a Sublicensee for resale by such Affiliate or Sublicensee or use in clinical trials, for compassionate use, or use as free marketing samples, will not be deemed Net Sales. Instead, if applicable, Net Sales will be determined based on the gross amount billed or invoiced by such Affiliate or Sublicensee upon resale of such Licensed Products to a third party purchaser. Transfers of Licensed Products by an Invoicing Entity for use in clinical trials, for compassionate use, or use as free marketing samples will not be deemed Net Sales unless such Invoicing Entity bills or invoices for such Licensed Products, in which case, Net Sales will be determined based on the gross amount billed or invoiced by such Invoicing Entity upon transfer for such use.

Notwithstanding the foregoing definition, to the extent of Net Sales arising under a Sublicense, provided that the net Sales royalty to Licensee under such Sublicense after subtracting the Net Sales royalty to Hutherfort is at least as great as the royalty to Hutherfort provided for hereunder, the definition that shall be used to calculate Net Sales for purposes of this Agreement shall be such reasonable and customary Net Sales definition as is set forth in the Sublicense agreement, rather than the definition set forth above.

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1.64 **“Non-Human/Recombinant Materials”**means any non-human animal, chimera, non-human animal cell, cell from a chimera, non-human organ, organ from a chimera, non-human cell, portion of any of the foregoing, plant, plant cell, or portion of or material derived from any of the foregoing, including any item in the foregoing list that may also contain human genetic material or genetic material of human origin or be otherwise genetically engineered.

1.65 **“Non-Royalty Sublicense Income”** means all consideration received by Licensee or its Affiliates for a Sublicense such as license or distribution fees, milestone or option payments, or license maintenance fees, including any consideration received by Licensee under a Sublicense, but excluding reimbursement of future research and development by or for the Licensee at Licensee’s fully burdened cost, reimbursement for patent expenses (including prosecution and enforcement expenses) paid to third parties at out-of-pocket cost to Licensee, reimbursement of commercialization expenses of Licensee under a co-promotion arrangement at Licensee’s cost (determined in accordance with U.S. generally accepted accounting principles consistently applied), reimbursement of license, option, or other fees paid to third parties at out-of-pocket cost to Licensee, proceeds from equity investments to the extent at fair market value, principal amount of loans to the extent not forgiven, and royalties on Net Sales of Licensed Products. To avoid doubt as to the calculation of Non-Royalty Sub license Income, “equity investments to the extent at fair market value” means that only a premium over the fair market value of the security received for the equity investment (such fair market value being determined by reference to the price paid by a non-Sublicensee Third Party for the equivalent Licensee security (equal to such price wherever available) or by a reasonable methodology where such non-Sublicensee Third Party price is not available) would be included in Non-Royalty Sublicense Income, and if a loan is partially forgiven, then only the forgiven portion of the loan would be included in the Non-Royalty Sublicense Income. In the event that non-cash consideration is received as Sublicense Income, Sublicense Income shall be calculated based on the fair market value of such non-cash consideration, or, at Licensee’s election, Licensee may distribute Hutherfort’s share to Hutherfort in kind; provided that Licensee may only elect to make such a distribution if such non-cash consideration is a freely transferable security (except for such restrictions on transfer imposed by law). For clarity, a license of intellectual property rights that are necessary for Licensee to make, have made use, have used, sell, offer for sale, have sold, export and import Licensed Products, and other routine contractual covenants that do not involve the payment of any monetary consideration and are customary in the type of deal that the Sublicense is included in (including covenants providing for the research, development, supply, and commercialization responsibilities of the Sublicensee, confidentiality provisions, licenses or other rights or forbearances with respect to improvements and other technologies and intellectual property, retention of co-promotion rights or options to obtain co-promotion rights to the Licensed Product(s) covered by such Sublicense, and indemnification) shall not be deemed non-cash consideration. For purposes of this Section, “all consideration received by Licensee or its Affiliates for a Sublicense” shall include all consideration received by Licensee or its Affiliates for any option, license, sublicense, standstill, covenant not to sue or other right granted under any

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other rights owned or controlled (for example, by virtue of a license granted by a third party) by Licensee or its Affiliate, or other agreement or arrangement entered into by Licensee or its Affiliate, in connection with a Sublicense. All rights relevant to making, using, selling, offering to sell or importing particular Licensed Products or Enabled Products to which a Sublicense relates shall be included in or deemed to be granted in connection with the Sublicense under which the rights granted to Licensee hereunder are sublicensed with respect to such Licensed Products or Enabled Products. If Licensee has an opportunity to enter into a profit sharing deal involving a Sublicense, and requests discussions with Hutherfort, then Hutherfort shall discuss and negotiate in good faith with Licensee for an appropriate exclusion from Non-Royalty Sublicense Income for payments made as a share of profits (as opposed to milestones or other similar payments) and/or opportunity for Hutherfort to participate in a portion of the profit share (*e.g.*, the opportunity for Hutherfort to fund a percentage of the Licensee’s share of the profit share (and be responsible for the same proportion of losses in the profit share) in exchange for receiving such same percentage of the profit share payments received by Licensee in such deal), and if the parties reach written agreement as to any of the foregoing it shall supersede this definition with respect to such profit share; recognizing that a profit share deal would likely be un-economic for the Licensee to enter into without such an exclusion or other arrangement with Hutherfort, Hutherfort agrees to negotiate promptly and in good faith with Licensee. In addition, to the extent that Licensee enters into a cross-license with a Third Party to achieve freedom-to-operate for Licensed Products while providing the Third Party with freedom-to-operate with respect to all or some portion of the Licensed Patents, the value of the licenses to Licensee as part of such cross-license, and the other routine contractual covenants by other parties to such cross-license, shall not be deemed to give rise to Non-Royalty Sublicense Income for purposes of this Agreement. In addition, no Change of Control transaction or other transaction giving rise to potential payments under Section 4.7 of this Agreement shall be deemed to be a Sublicense nor to give rise to Non-Royalty Sublicense Income.

1.66 **“Omni”** means Omni University Partners or any fund under common management with Omni University Partners.

1.67 **“Other Active Component(s)”** shall have the meaning set forth in Section 4.4.5.

1.68 **“Party”** or “party” means Hutherfort or Licensee and “**Parties**” or “**parties**” means both of them.

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1.69 **“Patent Challenge”** means any direct — or indirect through the actions of another acting on Licensee’s, its Affiliate’s, or a Sublicensee’s behalf or upon its or their instruction—dispute or challenge, or any knowing, willful, or reckless assistance in the dispute or challenge by another, of the validity, patentability, scope, priority, construction, non-infringement, inventorship, ownership or enforceability of any Patent Right or any claim thereof, or opposition or assistance in the opposition of the grant of any letters patent within the Patent Rights, in any legal or administrative proceedings in a court of law, before the United States Patent and Trademark Office or other similar agency or tribunal in any jurisdiction, or in arbitration including, without limitation, by reexamination, *inter partes* review, opposition, interference, post-grant review, nullity proceeding, preissuance submission, third party submission, derivation proceeding or declaratory judgment action. For clarity, a Patent Challenge shall not include (1) arguments made by Licensee that (a) distinguish the inventions claimed in patents or patent applications owned or controlled by Licensee (“**Licensee Patents**”) from those claimed in the Patent Rights but (b) do not disparage the Patent Rights or challenge the validity, scope, or enforceability of the Patent Rights’ claims (excluding any claims that have been abandoned, lapsed, expired, or are otherwise no longer in force) under applicable patent laws, regulations or administrative rules, in each case (i) in the ordinary course of ex parte prosecution of the Licensee Patents or (ii) in *inter partes* proceedings before the United States Patent and Trademark Office or other agency or tribunal in any jurisdiction (excluding interferences or derivation proceedings), or in arbitration, wherein the Licensee Patents have been challenged; (2) arguments or assertions as to whether the Patent Rights Cover a given product, to the extent arising in a Suit brought by Hutherfort; (3) Licensee payments of patent costs to another licensor or assignor of Licensee Patent Rights as required by the agreement under which the Licensee obtained rights to such patent rights, even if the licensor or assignor is engaging in behavior or presenting arguments that would themselves be considered a Patent Challenge if done by the Licensee; nor (4) Licensee being named as an essential party, real party in interest or other status similar to either of the foregoing, in an interference between Patent Rights and Licensee Patents or other adversarial proceeding similar to an interference.

1.70 **“Patent Rights”** means, in each case to the extent owned and controlled by Hutherfort: (a) the patents and patent applications listed in Exhibit 1.70 (including the PCT and/or U.S. utility application claiming priority to such application(s) that are filed on such application(s)); (b) any patent or patent application to which any patent application identified in (a) claims priority and any patent or patent application that claims priority to (excluding continuation-in-part patents or patent applications except to the extent described in (d) below) or is a divisional, continuation, reissue, renewal, reexamination, substitution or extension of any patent application identified in (a); (c) any patents issuing on any patent application identified in (a) or (b), including any reissues, renewals, reexaminations, substitutions or extensions thereof; (d) any claim of a continuation-in-part application or resulting patent (including any reissues, renewals, reexaminations, substitutions or extensions thereof) that is entitled to the priority date of, and is directed specifically to subject matter specifically described in, at least one of the patents or patent applications identified in (a), (b) or (c); (e) any foreign counterpart (including PCTs) of any patent or patent application identified in (a), (b) or (c) or of the claims identified in (d) ; and (f) any supplementary protection certificates, pediatric exclusivity periods, any other patent term extensions and exclusivity periods and the like of or based on any patents and patent applications identified in any of (a) through (e).

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1.71 **“Phase 1 Clinical Study”** means a clinical study in any country involving the initial introduction of an investigational new drug into humans, typically designed to determine the metabolism and pharmacologic actions of the drug in humans, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness. In the United States, “**Phase 1 Clinical Study**” means a human clinical study that satisfies the requirements of 21 C.F.R. § 312.21(a).

1.72 **“Phase 2 Clinical Study”** means a human clinical study in any country conducted to evaluate the effectiveness of a drug for a particular indication or indications in patients with the disease or condition under study and, possibly, to determine the common short-term side effects and risks associated with the drug. In the United States, “**Phase 2 Clinical Study**” means a human clinical study that satisfies the requirements of 21 C.F.R. § 312.21 (b).

1.73 **“Phase 3 Clinical Study”** means a human clinical study in any country, whether controlled or uncontrolled, that is performed after preliminary evidence suggesting effectiveness of the drug under evaluation has been obtained, and intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of the drug and to provide an adequate basis for physician labeling. In the United States, “**Phase 3 Clinical Study**” means a human clinical study that satisfies the requirements of 21 C.F.R. § 312.21 (c).

1.74 **“Plan”** shall have the meaning set forth in Section 3.4.

1.75 [Reserved].

1.76 **“Proceeds Factor”** means a number, not more than [\*\*], determined by dividing the gross proceeds to Licensee from an applicable sale of Series B Preferred Stock by $[\*\*].

1.77 **“Regulatory Approval”** means, with respect to a particular product or service, receipt of all regulatory clearances or approvals (which in the case of the EU may be through the centralized procedure) required in the jurisdiction in question for the sale of the applicable product or service in such jurisdiction, including receipt of pricing approval, if any, legally required for such sale.

1.78 **“Regulatory Authority”** means any applicable government regulatory authority involved in granting approvals for the clinical testing, manufacturing and marketing of a Licensed Product, including, in the United States, the FDA and the RAC.

1.79 **“Related Product”** means with respect to a Licensed Product (the “reference Licensed Product”), a Licensed Product targeting (a) the [\*\*] and (b) (i) same [\*\*] or [\*\*] or (ii) a [\*\*] or [\*\*] whose alteration would have the same intended clinical outcome in the same intended patient population, in each case of clause (a), (b)(i) and (b)(ii) as the reference Licensed Product.

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1.80 **“RNA Editor”** means a Base Editor that solely converts a nucleobase in polyribonucleic acid.

1.81 **“RNA Editor Product”** means a product candidate or product that contains or delivers an RNA Editor.

1.82 **“Series A Investors”** means [\*\*], together with any other investors under common management with the foregoing.

1.83 **“Series A Post-Money”** means an amount determined by multiplying (a) the weighted average price per share of the Series A Preferred Stock sold by Licensee to the Series A Investors prior to the time of determination of the Actual Series B Valuation Multiple by (b) the number of shares of outstanding capital stock of Licensee on a Fully-Diluted Basis immediately prior to the first sale and issuance of Series B Preferred Stock (excluding for this purpose any securities issued in a bridge or similar financing that are convertible into, and are, at such first sale and issuance, converted into, Series B Preferred Stock). For purposes of the foregoing, any shares of Series A Preferred Stock that are deemed Series B Preferred Stock by operation of the definition of Series B Preferred Stock shall he excluded from the calculation of the weighted average price per share of the Series A Preferred Stock for purposes of clause (a) and shall be deemed excluded from the number of shares of outstanding capital stock for purposes of clause (b).

1.84 **“Series A Preferred Stock”** means Licensee’s Series A Preferred Stock, par value $0.0001 per share.

1.85 **“Series B Pre-Money”** means an amount determined by multiplying (a) the weighted average price per share of Series B Preferred Stock sold by Licensee in a closing at the time of determination of the Actual Series B Valuation Multiple (including in any such weighted average calculation any discount attributable to the conversion of the first up-to-$[\*\*] in principal amount of debt securities issued in a bridge or similar financing that converted into Series B Preferred Stock and excluding any other discount attributable to the conversion of such debt securities in excess of the first up-to-$[\*\*] in principal amount) by (b) the number of shares of outstanding capital stock of Licensee on a Fully-Diluted Basis immediately prior to such closing (excluding for this purpose any securities issued in a bridge or similar financing that are convertible into, and are, at such closing, converted into, Series B Preferred Stock).

1.86 **“Series B Preferred Stock”** means any series of preferred stock of Licensee sold by Licensee in a financing transaction other than Series A Preferred Stock, provided that if Licensee has sold $[\*\*] of Series A Preferred Stock, the term “Series B Preferred Stock” shall include any additional shares of Series A Preferred Stock sold by Licensee.

1.87 **“Shares”** has the meaning set forth in Section 4.1.1.

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1.88 **“Skipped Milestone”** has the meaning set forth in Section 4.3.5.

1.89 **“Subcategory Product Milestones”** means the Development Milestones identified under the heading “Subcategory Product Milestones” in Exhibit 3.1.1.

1.90 **“Sublicense”** means: (a) any right (including any sublicense or covenant not to sue) granted by Licensee to any third party, under or with respect to or permitting any use or exploitation of any of the Patent Rights or otherwise permitting the development, manufacture, marketing, distribution, use and/or sale of Licensed Products or Enabled Products; (b) any option or other right granted by Licensee to any third party to negotiate for or receive any of the rights described under clause (a); or (c) any standstill or similar obligation undertaken by Licensee toward any third party not to grant any of the rights described in clause (a) or (b) to any other third party; in each case regardless of whether such grant of rights, option, standstill, or similar undertaking is referred to or is described as a sublicense. In addition, a transfer of an Affiliate of Licensee that holds any right, license, option or other right of the type described above (i.e., that would fall within this definition of Sublicense had such right, license, option or other right been granted by Licensee to a third party) to a third party (whether by merger, sale of assets, sale of stock or otherwise) shall be deemed a Sublicense.

1.91 **“Sublicensee”** means any person or entity granted a Sublicense.

1.92 **“Subscription Agreement”** means a Subscription Agreement in the form attached hereto as Exhibit 4.1.1.

1.93 **“Supporting Technology Patent Rights”** means any patent application identified under the heading “Supporting Technology Patent Rights” in Exhibit 1.70 (“**Listed Supportive Technology Filings**”), and all other patent applications and patents that fall within the Patent Rights definition of this Agreement based upon the presence of any Listed Supportive Technology Filing in Exhibit 1.70.

1.94 **“Term”** means the term of this Agreement as set forth in Section 10.1.

1.95 **“Third Party”** or “**third party**” means an entity that is not Hutherfort, Licensee, or an Affiliate of Licensee.

1.96 **“[**\*\***] Proposed Product”** means an actual or potential Licensed Product [\*\*] that (a) [\*\*] is actively researching, developing or commercializing and (b) with respect to which [\*\*] has not entered into an agreement containing an option that remains in effect or a term sheet under which Licensee remains in good faith negotiations of a definitive agreement.

1.97 **“United States”** means the United States of America.

1.98 **“Valid Claim”** means: (a) a claim of an issued and unexpired patent within the Patent Rights that has not been (i) held permanently revoked, unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, (ii) rendered unenforceable through disclaimer or

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otherwise, (iii) abandoned or (iv) permanently lost through an interference or opposition proceeding without any right of appeal or review, or not appealed or put in for review within the applicable statutory or regulatory period; or (b) a pending claim of a pending patent application within the Patent Rights that (i) has been asserted and continues to be prosecuted in good faith, (ii) has not been abandoned or finally rejected without the possibility of appeal or refiling, and (iii) has not been pending more than [\*\*] years from the date of the first substantive office action on the filing. A pending claim that ceases to be a Valid Claim due to the foregoing time limit shall, if it later issues, qualify again as a Valid Claim, provided that it meets the requirements of clauses (a)(i)-(iv) of the foregoing definition.

1.99 **“Valuation Factor”** means a number, not to exceed [\*\*], determined by dividing the Actual Series B Valuation Multiple by [\*\*]; provided, however, that if the Series B Preferred Stock sold by Licensee that gives rise to an obligation by Licensee to make a payment under Section 4.3.2.2 is sold in a financing transaction in which the Series A Investors, along with other investors who purchased Series A Preferred Stock sold by Licensee prior to the time of determination of the Actual Series B Valuation Multiple, purchase more than [\*\*] percent ([\*\*]%) of the Series B Preferred Stock sold in such financing transaction, the Valuation Factor shall be [\*\*].

1.100 **“Xeno-Transplantation”** [\*\*].

2. License.

2.1 License Grants

2.1.1 Exclusive License Grants.

2.1.1.1 Subject to the terms and conditions set forth in this Agreement, Hutherfort hereby grants to Licensee an exclusive, worldwide, royalty-bearing license, sublicensable solely in accordance with Section 2.4 below, under the Base Editor Patent Rights, solely to make, have made, offer for sale, sell, have sold and import Licensed Products, solely for use within the Field. The foregoing exclusive license to make and have made Licensed Products solely for use within the Field expressly includes the exclusive license to make and have made in Non-Human/Recombinant Materials a Licensed Product solely for use within the Field.

2.1.1.2 Subject to the terms and conditions set forth in this Agreement, Hutherfort hereby grants to Licensee an exclusive, worldwide, royalty-bearing license, sublicensable solely in accordance with Section 2.4 below, under the Supporting Technology Patent Rights, solely to make, have made, offer for sale, sell, have sold and import Base Editor Products, solely for use within the Field. The foregoing exclusive license to make and have made Base Editor Products solely for use within the Field expressly includes the exclusive license to make and have made in Non-Human/Recombinant Materials a Base Editor Product solely for use within the Field.

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2.1.1.3 For the avoidance of doubt, the exclusive licenses under this Section 2.1.1 do not include a license to make, have made, offer for sale, sell, have sold and import Enabled Products.

2.1.2 Non-Exclusive License Grant. Subject to the terms and conditions set forth in this Agreement, Hutherfort hereby grants to Licensee a non-exclusive, worldwide, royalty-bearing license, sublicensable solely in accordance with Section 2.4 below, under the Patent Rights, to research, have researched, develop (including human clinical development) and have developed (including human clinical development) Enabled Products. Such license shall not include selling, offering for sale, having sold, importing or otherwise commercializing Enabled Products.

2.2 Reservation of Rights, Certain Restrictions. Notwithstanding anything herein to the contrary:

2.2.1 Hutherfort retains the right, for itself and for other not-for-profit research organizations, to practice the Patent Rights within the scope of the license granted above, solely for research, educational and scholarly purposes;

2.2.2 the United States federal government retains rights in the Patent Rights pursuant to 35 U.S.C. §§ 200-212 and 37 C.F.R. § 401 et seq., and any right granted in this Agreement greater than that permitted under 35 U.S.C. §§ 200-212 or 37 C.F.R. § 401 et seq. will be subject to modification as may be required to conform to the provisions of those statutes and regulations;

2.2.3 Hutherfort retains the rights, for itself, set forth in Sections 2.5, 3.1.2, 3.1.3 and 6.3;

2.2.4 Further, Licensee acknowledges that it has been informed that the Patent Rights were developed, at least in part, by employees of MMMI and that MMMI has a fully paid-up, non-exclusive, irrevocable, worldwide license to exercise any intellectual property rights with respect to such Patent Rights for research purposes, with the right to sublicense to non-profit and governmental entities (the **“MMMI License**”). Any and all licenses and other rights granted under this Agreement are explicitly made subject to the MMMI License; and

2.2.5 Further, Licensee agrees that the licenses granted by Hutherfort to Licensee hereunder shall not include any license under the Patent Rights for human germline modification, including intentionally modifying the DNA of human embryos or human reproductive cells (the field of “**Human Germline Modification**”). Hutherfort hereby covenants that it shall not grant any entity any license under the Patent Rights to practice Human Germline Modification. Licensee agrees that it shall not use the Patent Rights for Human Germline Modification.

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2.3 Affiliates. The licenses granted to Licensee under Section 2.1.1 and Section 2.1.2 include the right to have some or all of Licensee’s rights or obligations under this Agreement exercised or performed by one or more of Licensee’s Affiliates, solely on Licensee’s behalf; provided, however, that:

2.3.1 prior to any Affiliate exercising or performing any of Licensee ’ s rights or obligations under this Agreement, such Affiliate shall agree in writing with Licensee to be bound by the terms and conditions of this Agreement as if it were Licensee hereunder, including specific written agreement (a) to indemnify, defend and hold Indemnitees and MMMI Indemnitees harmless, and carry insurance, under the same terms as Article 9 of this Agreement, and (b) that Hutherfort and MMMI are express third party beneficiaries of such writing; provided that nothing in this Section 2.3.1 is intended to increase the payments (or the number of payments) to Hutherfort under this Agreement (for non-limiting examples, an Affiliate agreeing to the terms and conditions of this Agreement as if it were Licensee hereunder shall not increase the number of times the milestone tables in Article 4 can be run and shall not give rise to additional Win State Payments);

2.3.2 no such Affiliate shall be entitled to grant, directly or indirectly, to any third party any right of whatever nature under, or with respect to, or permitting any use or exploitation of, any of the Patent Rights, including any right to develop, manufacture, market or sell Licensed Products;

2.3.3 prior to any Affiliate exercising or performing any of Licensee’s rights or obligations under this Agreement, such Affiliate shall agree in writing that it shall not practice the license under the Patent Rights for Human Germline Modification (except to the extent that the Licensee would have the right to do so after notice from Hutherfort of a permitted application within Human Germline Modification); and

2.3.4 any act or omission taken or made by an Affiliate of Licensee under this Agreement will be deemed an act or omission by Licensee under this Agreement.

2.4 Sublicenses.

2.4.1 Sublicense Grant. Licensee will be entitled to grant Sublicenses to third parties under the licenses granted pursuant to Section 2.1 subject to the terms of this Section 2.4; provided, however, that no Sublicense may be granted under the license granted pursuant to Section 2.1.2 except in connection with a bona fide collaboration with a third party to research or develop one or more Licensed Product(s) under a Sublicense granted under the licenses granted pursuant to Section 2.1.1. Any such Sublicense shall be on terms and conditions in compliance with and not inconsistent with the terms of this Agreement. The Parties agree that any such Sublicense granted under the license granted pursuant to Section 2.1.2 shall not become invalid hereunder even if the original Licensed Product(s) that were included in the subject matter of such Sublicense under the licenses granted pursuant to Section 2.1.1 cease to be Licensed Product(s) at a later date or fail or are discontinued in development and shall instead continue in full force and effect.

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2.4.2 Sublicense Agreements. Licensee shall grant sublicenses pursuant to written agreements, which will be subject and subordinate to the terms and conditions of this Agreement. Such Sublicense agreements will contain, among other things, the following:

2.4.2.1 all provisions necessary to ensure Licensee’s ability to perform its obligations under this Agreement;

2.4.2.2 a section requiring Sublicensee to indemnify, defend and hold Indemnitees and MMMI Indemnitees harmless, and carry insurance, under the same terms set forth in Article 9 of this Agreement (which obligation to indemnify, defend, and hold harmless, to avoid doubt, may be limited to the activities under the Sublicense (*e.g.*, the Sublicensee shall not be required to indemnify for activities arising under other unrelated Sublicenses to unrelated Third Parties)), which also will state that the Indemnitees and MMMI Indemnitees are intended third party beneficiaries of such Sublicense agreement for the purpose of enforcing such indemnification;

2.4.2.3 a statement that Hutherfort is an intended third party beneficiary of such Sublicense for the purpose of enforcing all patent challenge, indemnification, and insurance provisions of such Sublicense and enforcing the right to terminate such Sublicense for breach of the patent challenge, indemnification and insurance provisions of such Sublicense; and a statement that MMMI is an intended third party beneficiary of such Sublicense for the purpose of enforcing MMMI’s rights, including indemnification and insurance provisions, under this Agreement;

2.4.2.4 a provision stating that in the event Sublicensee directly or indirectly brings, assumes, or participates in, or knowingly, willfully or recklessly assists in bringing, a Patent Challenge then Licensee shall be entitled to terminate the Sublicense;

2.4.2.5 a provision clarifying that, in the event of termination of the licenses set forth in Section 2.1 (in whole or in part (*e.g.*, termination in a particular country)), any existing Sublicense agreement shall terminate to the extent of such terminated license;

2.4.2.6 a provision prohibiting the Sublicensee from sublicensing its rights under such Sublicense agreement through more than [\*\*] additional tiers, provided that such further Sublicense also shall comply with the terms of this Section 2.4;

2.4.2.7 a provision requiring the Sublicensee to notify Licensee of the achievement of each milestone described in Section 4.3.1 within [\*\*] days after such achievement;

2.4.2.8 a provision requiring the Sublicensee to comply with Section 8.1 (Compliance with Law) and Section 11.4 (Use of Name) of this Agreement;

2.4.2.9 a provision requiring the Sublicensee to agree that it shall not use the Patent Rights for Human Germline Modification; and

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2.4.2.10 a provision prohibiting the Sublicensee from assigning the Sublicense agreement without the prior written consent of Hutherfort, except that Sublicensee may assign the Sublicense agreement to a successor in connection with the merger, consolidation or sale, lease or other transfer of all or substantially all of its assets or that portion of its business to which the Sublicense agreement relates; provided, however, that any permitted assignee agrees in writing to be bound by the terms of such Sublicense agreement.

2.4.3 Delivery of Sublicense Agreement. Licensee shall furnish Hutherfort with a fully executed copy of any Sublicense agreement, promptly after its execution. Hutherfort shall keep all such copies in its confidential files and shall use them solely for the purpose of monitoring Licensee’s and Sublicensees’ compliance with their obligations hereunder and enforcing Hutherfort’s rights under this Agreement. Licensee shall be entitled to redact sensitive information and/or research plans not reasonably required to monitor Licensee’s and Sublicensee’s compliance with their obligations hereunder and enforcing Hutherfort’s rights under this Agreement.

2.4.4 Breach by Sublicensee. Licensee shall be responsible for any breach of a Sublicense agreement by any Sublicensee that results in a material breach of this Agreement. Licensee shall either (a) cure such breach in accordance with Section 10.2.2 of this Agreement or (b) enforce its rights by seeking to terminate such Sublicense agreement in accordance with the terms thereof. It is understood that if Licensee cures such breach or has diligently sought to enforce, and continues to diligently seek to enforce to the extent possible, its right to terminate such Sublicense agreement, including by, at minimum, taking all required steps to seek to terminate such Sublicense agreement in accordance with the terms thereof and contesting any contrary claim by the Sublicensee, Licensee shall not be subject to termination of this Agreement for the breach by the Sublicensee even though it resulted in a material breach of this Agreement.

2.5 [\*\*] Proposed Products.

2.5.1 If a third party inquires with Hutherfort for a license under the Base Editor Patent Rights with respect to products for use in the Field or for a license under the Supporting Technology Patent Rights with respect to Base Editor Products for use in the Field, in each case while this Agreement is in effect, Hutherfort may refer such third party to Licensee to seek a potential Sublicense.

2.5.2 Sections 2.5.3 through 2.5.10 shall apply only from and after the [\*\*] anniversary of the Effective Date (“**Start Date**”). Prior to Start Date, Hutherfort shall have no right to invoke such Sections.

2.5.3 If after the Start Date a third party that (a) is not a Competitor and (b) has attempted in good faith but has not entered into a Sublicense with Licensee as of [\*\*] months after the third party first contacted Licensee for such Sublicense after being referred to Licensee by Hutherfort, makes a Bona Fide Proposal to Hutherfort for developing what Hutherfort reasonably believes is a [\*\*] Proposed Product for the prevention or treatment of a human disease that is Covered by the Base Editor Patent Rights or, to the extent such [\*\*] Proposed Product is a Base Editor, is Covered by the Supporting Technology Patent Rights, and Hutherfort is interested in

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having such [\*\*] Proposed Product developed and commercialized, Hutherfort may notify Licensee of the third party’s Bona Fide Proposal and shall include in such notification all information in Hutherfort’s possession regarding such Bona Fide Proposal, including a copy thereof; provided, however, that Hutherfort may redact any confidential information Hutherfort is not permitted to share with Licensee under the terms of any confidentiality agreement between Hutherfort and the third party making such Bona Fide Proposal, after seeking permission to make such disclosure and indicating to the Third Party that either Hutherfort or the Third Party will have to make such disclosure to Licensee in order for a Sublicense or a [\*\*] License to be available by the process provided in this Section 2.5, and Hutherfort shall include with such notification a further notice if Hutherfort was not permitted to share with Licensee any such confidential information of such third party. Within [\*\*] days after the receipt of such notification from Hutherfort, Licensee shall notify Hutherfort whether it is interested in developing such [\*\*] Proposed Product for the prevention or treatment of such human disease, is interested in further discussing a Sublicense with the third party, or is interested in Sublicensing a different third party(ies). Hutherfort shall not entertain Bona Fide Proposals prior to the Start Date, nor from any third party who has not first engaged in [\*\*] months of good faith discussions with the Licensee, or is a Competitor.

2.5.4 If the proposal does not meet the definition of Bona Fide Proposal, the proposed product is not a [\*\*] Proposed Product, or the third party is a Competitor, then Sections 2.5.5 through 2.5.10 shall not apply (and without limiting the generality of the foregoing Hutherfort shall have no right to grant a [\*\*] License to such third party with respect to such [\*\*] Proposed Product nor to require that Licensee grant a Sublicense or provide a development plan and development milestones in relation thereto).

2.5.5 If Licensee notifies Hutherfort within such [\*\*] day period that Licensee is interested in developing such [\*\*] Proposed Product for the prevention or treatment of such human disease, the parties will negotiate in good faith and agree, during the [\*\*] days following such notification by Licensee, upon a development plan with respect to such [\*\*] Proposed Product, which development plan will be similar to the Development Plan with respect to other Licensed Products developed by Licensee, subject to necessary adjustments, and will include reasonable development milestones, including at least one preclinical development milestone, and associated timelines. In the discussion of such development plan and development milestones, Hutherfort shall not unreasonably withhold its consent to Licensee’s proposed plan. If the parties agree on such development plan and milestones within such ninety [\*\*] day period, Licensee shall maintain its exclusive license(s) hereunder with respect to such [\*\*] Proposed Product for the prevention or treatment of such human disease, but shall be obligated (a) to use commercially reasonable efforts to develop and commercialize the [\*\*] Proposed Product for the prevention or treatment of such human disease in accordance with such new development plan (which shall be incorporated into and be part of the “Development Plan” for all purposes hereunder) and (b) to meet the development milestones on the timeline associated therewith with respect to the [\*\*] Proposed Product (which shall be a “Development Milestone” for all purposes hereunder) for the prevention or treatment of such human disease (subject to extension in the same manner as provided in Sections 3.4.1 through 3.4.5, applied *mutatis mutandis*). Exhibit 3.1.1 shall be amended to reflect such development milestones and timeline with respect to such [\*\*] Proposed Product.

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2.5.6 If (a) within such [\*\*] day period, Licensee fails to notify Hutherfort that Licensee is interested in developing such [\*\*] Proposed Product for the prevention or treatment of such human disease or notifies Hutherfort that Licensee is not interested in developing such [\*\*] Proposed Product for the prevention or treatment of such human disease or (b) the parties do not agree on a development plan and development milestones that are acceptable to Hutherfort in its reasonable judgment Hutherfort will be entitled, [\*\*] Licensee beyond that provided in Section 2.5.10, to (A) [\*\*] the licenses granted under Section 2.1.1 under the [\*\*] with respect to such [\*\*] Proposed Product for the prevention or treatment of such human disease, (B) grant to [\*\*] an [\*\*] license under such [\*\*] solely to make, have made, offer for sale, sell, have sold and import such [\*\*] Proposed Product for the prevention or treatment of such human disease, and (C) grant to [\*\*] a non-exclusive license under the Patent Rights other than the [\*\*] solely to make, have made, offer for sale, sell, have sold and import such [\*\*] Proposed Product for the prevention or treatment of such human disease.

2.5.7 If Licensee states in its notification to Hutherfort that it is not interested in developing such [\*\*] Proposed Product for the prevention or treatment of such human disease but that it wishes to grant a Sublicense to such third party with respect to such [\*\*] Proposed Product for the prevention or treatment of such human disease, Licensee will have [\*\*] months (or [\*\*]) to negotiate and enter into such a Sublicense agreement with [\*\*]; provided, however, that if Licensee demonstrates that it and [\*\*] have entered into a term sheet with respect to such a Sublicense agreement during such [\*\*] months and remain in active negotiations of a definitive agreement at the end of such [\*\*] months, Licensee will be entitled to [\*\*] for the execution of a [\*\*] by an additional [\*\*] months. In addition, the first of the foregoing [\*\*] month periods shall be tolled for any delays in the provision of any confidential information that was present in the Bona Fide Proposal provided to Hutherfort by [\*\*] and Hutherfort was not permitted to share with Licensee under the terms of any confidentiality agreement between Hutherfort and such third party that exceed [\*\*] days after request for such confidential information by Licensee following the execution of a confidentiality agreement between Licensee and [\*\*]; provided, however, that in order to avail itself of such extension Licensee must notify Hutherfort of such delay within [\*\*] days of such failure to provide such confidential information within [\*\*] days after such request by Licensee and of the date on which such confidential information was provided to Licensee by [\*\*] within [\*\*] days after such confidential information was provided.

2.5.8 If Licensee does not enter into such a [\*\*] agreement within such [\*\*] month or [\*\*] month period, as applicable, Licensee shall promptly (but in any event within [\*\*] business days of the end of such period) provide Hutherfort in writing an explanation for such not entering into such a [\*\*] agreement along with the proposed terms offered by Licensee to [\*\*]. If Hutherfort reasonably determines in its good faith judgment that the terms offered by Licensee to [\*\*] were not commercially reasonable, Hutherfort shall notify Licensee of such determination and provide Licensee with an additional [\*\*] days to enter into [\*\*]; such notices shall explicitly state what modified terms Hutherfort would consider commercially reasonable. If Licensee does not enter into an agreement with [\*\*] within such additional [\*\*] day period, then Hutherfort will be entitled, [\*\*] to Licensee except as expressly set forth in Section 2.5.10, to (A) [\*\*] with respect to such [\*\*] Proposed Product for the prevention or treatment of such human disease, (B) grant [\*\*] an [\*\*] license under such [\*\*] solely to make, have made, offer for sale, sell, have

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sold and import such [\*\*] Proposed Product for the prevention or treatment of such human disease, and (C) grant to [\*\*] under the Patent Rights other than the [\*\*] to make, have made, offer for sale, sell, have sold and import such [\*\*] Proposed Product for the prevention or treatment of such human disease.

2.5.9 In parallel with or in lieu of seeking to Sublicense [\*\*] who proposed the [\*\*] Proposed Product, the Licensee may seek to enter into a Sublicense with another third party. If the Licensee enters into such a Sublicense with another third party within [\*\*] months after Licensee’s notice to Hutherfort under Section 2.5.3, which may be extended by an additional [\*\*] months if Licensee demonstrates that it and such other third party have entered into a term sheet with respect to such a Sublicense agreement during such [\*\*] months and remain in active negotiations of a definitive agreement at the end of such [\*\*] months, then Licensee shall have the right to discontinue any discussions under Section 2.5.7 or 2.5.8 without consequence and as long as the Sublicense with the third party that Licensee entered into remains in effect, Hutherfort shall have no right to grant a [\*\*] License for the applicable [\*\*] Proposed Product.

2.5.10 A license by Hutherfort to a third party under Section 2.5.6 or 2.5.8 is a “[\*\***] License**.” [\*\*] License [\*\*] is “[\*\***]**.” The financial terms of any [\*\*] License [\*\*]. The financial terms of any [\*\*] License shall not be required to have any other elements of financial consideration other than [\*\*]. Licensee shall be [\*\*]. Licensee may elect to take such [\*\*]. If any [\*\*] License is granted, Hutherfort shall report on a [\*\*] basis in writing to Licensee as to any and all [\*\*] received by Hutherfort or its designee, whether zero or a positive number. Such reports and any related records shall be subject to audit by the Licensee on terms equivalent to those set forth in Section 5.3, applied *mutatis mutandis*, provided, however, that such audit shall be limited to an audit of Hutherfort’s records and shall not extend to any licensee under a [\*\*] License (either directly or by causing Hutherfort to exercise any audit rights it may have under the [\*\*] License), and such audit shall be limited in scope to a determination that Hutherfort’s report of [\*\*] is true and complete.

2.6 No Other Grant of Rights. Except as expressly provided herein, nothing in this Agreement will be construed to confer any ownership interest, license or other rights upon Licensee by implication, estoppel or otherwise as to any technology, intellectual property rights, products or biological materials of Hutherfort, or any other entity, regardless of whether such technology, intellectual property rights, products or biological materials are dominant, subordinate or otherwise related to any Patent Rights.

3. Development and Commercialization.

3.1 Diligence.

3.1.1 General. Licensee shall use commercially reasonable efforts and shall cause its Sublicensees to use commercially reasonable efforts: (a) to develop Licensed Products in accordance with the Development Plan; (b) to introduce any Licensed Products that gain Regulatory Approval into the commercial market; (c) to market Licensed Products that have gained Regulatory Approval following such introduction into the market; and (d) to make

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Licensed Products that have gained Regulatory Approval reasonably available to the public. In addition, Licensee, by itself or through its Affiliates or Sublicensees, shall achieve each of the Development Milestones within the time periods specified in Exhibit 3.1.1, as they may be extended in accordance with this Agreement.

3.1.2 Developing Countries. At any time beginning [\*\*] after Regulatory Approval of any Licensed Product in the United States or an EU Major Market Country, Hutherfort shall have the right to grant third parties the non-exclusive right under the Patent Rights to develop, manufacture, have manufactured, import, have imported, offer for sale, sell, have sold or otherwise distribute or have distributed such Licensed Product or an equivalent thereof (*e.g.*, a generic product), in each case solely for sale or other distribution of such Licensed Product or equivalent on a locally-affordable basis in any Developing Country(ies) in which such Licensed Product is not then available on a locally-affordable basis and not in any Developed Country, solely and exclusively for administration to citizens and permanent legal residents of such Developing Country(ies) in which such Licensed Product is not then available on a locally-affordable basis (such right, a “**Developing Country Locally-Affordable Citizen License**”). Hutherfort hereby reserves the non-exclusive right to grant such non-exclusive rights to third parties, solely and exclusively in the circumstances described in this Section 3.1.2. Notwithstanding the foregoing, at any time beginning [\*\*] after Regulatory Approval of any Licensed Product in the United States or an EU Major Market Country, but in any event no later than [\*\*] prior to granting any Developing Country Locally-Affordable Citizen License with respect to any Licensed Product, Hutherfort shall notify Licensee in writing, and if requested by Licensee, Hutherfort shall meet with Licensee and discuss in good faith Licensee’s (or its Affiliate’s or Sublicensee’s) plans to seek Regulatory Approval for and subsequently market such Licensed Product in the Developing Countries that were the subject of Hutherfort’s written notice or any concerns of Licensee related to marketing in such country. In addition, Hutherfort shall not grant a Developing Country Locally-Affordable Citizen License without identifying in writing to Licensee the potential licensee and if requested by Licensee meeting with Licensee to discuss, and subsequently considering in good faith, any concerns of the Licensee with respect to such potential licensee. The terms of any Developing Country Locally-Affordable Citizen License shall require the licensee thereof to sell only on a locally affordable basis, and shall require that the licensee sell only for administration to citizens and permanent legal residents of the applicable Developing Country. All consideration to Hutherfort (or its designee) under a Developing Country Locally-Affordable Citizen License (other than reimbursement for patent expenses paid to third parties at out-of-pocket cost to Hutherfort) is “**Developing Country Consideration.**” Licensee shall be entitled to a share of any and all Developing Country Consideration received by Hutherfort (or its designee) equal to the total Developing Country Consideration, minus the share that Hutherfort would have received under this Agreement if the Developing Country Locally-Affordable Citizen License had been a Sublicense agreement on the same terms entered into between Licensee and the third party. Licensee may [\*\*]. If any Developing Country Locally-Affordable Citizen License is granted, Hutherfort shall report on a [\*\*] basis in writing to Licensee as to any and all Developing Country Consideration received by Hutherfort or its designee, whether zero or a positive number. Such reports and any related records shall be subject to audit by the Licensee on terms equivalent to those set forth in Section 5.3, applied *mutatis mutandis*, provided, however, that such audit shall be limited to an audit of

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Hutherfort’s records and shall not extend to any licensee under a Developing Country Locally-Affordable Citizen License (either directly or by causing Hutherfort to exercise any audit rights it may have under the Developing Country Locally-Affordable Citizen License), and such audit shall be limited in scope to a determination that Hutherfort’s report of Developing Country Consideration is true and complete. Any Developing Country Locally-Affordable Citizen License shall be clearly limited to the applicable Developing Country, and Hutherfort shall take action to terminate the Developing Country Locally-Affordable Citizen License if the licensee sells outside of its licensed territory. For clarity, notwithstanding anything express or implied in the foregoing, Licensee does not grant Hutherfort any right under patent rights, know-how, data, or other assets or intellectual property rights owned or controlled by Licensee with respect to any Licensed Product for Developing Country(ies) or otherwise, and Hutherfort’s reserved rights above are limited to the Patent Rights.

3.1.3 Sub-Categories of Base Editor Patent Rights. If within [\*\*] years after the Effective Date, Licensee has not initiated a discovery program in accordance with the then current Development Plan and Development Milestones for the development of a Licensed Product covered by a Valid Claim for a Sub-Category of Base Editor Patent Rights (“**Failed Sub-Category of Base Editor Patent Rights**”), the license to such Failed Sub-Category of Base Editor Patent Rights will terminate, and Hutherfort shall have the right to grant to third party licensees of such Failed Sub-Category of Base Editor Patent Rights, a non-exclusive license under the Patent Rights other than such Failed Sub-Category of Base Editor Patent Rights solely to make, have made, offer for sale, sell, have sold and import products Covered by such Failed Sub-Category of Base Editor Patent Rights in the Field, which non-exclusive license shall not extend to components of such product that are a different category of Base Editor than the category of Base Editor that is the subject matter of such Failed Sub-Category of Base Editor Patent Rights. As a non-limiting example of the foregoing exclusion, [\*\*].

The foregoing paragraph may apply to multiple Sub-Categories of Base Editor Patent Rights, if there are multiple Failed Sub-Categories of Base Editor Patent Rights.

3.2 Adjustments of Development Plan.

3.2.1 Within [\*\*] months after the Effective Date, Licensee shall submit to Hutherfort a written plan for the development and commercialization of Licensed Products, which shall be attached hereto as Exhibit 3.2.1. Such plan shall be designed to meet the Development Milestones attached in Exhibit 3.1.1, on the timeline provided in Exhibit 3.1.1. Hutherfort shall have the right to approve Licensee’s submitted Development Plan, such approval not to be unreasonably withheld, delayed, or conditioned. Hutherfort shall be reasonably available to meet and discuss with Licensee as Licensee is preparing the Development Plan, to help ensure consensus as to the Development Plan that Licensee will submit.

3.2.2 Within [\*\*] years after the Effective Date, Licensee shall update its Development Plan and Development Milestones to include the elements required by the Subcategory Product Milestones. Hutherfort shall have the right to approve Licensee’s submitted, updated Development Plan, such approval not to be unreasonably withheld, delayed, or conditioned. Hutherfort shall be reasonably available to meet and discuss with Licensee as Licensee is preparing the updated Development Plan, to help ensure consensus as to the Development Plan that Licensee will submit.

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3.2.3 Licensee will be entitled, from time to time, to make such adjustments to the then applicable Development Plan as Licensee believes, in its good faith judgment, are needed in order to improve Licensee’s ability to meet the Development Milestones.

3.3 Reporting. Within [\*\*] days after the end of each calendar year, Licensee shall furnish Hutherfort with a written report summarizing its, its Affiliates’ and its Sublicensees’ efforts during the prior year to develop and commercialize Licensed Products, including: (a) research and development activities; (b) commercialization and/or other distribution efforts; and (c) marketing efforts. Each report must contain a sufficient level of detail for Hutherfort to assess whether Licensee is in compliance with its obligations under Section 3.1 and a discussion of intended efforts for the then current year. Together with each report, Licensee shall provide Hutherfort with a copy of the then current Development Plan.

3.4 Failure to Meet Development Milestone: Opportunity to Cure.

3.4.1 Notice/Explanation/Plan. If Licensee believes that it will not achieve a Development Milestone by the then-applicable deadline (i.e., the original timeline therefor in Exhibit 3.1.1, or any extension thereto in accordance with this Agreement) (“**Milestone Deadline**”) or that such then-applicable Milestone Deadline needs to be or should be extended, it may notify Hutherfort in writing in advance of the relevant deadline, explicitly referencing this Section 3.4.1. Licensee shall include with such notice (a) a reasonable explanation of the reasons for such failure or need for extension (and lack of finances will not constitute reasonable basis for such failure or need for extension) (“**Explanation**”) and (b) a reasonable, detailed, written plan for promptly achieving a reasonable extended and/or amended milestone (“**Plan**”).

3.4.2 Missing Plan or Explanation. If Licensee so notifies Hutherfort, but fails to provide Hutherfort with both an Explanation and Plan, then Licensee will have an additional [\*\*] days or until the original deadline of the relevant Development Milestone, whichever is later, to meet such milestone. [\*\*].

3.4.3 Sufficient Notice/Explanation/Plan. If Licensee notifies Hutherfort as provided in Section 3.4.1 and provides Hutherfort with an Explanation and Plan, both of which are acceptable to Hutherfort in its reasonable discretion, then Exhibit 3.1.1 will be amended automatically to incorporate the extended and/or amended milestone set forth in the Plan.

3.4.4 Explanation Discussions. If Licensee so notifies Hutherfort and provides Hutherfort with an Explanation and Plan, but the Explanation is not acceptable to Hutherfort in its reasonable discretion (*e.g.*, Licensee asserts lack of finances or development preference for a non-Licensed Product), then Licensee will have an additional [\*\*] days or until the original deadline of the relevant Development Milestone, whichever is later, to meet such milestone. [\*\*].

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3.4.5 Plan Discussions. If Licensee so notifies Hutherfort and provides Hutherfort with an Explanation and Plan, but the Plan is not acceptable to Hutherfort in its reasonable discretion, then Hutherfort will explain in writing to Licensee why the Plan is not acceptable and provide Licensee with written suggestions for an acceptable Plan. Licensee will have one opportunity to provide Hutherfort with an acceptable Plan within [\*\*] days, during which time Hutherfort agrees to work with Licensee in good faith in Licensee’s effort to develop a reasonably acceptable Plan. If, within such [\*\*] days, Licensee provides Hutherfort with an acceptable Plan, then Exhibit 3.1.1 will be amended automatically to incorporate the extended and/or amended milestone set forth in the Plan. If, within such [\*\*] days, Licensee fails to provide an acceptable Plan, then Licensee will have an additional [\*\*] days or until the original deadline of the relevant Development Milestone, whichever is later, to meet such milestone.

3.4.6 Unmet Deadline. Licensee’s failure to meet the then-current Milestone Deadline for any Development Milestone (taking into account any extension or modification thereof as a result of the applicable procedures set forth in Sections 3.4.1 through 3.4.5) [\*\*]:

3.4.6.1 If such failure is a failure to meet the first Development Milestone (“Initiate a discovery program …”) with respect to [\*\*] Licensed Products within the timeframe set forth on Exhibit 3.1.1 [\*\*].

3.4.6.2 If such failure relates to (a) a Licensed Product that was a [\*\*] Proposed Product for which Licensee exercised its rights under Section 2.5.5, (b) a Licensed Product that was a Retained Product for which Licensee retained the licenses under Section 2.1.1 in accordance with the terms of Section 3.4.6.3 or (c) a Licensed Product that was a Restored Product for which Licensee was granted the licenses under Section 2.1.1 in accordance with the terms of Section 3.4.7.3. Hutherfort will be entitled, without any compensation or accounting to Licensee, to terminate forthwith, immediately upon written notice to Licensee, the licenses granted under Section 2.1.1 with respect to such Licensed Product. Upon such termination, Hutherfort shall be entitled to grant to any third party(ies) an exclusive or non-exclusive license(s) under the Patent Rights to make, have made, offer for sale, sell, have sold and import such Licensed Product for use within the Field or outside the Field.

3.4.6.3 If such failure is not a failure provided for under Section 3.4.6.1 or Section 3.4.6.2, Hutherfort shall be entitled, without any compensation or accounting to Licensee, to terminate forthwith, immediately upon written notice to Licensee, the licenses granted under Section 2.1.1 with respect to all Licensed Products for which Licensee has not achieved Initiation of GLP Toxicology prior to the date of such notice (other than any such Licensed Products that are Related Products to a Licensed Product for which Licensee has achieved Initiation of GLP Toxicology prior to the date of such notice). Promptly after receipt of such notice (and in any event within [\*\*] days thereof), Licensee shall deliver to Hutherfort a true, correct and complete list of all Licensed Products for which Licensee has achieved Initiation of GLP Toxicology prior to

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the date of such notice (the “**Retained Product List**”) and sufficient information for Hutherfort to identify Related Products (i.e., [\*\*], splicing variant or mutation, intended patient population and intended clinical outcome) to such Licensed Products. For each such Licensed Product (each, a “**Retained Product**”), Licensee shall follow the following procedure:

For each Retained Product, the parties will negotiate in good faith and agree, during the [\*\*] days following the date Licensee provided the Retained Product List to Hutherfort, upon a development plan with respect to such Retained Product, which development plan will be similar to the Development Plan with respect to other Licensed Products that were being developed by Licensee, subject to necessary adjustments, and will include reasonable development milestones, including at least [\*\*] preclinical development milestone if such Retained Product is a preclinical product, and associated timelines. In the discussion of such development plan and development milestones, Hutherfort shall not unreasonably withhold its consent to Licensee’s proposed plan. If the parties agree in writing on such development plan and development milestones within such [\*\*] day period, Hutherfort shall grant to Licensee, and shall be deemed to have granted to Licensee, the licenses under Section 2.1.1 to make, have made, offer for sale, sell, have sold and import such Retained Product and Related Products to such Retained Product for use within the Field, but Licensee shall be obligated (a) to use commercially reasonable efforts to develop and commercialize the Retained Product for the prevention or treatment of such human disease in accordance with such new development plan (which shall be incorporated into and be part of the “Development Plan” for all purposes hereunder) and (b) to meet the development milestones on the timeline associated therewith with respect to the Retained Product (which shall be a “Development Milestone” (which shall not be subject to extension in the manner provided in Sections 3.4.1 through 3.4.5, but shall only be subject to extension in Hutherfort’s sole discretion). Exhibit 3.1.1 shall be amended to reflect such development milestones and timeline with respect to such Retained Product. If the parties do not agree in writing on such development plan and milestones for such Retained Product within such [\*\*] day period, the licenses under Section 2.1.1 to make, have made, offer for sale, sell, have sold and import such Retained Product and Related Products to such Retained Product shall be deemed terminated as of 11:59 p.m. Eastern Time on the last day of such period.

Notwithstanding anything in this Agreement to the contrary, the procedure set forth in Sections 3.4.1 through 3.4.5 shall not be applicable to extend the Development Milestones for a Licensed Product that was a Retained Product (although the Development Plan may still be updated with respect thereto without modifying the Development Milestones, and the Development Milestones may still be modified with Hutherfort’s consent in its sole discretion).

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Notwithstanding anything in this Section 3.4.6 to the contrary, for any Retained Product for which a Retained Product or a Related Product to such Retained Product already had a Development Plan and Development Milestones in place, and such Retained Product or a Related Product to such Retained Product that already had a Development Plan and Development Milestones in place has not missed such Development Milestones, such Development Plan and Development Milestones shall remain in place, with no requirement to negotiate a new Development Plan and new Development Milestones with respect thereto for such Retained Product or a Related Products to such Retained Product.

3.4.7 If Hutherfort has terminated the licenses granted under Section 2.1.1 in accordance with the terms of Section 3.4.6.3 and during the Term, Licensee wishes to obtain the licenses under Section 2.1.1 with respect to a product for which Licensee does not have a license under Section 2.1.1 and that was, prior to such termination, within the definition of Licensed Product (each, a “**Restored Product**” and such licenses, “R**estored Licenses**”), Licensee shall notify Hutherfort, and Hutherfort and Licensee shall follow the procedures below:

3.4.7.1 Licensee shall make a proposal to Hutherfort equivalent in all material respects to a Bona Fide Proposal to Hutherfort for developing such Restored Product for the prevention or treatment of a human disease, including with such proposal a statement of the extent such Restored Product is Covered by the Base Editor Patent Rights or the Supporting Technology Patent Rights and sufficient information for Hutherfort to identify Related Products (i.e., [\*\*], splicing variant or mutation, indicated patient population and clinical outcome) to such Restored Product. If Hutherfort is interested in having such Restored Product developed and commercialized, Hutherfort has not granted to any third party (such third parties including for purposes of this Section 3.4.7.1 Affiliates of Licensee) any rights or licenses that would be breached by the grant of the Restored Licenses and the grant by Hutherfort of the Restored Licenses would not otherwise be in conflict with any contract, agreement, arrangement or understanding between Hutherfort and a third party, Hutherfort shall notify Licensee.

3.4.7.2 If the proposal does not meet the definition of Bona Fide Proposal (as applied to the Restored Product and not a [\*\*] Proposed Product), then Section 3.4.7.3 shall not apply.

3.4.7.3 If Licensee notifies Hutherfort within [\*\*] days after Hutherfort has notified Licensee pursuant to the last sentence of Section 3.4.7.1, the parties will negotiate, during the [\*\*] days following such notification by Licensee, a development plan with respect to such Restored Product, which development plan will be similar to the Development Plan with respect to other Licensed Products developed by Licensee, subject to necessary adjustments, and will include reasonable development milestones, including at least one preclinical development milestone if such Restored Product is a preclinical product, and associated timelines. [\*\*]. If the parties agree in writing on such development plan and milestones within such [\*\*] day period, Hutherfort shall grant to Licensee, and shall be deemed to have granted to Licensee, the licenses under Section 2.1.1 to make, have made, offer for sale, sell, have sold and import such Restored Product

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and Related Products to such Restored Product for use within the Field, but Licensee shall be obligated (a) to use commercially reasonable efforts to develop and commercialize the Restored Product in the Field in accordance with such new development plan (which shall be incorporated into and be part of the “Development Plan” for all purposes hereunder) and (b) to meet the development milestones on the timeline associated therewith with respect to the Restored Product (which shall be a “Development Milestone” (for all purposes hereunder) (subject to extension in the same manner as provided in Sections 3.4.1 through 3.4.5, applied *mutatis mutandis*). Exhibit 3.1.1 shall be amended to reflect such development milestones and timeline with respect to such Restored Product. [\*\*].

3.4.7.4 For clarity, the provisions of this Section 3.4.7 shall not apply to any product with respect to which Hutherfort exercised its rights under Section 3.4.6.2 to terminate the licenses under Section 2.1.1.

3.5 Certain Editors. “**RNA Milestone**” means the Development Milestone identified under the heading “RNA Editor Product” in Exhibit 3.1.1. [\*\*]. If Licensee has not achieved the RNA Milestone by the then-applicable deadline (i.e., the original timeline therefor in Exhibit 3.1.1 or any extension thereto granted by Hutherfort in its sole discretion), Licensee shall notify Hutherfort promptly and will have an additional [\*\*] days to achieve such milestone. If Licensee does not achieve the RNA Milestone within such [\*\*] days, then Hutherfort may by written notice to Licensee exclude RNA Editors and RNA Products from the Licensed Products and the licenses granted herein. Notwithstanding anything express or implied, not meeting the then-applicable deadline for the RNA Milestone shall in any event not be deemed a breach of this Agreement and shall not give rise to a right for Hutherfort to terminate this Agreement.

3.6 Xeno-Transplantation. “**Xeno-Transplantation Milestone**” means the Development Milestone Identified under the heading “Xeno-Transplantation” in Exhibit 3.1.1. [\*\*]. If Licensee has not achieved the Xeno-Transplantation Milestone by the then-applicable deadline (i.e., the original timeline therefor in Exhibit 3.1.1 or any extension thereto granted by Hutherfort in its sole discretion), Licensee shall notify Hutherfort promptly and will have an additional [\*\*] days to achieve such milestone. If Licensee does not achieve the Xeno-Transplantation Milestone within such [\*\*] days, then Hutherfort may by written notice exclude Xeno-Transplantation from the Field and the licenses granted herein. Notwithstanding anything express or implied, not meeting the then-applicable deadline for the Xeno-Transplantation Milestone shall in any event not be deemed a breach of this Agreement and shall not give rise to a right for Hutherfort to terminate this Agreement.

3.7 Activities of Others. Licensee may satisfy its obligations under Sections 3.1 through 3.6 by the actions of itself, its Affiliates, or its Sublicensees, or by the actions of any combination of the foregoing.

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4. Consideration for Grant of License.

4.1 Equity.

4.1.1 Initial Issuance. In accordance with the terms of the Subscription Agreement, Licensee shall, on the Effective Date and concurrent with the execution of this Agreement, as partial consideration for the licenses granted hereunder, issue to Hutherfort 454,545 shares of Licensee’s common stock, representing [\*\*] percent ([\*\*]%) of Licensee’s outstanding capital stock on a Lully-Diluted Basis as of the date of such issuance and after giving effect to such issuance (the “**Shares**”). Hutherfort hereby agrees that, as a condition to and effective as of the issuance of the Shares, Hutherfort will execute a joinder to that certain Right of first Refusal and Co-Sale Agreement, by and among the Licensee and the stockholders set forth therein, dated on or about the date hereof, and that certain Voting Agreement, by and among the Licensee and the stockholders set forth therein, dated on or about the date hereof, as a common stockholder of Licensee.

4.1.2 Anti-Dilution Issuances. If, at any time, prior to the achievement of the Financing Threshold, Licensee issues Additional Securities that would cause the Shares to represent less than [\*\*] of Licensee’s outstanding capital stock on a Fully-Diluted Basis (excluding Exempted Issuances), Licensee shall immediately issue to Hutherfort, for no additional consideration, such additional number of shares of common stock of Licensee (the “**Anti-Dilution Shares**”) such that the Shares plus the Anti-Dilution Shares (including any Anti-Dilution Shares previously issued to Hutherfort pursuant to this Section 4.1.2, and any Shares or Anti-Dilution Shares transferred by Hutherfort to a third party or held by an Affiliate of Hutherfort) would then represent in the aggregate [\*\*] of Licensee’s outstanding capital stock on a Fully-Diluted Basis (excluding Exempted Issuances), as calculated after giving effect to the anti-dilutive issuance up to the Financing Threshold, but not any issuances in consideration for investment amounts in excess of the Financing Threshold; provided however, that to the extent such Additional Securities are issued pursuant to an equity incentive plan, Licensee shall issue the Anti-Dilution Shares upon the earlier of (a) the end of Licensee’s fiscal year in which the issuances took place and (b) the closing of the next preferred stock financing, in each case, calculated as of the date contemplated by (a) or (b), as applicable. Licensee shall provide Hutherfort with evidence of the issuance of such Anti-Dilution Shares promptly after their issuance. Such issuances shall continue only up to, and until such time as Licensee has achieved, the Financing Threshold. Thereafter, no additional shares shall be due to Hutherfort pursuant to this Section 4.1.2. The Anti-Dilution Shares will be subject to the same restrictions as the Shares in accordance with the terms of the Subscription Agreement.

4.1.3 Preemptive Rights. Hutherfort shall have, pursuant to the Subscription Agreement, the right to purchase from Licensee in offerings of equity securities by Licensee (excluding (a) Exempted Issuances, (b) shares of common stock issued or issuable, and options, warrants or other rights to purchase Common Stock issued or issuable to Licensee’s employees, consultants, officers, directors, or advisors as part of an incentive compensation arrangement or to Licensee’s former employees, consultants, officers, directors, or advisors as part of a settlement of any dispute regarding incentive compensation arrangements and (c) shares of Common Stock issued or issuable to banks, equipment lessors, real property lessors, financial institutions or other persons engaged in the business of making loans pursuant to a debt financing, commercial leasing or real property leasing transaction; shares of Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation)

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after the Financing Threshold has been achieved that portion of such equity securities as equals the proportion that the common stock then held by Hutherfort (including all shares of common stock then issuable upon conversion and/or exercise, as applicable, of preferred stock and any other equity securities then held by Hutherfort) bears to the total common stock of Licensee then outstanding on a Fully-Diluted Basis. The foregoing right shall be subject to the terms, conditions and exceptions as are contained in the Subscription Agreement, which terms, conditions and exceptions shall be no less favorable to Hutherfort than the terms, conditions and exceptions offered to the holders of preferred stock holding similar rights, unless otherwise provided in this Section 4.1.3. The Subscription Agreement shall provide that during the period prior to any Change of Control of Licensee or any Initial Public Offering, Hutherfort may not sell or otherwise transfer the shares acquired by Hutherfort upon exercise of the foregoing right without the consent of Licensee to any third party other than Omni or a holder of the preferred stock of Licensee. The Subscription Agreement shall provide that during the period prior to any Change of Control of Licensee or any Initial Public Offering, Hutherfort may sell or otherwise transfer the shares acquired by Hutherfort upon exercise of the foregoing right without the consent of Licensee to any third party other than Omni or a holder of the preferred stock of Licensee; provided, in each such case, that Hutherfort notifies Licensee in writing, and the transferee agrees and consents to be bound in writing by the transaction agreements pursuant to which such securities were originally acquired. The Subscription Agreement shall provide that Hutherfort may not assign the foregoing right without the consent of Licensee to any third party other than Omni or a holder of the preferred stock of Licensee. The Subscription Agreement shall provide that Hutherfort may assign the foregoing right without the consent of Licensee to any third party other than Omni or a holder of the preferred stock of Licensee; provided, that, in each such case, Hutherfort notifies Licensee in writing in connection with the transfer of such rights. With regard to assignment of the foregoing right to Omni or a holder of the preferred stock of Licensee, the Subscription Agreement shall provide that Hutherfort may assign the foregoing right in whole or in part and in any one or more instances.

4.1.4 Representations and Warranties. Licensee represents and warrants to Hutherfort that, upon issuance of the Shares, and upon issuance of any Anti-Dilution Shares:

4.1.4.1 the capitalization table as provided by Licensee (the “**Cap Table**”) upon issuance of the Shares or the Anti-Dilution Shares, as the case may be, sets forth all of the capital stock of Licensee on a Fully-Diluted Basis as of the date of issuance of the Shares or the Anti-Dilution Shares, on a pro forma basis as of immediately subsequent to the issuance of the Shares or the Anti-Dilution Shares, as applicable;

4.1.4.2 other than as set forth in the Cap Table, as of the date of issuance of the Shares or Anti-Dilution Shares, as applicable, there are no outstanding shares of capital stock, convertible securities, outstanding warrants, options or other rights to subscribe for, purchase or acquire from Licensee any capital stock of Licensee and there are no contracts or binding commitments providing for the issuance of, or the granting of rights to acquire, any capital stock of Licensee or under which Licensee is, or may become, obligated to issue any of its securities; and

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4.1.4.3 the Shares or the Anti-Dilution Shares, as the case may be, when issued pursuant to the terms hereof, shall, upon such issuance, be duly authorized, validly issued, fully paid and nonassessable.

4.1.5 Information. Upon request, but no more frequently than [\*\*], Licensee will deliver to Hutherfort a statement of the outstanding capital stock of Licensee on a Fully Diluted Basis in sufficient detail as to permit Hutherfort to calculate its percentage equity ownership in Licensee.

4.2 Annual License Maintenance Fees. Licensee shall pay Hutherfort annual license maintenance fees (“**Maintenance Fees**”) as follows:

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| --- | --- | --- |
|  |  |  |
| **Calendar Year(s)** |  | **Maintenance Fee (U.S. Dollars)** |
| 2018 |  | [\*\*] |
| 2019 |  | [\*\*] |
| 2020 and each subsequent Calendar Year during the Term |  | [\*\*] |

Each such Maintenance Fee shall be due and payable on [\*\*] of the calendar year to which such fee applies.

4.3 Milestone Payments.

4.3.1 Product Milestone Payments. Licensee shall pay Hutherfort the following milestone payments with respect to each of the first [\*\*] Licensed Products to reach each milestone, regardless of whether such milestone is achieved by Licensee or any Affiliate or Sublicensee of Licensee, and subject to Section 4.3.4:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Milestone Event** |  | **Milestone Payment (U.S. Dollars)** |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |

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Upon the consummation (i.e., closing) of a Change of Control of Licensee at any time during the Term, the dollar amounts set forth in the table above under “Milestone Payments (U.S. Dollars)” shall be deleted and the milestone payments set forth in the table below shall be substituted for the corresponding milestone payments for occurrences of a milestone event after the consummation of Change of Control. This shall not change the number of times that each of the milestone payments may become due — each milestone payment can become due hereunder a maximum of [\*\*] times only, whether at the lower level of the table above or at the higher level of the table below as applicable at the time of milestone achievement. In addition, it is understood that the increased milestone amounts shall only apply on a going-forward basis from the time of a Change of Control; no increase to the amounts of the milestone payments due for milestone events achieved prior to the Change of Control shall be due.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Milestone Event** |  | **Milestone Payment (U.S. Dollars)** |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |

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4.3.2 Financing Milestone Payments.

4.3.2.1 Series A Financing. Licensee shall pay to Hutherfort, in accordance with Section 4.3.3, upon achievement by Licensee (together with its Affiliates for purposes of this Section 4.3.2.1, including the calculation of sales by Licensee of shares of Series A Preferred Stock) of each of the financing milestone events set forth below the applicable milestone payment set forth opposite such milestone event set forth below:

|  |  |  |
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| **Milestone Event** |  | **Milestone Payment (U.S. Dollars)** |
| Closing of sale by Licensee, in a single transaction or series of transactions since inception, of shares of Series A Preferred Stock yielding aggregate gross proceeds to Licensee of at least five million dollars ($5,000,000) |  | Five Hundred Thousand Dollars ($500,000) |
| Closing of sale by Licensee, in a single transaction or series of transactions since inception, of shares of Series A Preferred Stock yielding aggregate gross proceeds to Licensee of at least twenty-five million dollars ($25,000,000) |  | Seven Hundred Fifty Thousand Dollars ($750,000) |
| Closing of sale by Licensee, in a single transaction or series of transactions since inception, of shares of Series A Preferred Stock yielding aggregate gross proceeds to Licensee of at least $50 million |  | One Million Seven Hundred Fifty Thousand Dollars ($1,750,000) |

Each milestone payment set forth in table above in this Section 4.3.2.1 shall be payable only once.

If Licensee sells any equity security other than Series A Preferred Stock (excluding common stock sold to employees or consultants as part of an incentive compensation arrangement) as part of a financing transaction of Licensee prior to the sale of $50 million in Series A Preferred, the aggregate gross proceeds from such financing transaction shall be applied towards the achievement of a milestone event set forth in the table above in this Section 4.3.2.1 as if the cash proceeds were for the purchase of Series A Preferred Stock, and if any milestone event is deemed achieved as a result, then the corresponding milestone payment set forth in the table above in this Section 4.3.2.1 shall be paid to Hutherfort in accordance with Section 4.3.3.

If prior to the payment by Licensee of an aggregate of $3 million to Hutherfort pursuant to this Section 4.3.2.1, a milestone payment becomes due under this Agreement for achievement by Licensee or any Affiliate or Sublicensee of Licensee of the milestone event described in the table above in Section 4.3.1 as [\*\*] becomes due under this Agreement, any milestone payment set forth in the table above in this Section 4.3.2.1 remaining unpaid shall be paid on the date such milestone payment or [\*\*], as the case may be, is due.

In no event shall Licensee be required to pay more than $3 million to Hutherfort pursuant to this Section 4.3.2.1.

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4.3.2.2 Series B Financing. Upon each closing of the sale by Licensee (together with its Affiliates for purposes of this Section 4.3.2.2, including the calculation of sales by Licensee of shares of Series B Preferred Stock) of shares of Series B Preferred Stock, Licensee shall pay Hutherfort a milestone payment in an amount equal to $6 million multiplied by the product of the Valuation Factor multiplied by the Proceeds Factor, until such time as the aggregate payments under this Section 4.3.2.2 total $6 million.

If prior to the payment by Licensee of an aggregate of $6 million to Hutherfort pursuant to this Section 4.3.2.2, a milestone payment becomes due under this Agreement for achievement by Licensee or any Affiliate or Sublicensee of Licensee of the milestone event described in the table above in Section 4.3.1 as “FSFD in Phase 3 Clinical Study” or a Win-State Payment becomes due under this Agreement, the unpaid balance of such $6 million shall be paid to Hutherfort on the date such milestone payment or Win-State Payment, as the case may be, is due.

In no event shall Licensee be required to pay more than $6 million to Hutherfort pursuant to this Section 4.3.2.2.

4.3.3 Licensee shall notify Hutherfort in writing within [\*\*] days following the achievement of each milestone described in Section 4.3.1 or 4.3.2, and shall make the appropriate milestone payment within [\*\*] days after the achievement of such milestone.

4.3.4 The milestone payments set forth in Section 4.3.1 shall not be payable:

(a) with respect to a subsequent achievement of the same milestone event by a Licensed Product that is a replacement for another Licensed Product the development of which has been discontinued after achievement of such same milestone event;

(b) with respect to a subsequent achievement of the same milestone event by any back-up Licensed Product that is a Related Product to a first Licensed Product that has already achieved such same milestone event; and

(c) with respect to a subsequent achievement of the same milestone event by a Licensed Product that differs from a first Licensed Product that has achieved such same milestone event only by virtue of such subsequent Licensed Product’s being a different dOmni strength or formulation of or using a different delivery system than such first Licensed Product.

4.3.5 The milestones set forth in Section 4.3.1 are intended to be successive. If a Licensed Product is not required to undergo the event associated with a particular milestone for a given Licensed Product (“**Skipped Milestone**”), such Skipped Milestone will be deemed to have been achieved upon the achievement by such Licensed Product of the next successive milestone (“**Achieved Milestone**”). Payment for any Skipped Milestone that is owed in accordance with the provisions of Section 4.3.1 shall be due within [\*\*] days after the Licensee learned of the achievement of the Achieved Milestone. For clarity, Regulatory Approval in a

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jurisdiction shall not trigger payment of another Regulatory Approval milestone not yet achieved (for example, First Regulatory Approval in the EU shall not trigger a payment obligation for First Regulatory Approval in the United States as a Skipped Milestone and *vice versa*, and First Regulatory Approval in Japan shall not trigger a payment obligation for First Regulatory Approval in the United States or Europe, nor *vice versa*).

4.4 Royalty on Net Sales.

4.4.1 Rate. Licensee shall pay Hutherfort an amount equal to [\*\*] percent ([\*\*]%) of Net Sales of Licensed Products, calculated in accordance with and subject to the remainder of this Section 4.4.

4.4.2 Royalty Term. On a country-by-country basis, in each country in which a Licensed Product is Covered by a Valid Claim, royalties shall be paid on the sum of Net Sales of such Licensed Product until the latest of: (a) the expiration date of the last to expire Valid Claim within the Patent Rights Covering the applicable Licensed Product (or if the last Covering Valid Claim with respect to such Licensed Product in such country is a pending Valid Claim, the date such pending Valid Claim ceases to be a Valid Claim; provided, however, that subsequent issuance of such Valid Claim shall again extend the Royalty Term from the date of such issuance to the expiration date of such Valid Claim); (b) the period of regulatory exclusivity associated with such Licensed Product in such country; or (c) [\*\*] years after the First Commercial Sale of such Licensed Product in such country but only for so long as such Licensed Product is sold (the “**Royalty Term**”). During time periods when the Royalty Term is only in effect in a given country for a given Licensed Product due to clause (c) of the foregoing sentence, then the royalty rate provided for such Licensed Product in such country shall be reduced by [\*\*] percent ([\*\*]%) from that set forth in Section 4.4.1 above for such portions of the Royalty Term for such Licensed Product in such country.

4.4.3 Third Party Royalty Set-Off. If Licensee obtains a license from a third party after arm’s length negotiations to patent application(s) and/or patent(s) that Licensee believes in good faith Cover a Licensed Product, then Licensee may offset [\*\*] percent ([\*\*]%) of any royalty payments due under such third-party license with respect to such patent application(s) and/or patent(s) with respect to sales of Licensed Products against the royalty payments that are due to Hutherfort with respect to Net Sales of such Licensed Products in such country; provided that in no event shall (a) the royalty payments to Hutherfort with respect to such Licensed Products be reduced by more than [\*\*] percent ([\*\*]%) of the amount otherwise due, (b) with respect to royalties paid to the third party solely on the basis of claims of pending patent applications of the third party (and no issued patent claim of the third party covers the applicable Licensed Product), such amounts shall only be offsettable in accordance with the foregoing in this Section 4.4.3 if the Covering pending claim of the third party’s pending application would meet the definition of Valid Claim set forth in this Agreement were such pending claim within the Patent Rights as of the Effective Date, and (c) the royalty offset provided in this Section 4.4.3 may be applied to any combination product for which an adjustment to Net Sales has been made in accordance with Section 4.4.5, but to avoid doubt only as relates to royalties on patent applications and patents that would apply in the absence of the Other Active Components (third party patent royalties due solely because of the presence of the Other Active Components shall not be offsettable against adjusted Net Sales of a Combination Product).

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4.4.4 Loss of Market Exclusivity. If a Loss of Market Exclusivity exists in a country with respect to a Licensed Product, then the royalty rate for such Product in such country shall be reduced by [\*\*] percent ([\*\*]%) of the applicable rate determined pursuant to Section 4.4.1 and 4.4.2, provided that in no event shall the effective royalty rate applied to Net Sales of such Licensed Product in such country be reduced as a result of the application of the terms of this Section 4.4.4 and Section 4.4.3 to less than fifty percent ([\*\*]%) of the applicable rate determined pursuant to Section 4.4.1 and 4.4.2. Once Loss of Market Exclusivity exists with respect to a Licensed Product in a country, it will be deemed to continue to exist thereafter with respect to such Licensed Product in such country unless Hutherfort requests in writing that Loss of Market Exclusivity with respect to a Licensed Product in a country be re-evaluated (which request may not be made more frequently than [\*\*] in a Calendar Year), in which case the existence of such Loss of Market Exclusivity, and any corresponding reduction pursuant to this Section 4.4.4, shall depend on whether the criteria set forth in the definition of Loss of Market Exclusivity are still met with respect to such Licensed Product in such country. If it is determined that the Loss of Market Exclusivity no longer exists, the termination of the [\*\*] percent ([\*\*]%) reduction in royalty rate due to the absence of Loss of Market Exclusivity shall be effective only on a going-forward basis from the date of such Hutherfort request, and there shall be no recovery of monies or retroactive increase in rates for time periods prior thereto.

4.4.5 Combination Products. If a Licensed Product is sold as part of a combination product with other active pharmaceutical ingredient(s) (or active biologic(s)) that are not Licensed Products and perform a function distinct from the Licensed Product component of the combination (“**Other Active Component(s**)”), then Net Sales of the combination product shall be adjusted prior to calculation of the royalty to Hutherfort hereunder, by multiplying total Net Sales of the combination product by the fraction, A/A+B, where A is the [\*\*] and B is the [\*\*], in each case during the applicable royalty reporting period or, if sales of both the Licensed Product and the Other Active Component(s) did not occur in such period, then in the most recent royalty reporting period in which sales of both occurred. In the event that such average sale price cannot be determined for both the Licensed Product and Other Active Component(s) included in such combination product, the Parties shall determine any adjustment to Net Sales of the Licensed Product by virtue of its being sold as part of a combination product with Other Active Components in such country by mutual agreement based on the relative contribution of value of the Licensed Product and the Other Active Component(s) in the combination product. If the Parties do not reach written agreement as to such allocation within [\*\*] days, then the matter shall be decided by arbitration in accordance with Exhibit 4.4.5. To avoid doubt, the royalty offset provided in Section 4.4.3 does not allow for the offset of royalties on third party patent applications and patents that are necessary only for the Other Active Component(s), and would not apply to the Licensed Product component as a single agent.

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4.5 Patent Challenge.

4.5.1 If Licensee, its Affiliate or a Sublicensee (“**Challenging Party**”) takes any action that constitutes a Patent Challenge, then (a) in the case of the Licensee or its Affiliate as the Challenging Party, the fees, milestones, royalties and other amounts payable to Hutherfort under Sections 4.2, 4.3, and 4.4 will be [\*\*] with respect to any payments that become due and Net Sales of Licensed Products that are sold during the pendency of such Patent Challenge, (b) in the case of a Sublicensee as the Challenging Party, if (i) Licensee (A) diligently sought to enforce and continues to diligently seek to enforce to the extent possible (unless reputable intellectual property counsel to Licensee advises Licensee that such enforcement or seeking to enforce is contrary to applicable law or is unenforceable against such Sublicensee), its right to terminate the Sublicense agreements with such Sublicensee, including by, at minimum, taking all required steps to seek to terminate such Sublicense agreements in accordance with the terms thereof and contesting any contrary claim by the Sublicensee or (B) does not take such enforcement action upon the advice of reputable intellectual property counsel to Licensee that such enforcement or seeking to enforce is contrary to applicable law or is unenforceable against such Sublicensee, then in each case under clause (A) and (B) the milestone payments under Section 4.3 with respect to Licensed Products achieved by such Sublicensee that become due during the pendency of such Patent Challenge will be [\*\*] and royalties payable to Hutherfort under Section 4.4 with respect to Net Sales by such Sublicensee of Licensed Products that are sold during the pendency of such Patent Challenge will be [\*\*], and if (ii) Licensee did not diligently seek to enforce and does not continue to diligently seek to enforce to the extent possible (unless such inaction is upon the advice of reputable intellectual property counsel to Licensee that such enforcement or seeking to enforce is contrary to applicable law or is unenforceable against such Sublicensee), its right to terminate the Sublicense agreements with such Sublicensee, including by, at minimum, taking all required steps to seek to terminate such Sublicense agreements in accordance with the terms thereof and contesting any contrary claim by the Sublicensee, the fees, milestones, royalties and other amounts payable to Hutherfort under Sections 4.2, 4.3, and 4.4 will be [\*\*] with respect to any payments that become due and Net Sales of Licensed Products that are sold during the pendency of such Patent Challenge. If the outcome of such Patent Challenge is a determination against the Challenging Party, (1) (A) in the case of a Patent Challenge subject to clause (a) above, the fees, milestones, royalties and other amounts payable to Hutherfort under Sections 4.2, 4.3, and 4.4 shall remain at such [\*\*] rate, (B) in the case of a Patent Challenge subject to clause (b)(1) above, only the milestones and royalties payable to Hutherfort under Sections 4.3 and 4.4 related to the challenging Sublicensee’s milestone achievements and Net Sales shall remain at such [\*\*] rate, and (C) in the case of a Patent Challenge subject to clause (b)(ii) above all the fees, milestones, royalties and other amounts payable to Hutherfort under Sections 4.2, 4.3, and 4.4 shall remain at such [\*\*] rate, and (2) Licensee shall reimburse Hutherfort [\*\*] the amount of all reasonable expenses incurred by Hutherfort (including reasonable attorneys’ fees) in connection with such Patent Challenge. If the outcome of such Patent Challenge is a determination in favor of the Challenging Party, Licensee will have no right, nor will any Affiliate or Sublicensee have any right, to recoup any royalties or other amounts paid before or during the pendency of such Patent Challenge. The Parties agree that any Patent Challenge by Licensee, or any of its Affiliates or Sublicensees, may be detrimental to Hutherfort, and that the foregoing provisions shall constitute reasonable liquidated damages to reasonably compensate Hutherfort for any loss it may incur as a result of Licensee, or any of its Affiliates’ or Sublicensees’, taking such action.

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4.5.2 Licensee shall include in each agreement for a Sublicense a clause equivalent with respect to the Sublicensee to the provisions found in the foregoing Section 4.5.1 (adjusted for party names, section references, and the like) and shall make Hutherfort an explicit third party beneficiary thereof.

4.5.3 Notwithstanding Section 4.5.1(b)(ii) and Section 4.5.1(1)(A), if the Challenging Party that takes an action that constitutes a Patent Challenge is a Sublicensee rather than Licensee or an Affiliate, then, the adjustment to the royalty rate under Section 4.4 of this Agreement with respect to Net Sales by Sublicensees of Licensed Products shall apply only to the calculation of royalties on Net Sales by such challenging Sublicensee, and the adjustment to the milestone payments under Section 4.3 with respect to Licensed Products achieved by Sublicensees shall apply only to the milestone payments with respect to Licensed Products achieved by such challenging Sublicensee. Licensee will make Hutherfort an explicit intended third-party beneficiary of the obligation in the Sublicense agreement for the Sublicensee to pay Hutherfort [\*\*] the amount of all expenses incurred by Hutherfort (including reasonable attorneys’ fees) in connection with such Patent Challenge, and will reasonably assert its rights under the Sublicense for such [\*\*] payments to be made, and reasonably cooperate with Hutherfort if Hutherfort takes enforcement actions of its own as to such right to [\*\*] payment.

To avoid doubt, royalties on Net Sales by Licensee and its Affiliates and Sublicensees who are not Challenging Parties shall not be [\*\*] under Section 4.5.1(b) as a result of the Patent Challenge actions of an unrelated Sublicensee Challenging Party.

4.6 Non-Royalty Sublicense Income. Licensee will pay Hutherfort a percentage in accordance with the following table of all Non-Royalty Sublicense Income, without deduction (other than as provided in the definition of Non-Royalty Sublicense Income in Section 1.65) or apportionment of any kind; provided, however, that Licensee may deduct from Non-Royalty Sublicense Income received by Licensee as a result of the achievement by a Sublicensee of a milestone event set forth in Section 4.3.1 the amount of the corresponding milestone payment due Hutherfort under Section 4.3.1 in connection with the achievement of such milestone event.

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| *Category of Sublicense* |  | *Percentage of Non-* *Royalty Sublicense* *Income* |
| (a) With respect to a Sublicense executed [\*\*] |  | [\*\*] |
| (b) With respect to a Sub license executed [\*\*] |  | [\*\*] |
| (c) With respect to a Sublicense executed [\*\*] |  | [\*\*] |

Subject to Section 1.65, in the case of Non-Royalty Sublicense Income received in kind in the form of a freely transferable security (except for such restrictions on transfer imposed by applicable law), Licensee may distribute such in-kind Non-Royalty Sublicense Income to Hutherfort in the same form in which received by the Licensee.

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4.7 Success Payments. Licensee shall make such payments (each, a “**Win-State Payment**” and collectively, the “**Win-State Payments**”) as are determined in accordance with Exhibit 4.7 hereto. Any acquirer, lessee, exclusive licensee or other transferee of all or substantially all of the Licensee’s assets, or any successor entity to the Licensee (each, an “**Acquirer**”), shall be obligated to assume the Licensee’s obligations pursuant to this Section 4.7 and Exhibit 4.7 hereto, as such obligations are set forth herein and therein and subject to the terms and conditions (including contingent events) set forth herein and therein.

5. Reports; Payments; Records.

5.1 Reports and Payments.

5.1.1 Reports. Within [\*\*] days after the conclusion of each Calendar Quarter commencing with the first Calendar Quarter in which Net Sales are generated or Non-Royalty Sublicense Income is received, Licensee shall deliver to Hutherfort a report containing the following information (in each instance, with a Licensed Product-by-Licensed Product and country-by-country breakdown):

5.1.1.1 the number of units of Licensed Products sold, leased or otherwise transferred by Invoicing Entities for the applicable Calendar Quarter;

5.1.1.2 the gross amount billed or invoiced for Licensed Products sold, leased or otherwise transferred by Invoicing Entities during the applicable Calendar Quarter;

5.1.1.3 a calculation of Net Sales for the applicable Calendar Quarter, including an itemized listing of allowable deductions;

5.1.1.4 a detailed accounting of all Non-Royalty Sublicense Income received during the applicable Calendar Quarter;

5.1.1.5 the total amount payable to Hutherfort in U.S. Dollars on Net Sales and Non-Royalty Sublicense Income for the applicable Calendar Quarter, together with the exchange rates used for conversion; and

5.1.1.6 a good faith list of [\*\*] for all Patent Rights that have Valid Claims covering the Licensed Products.

Each such report shall be certified on behalf of Licensee as true, correct and complete in all material respects. If no amounts are due to Hutherfort for a particular Calendar Quarter, the report shall so state.

5.1.2 Payment. Within [\*\*] days after the end of each Calendar Quarter, Licensee shall pay Hutherfort all amounts due with respect to Net Sales and Non-Royalty Sublicense Income for the applicable Calendar Quarter; provided, however, that for royalties to Hutherfort on Net Sales by Sublicensees, Licensee shall have until the earlier of (a) [\*\*] business days after receiving the quarterly royalty payment from the Sublicensee and (b) [\*\*] days after the end of the applicable Calendar Quarter to turn around payment to Hutherfort on the underlying Net Sales.

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5.2 Payment Currency. All payments due under this Agreement will be paid in U.S. Dollars. Conversion of foreign currency to U.S. Dollars will be made at the conversion rate existing in the United States (as reported in the Wall Street Journal) on the last working day of the applicable Calendar Quarter. Such payments will be without deduction of exchange, collection or other charges. Notwithstanding the foregoing, a reasonable and customary currency conversion methodology as is set forth in a Sublicense agreement shall be the method used for currency conversion of amounts due in relation to such Sublicense agreement.

5.3 Records. Licensee shall maintain, and shall cause its Affiliates and Sublicensees to maintain, complete and accurate records of Licensed Products that are made, used, sold, leased or transferred under this Agreement, any amounts payable to Hutherfort in relation to such Licensed Products, and all Non-Royalty Sublicense Income received by Licensee and its Affiliates, which records shall contain sufficient information to permit Hutherfort to confirm the accuracy of any reports or notifications delivered to Hutherfort under Section 5.1. Licensee, its Affiliates and/or its Sublicensees, as applicable, shall retain such records relating to a given Calendar Quarter for at least [\*\*] years after the conclusion of that Calendar Quarter, during which time Hutherfort will have the right, at its expense, to cause an independent, certified public accountant (or, in the event of a non-financial audit, other appropriate auditor) to inspect such records during normal business hours for the purposes of verifying the accuracy of any reports and payments delivered under this Agreement and Licensee’s compliance with the terms hereof. Such accountant or other auditor, as applicable, shall be under reasonable written obligations of confidentiality to the audited party and shall not disclose to Hutherfort any information other than information relating to the accuracy of reports and payments delivered under this Agreement. In addition, the auditor shall disclose its draft conclusions to Licensee and Hutherfort, and the basis for such conclusions to Licensee, prior to making its final report to Hutherfort, and shall reasonably consider the Licensee’s comments in response thereto (if any). The accounting records as to any accounting period shall not be audited more than [\*\*], nor more than [\*\*] years after the end of such accounting period. The parties shall reconcile any underpayment or overpayment within [\*\*] days after the accountant delivers the results of the audit. If any audit performed under this Section 5.3 reveals an underpayment in excess of [\*\*] percent ([\*\*]%) in any calendar year, Licensee shall reimburse Hutherfort for all amounts incurred in connection with such audit. Hutherfort may exercise its rights under this Section 5.3 only [\*\*] every year per audited entity and only with reasonable prior notice to the audited entity. Notwithstanding the foregoing, provided that the Licensee obtains an [\*\*] audit right for itself with respect to a Sublicensee’s records, as well as the right to share the results of such audit with Hutherfort, the Licensee shall not be required to obtain from such Sublicensee a direct audit right for Hutherfort. In such event, in any calendar year in which Licensee would not otherwise exercise its right to audit a given Sublicensee, if requested by Hutherfort in writing, Licensee shall exercise such audit right, which shall be at Hutherfort’s expense unless the audit reveals an underpayment (either by the Sublicensee alone or when taken together with all other contemporaneous audits conducted by or at the request of Hutherfort) in excess of [\*\*] percent ([\*\*]%) in any calendar year that is the subject of the audit, in which case such audit shall be at Licensee’s expense.

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5.4 Late Payments. Any payments by Licensee that are not paid on or before the date such payments are due under this Agreement will bear interest at the lower of (a) [\*\*] percent ([\*\*]%) per month and (b) the maximum rate allowed by law. Interest will accrue beginning on the first day following the due date for payment and will be compounded [\*\*]. Payment of such interest by Licensee shall not limit, in any way, Hutherfort’s right to exercise any other remedies Hutherfort may have as a consequence of any payment due but unpaid hereunder.

5.5 Payment Method. Each payment due to Hutherfort under this Agreement shall be paid by check or wire transfer of funds to Hutherfort’s account in accordance with written instructions provided by Hutherfort. If made by wire transfer, such payments shall be marked so as to refer to this Agreement.

5.6 Withholding and Similar Taxes. All amounts to be paid to Hutherfort pursuant to this Agreement shall be without deduction of exchange, collection, or other charges, and, specifically, without deduction of withholding or similar taxes or other government imposed fees or taxes, except as permitted in the definition of Net Sales; provided that Licensee shall be entitled to make payment to an account of Hutherfort held in the United States.

6. Patent Filing, Prosecution and Maintenance.

6.1 Control. Hutherfort will be responsible for the preparation, filing, prosecution, protection, defense and maintenance of all Patent Rights, using independent patent counsel reasonably acceptable to Licensee, and including oppositions, *inter partes* reviews and post-grant reviews. Hutherfort will: (a) instruct such patent counsel to furnish the Licensee with copies of all correspondence relating to the Patent Rights from the United States Patent and Trademark Office (USPTO) and any other patent office, as well as copies of all proposed responses to such correspondence in time for Licensee to review and comment on such response; (b) give Licensee an opportunity to review the text of each patent application before filing; (c) consult with Licensee with respect thereto; (d) supply Licensee with a copy of the application as filed, together with notice of its filing date and serial number; and (e) keep Licensee advised of the status of actual and prospective patent filings. Hutherfort shall give Licensee the opportunity to provide comments on and make requests of Hutherfort concerning the preparation, filing, prosecution, protection, defense and maintenance of the Patent Rights, and shall seriously consider such comments and requests (including any comment or request that Hutherfort refrain from filing a continuation-in-part application or that Hutherfort file a Patent Right divisional or similar filing that is specific to the Field); [\*\*]. In particular, and without intending to limit any of Hutherfort’s rights pursuant to this Agreement, Hutherfort expressly reserves the right to decline Licensee’s request to file, prosecute, maintain or defend any of the Patent Rights in any Developing Country(ies) unless (i) Licensee demonstrates to Hutherfort’s reasonable satisfaction that the filing, prosecution, maintenance or defense of such Patent Rights in such Developing Country(ies) would materially increase the locally-affordable availability of Licensed Products or equivalents thereof (*e.g.*, generic products) in those and/or other Developing Country(ies) and (ii) the provisions of Article 7 notwithstanding, Licensee agrees that Hutherfort shall hold final decision-making authority, on a case-by-case basis, as to whether Licensee will be permitted to enforce such Patent Rights in such Developing Country(ies).

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6.2 Expenses. Subject to Section 7.3 below, Licensee shall reimburse Hutherfort for [\*\*] documented, out-of-pocket expenses incurred by Hutherfort pursuant to this Article 6, within [\*\*] days after the date of each invoice from Hutherfort for such expenses. [\*\*]. In the event that after the Effective Date, Hutherfort enters into a license with a third party with respect to any of the Base Editor Patent Rights outside the Field or Supporting Technology Patent Rights in or outside the Field, then Hutherfort shall use reasonable efforts to secure a provision under such license that provides for payment of an appropriate portion of past and future expenses related to such Patent Rights by such licensee at the time such expenses are incurred, taking into consideration the scope and type (i.e., exclusive or non-exclusive) of such license. In the event that Hutherfort is able to collect such amounts, Hutherfort shall reimburse Licensee for a pro rata share of such expenses already paid by Licensee.

6.3 Abandonment. If Licensee decides that it does not wish to pay for the preparation, filing, prosecution, protection or maintenance of any Patent Rights in a particular country, then Licensee shall provide Hutherfort with prompt written notice of such election and upon such written notice, the Patent Rights that were the subject of the notice, solely in the countries identified in the notice for such Patent Rights, shall be “**Abandoned Patent Rights**”. Upon receipt of such notice by Hutherfort, Licensee shall be released from its obligation to reimburse Hutherfort for the expenses incurred thereafter as to such Abandoned Patent Rights; provided, however, that expenses authorized prior to the receipt by Hutherfort of such notice that cannot be cancelled as of the date of the notice shall be deemed incurred prior to the notice. Any license granted by Hutherfort to Licensee hereunder with respect to any Abandoned Patent Rights will terminate, and Licensee will have no rights whatsoever to exploit such Abandoned Patent Rights. Hutherfort will then be free, without further notice or obligation to Licensee, to grant rights in and to such Abandoned Patent Rights to third parties. In addition, Hutherfort shall have the right to grant to third party licensees of any Abandoned Patent Rights that are Disease-Specific Patent Rights and with advance written notice to the Licensee, a non-exclusive license under the Patent Rights other than such Disease-Specific Patent Rights solely to make, have made, offer for sale, sell, have sold and import such [\*\*] Proposed Product Covered (as of the date of the applicable notice from Licensee of its election not to pay patent expenses with respect to such Abandoned Patent Rights) by such Abandoned Patent Rights for the prevention or treatment of the applicable human disease solely in the countries applicable to such Abandoned Patent Rights and not including any indications or applications not Covered (as of the date of the applicable notice from Licensee of its election not to pay patent expenses with respect to such Abandoned Patent Rights) by such Abandoned Patent Rights in such country. In addition, if Abandoned Patent Rights represent substantially all the material patentable claims within a Subcategory of Base Editor Patent Rights, Hutherfort shall have the right to grant to third party licensees of such Abandoned Patent Rights within such Subcategory of Base Editor Patent Rights, a non-exclusive license under the Patent Rights solely to make, have made, offer for sale, sell, have sold and import products, including Base Editor Products, that are claimed or covered by Patent Rights within such Subcategory of Base Editor Patent Rights in any field solely in the countries

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applicable to such Abandoned Patent Rights, which non-exclusive license shall not extend to components of such products that are a different category of Base Editor than the category of Base Editor that is the subject matter of such Abandoned Patent Rights (for non-limiting example, [\*\*]). For clarity, Abandoned Patent Rights are defined on a country-by-country basis, not a worldwide basis, and Licensee shall retain its rights in all other countries to the Patent Rights that are counterparts in other countries to the Abandoned Patent Rights (and the non-exclusive licenses referred to in this paragraph shall not extend to such other countries).

6.4 Marking. Licensee shall, and shall cause its Affiliates and Sublicensees to, mark all Licensed Products sold or otherwise disposed of in such a manner as to conform with the patent laws and practice of the country to which such products are shipped or in which such products are sold for purposes of ensuring maximum enforceability of Patent Rights in such country.

7. Enforcement of Patent Rights.

7.1 Notice. In the event either party becomes aware of any possible or actual infringement of any Patent Rights with respect to Licensed Products in the Field (an “Infringement”), that party shall promptly notify the other party and provide it with details regarding such Infringement.

7.2 Suit by Licensee. Licensee shall have the first right, but not the obligation, to take action in the prosecution, prevention, or termination of any Infringement. Before Licensee commences an action with respect to any Infringement, Licensee shall consider in good faith the views of Hutherfort and potential effects on the public interest in making its decision whether to sue. Should Licensee elect to bring suit against an infringer, Licensee shall keep Hutherfort reasonably informed of the progress of the action and shall give Hutherfort a reasonable opportunity in advance to consult with Licensee and offer its views about major decisions affecting the litigation. Licensee shall give careful consideration to those views, but shall have the right to control the action; provided, however, that if Licensee fails to defend in good faith the validity and/or enforceability of the Patent Rights in the action, or if Licensee’s license to a Valid Claim in the suit terminates, Hutherfort may elect to take control of the action pursuant to Section 7.3. Any and all expenses, including reasonable attorneys’ fees, incurred by Hutherfort under this Section 1.2 with respect to the prosecution, adjudication and/or settlement of such suit, including any related appeals, shall be paid for entirely by Licensee and Licensee shall hold Hutherfort free, clear and harmless from and against any and all such expenses. The expenses of such suit or suits that Licensee elects to bring under this Section 7.2, including any expenses of Hutherfort incurred in conjunction with the prosecution of such suits or the settlement thereof by Licensee under this Section 7.2, shall be paid for entirely by Licensee and Licensee shall hold Hutherfort free, clear and harmless from and against any and all costs of such litigation, including reasonable attorneys’ fees (to avoid doubt, excluding costs of any suit that becomes a suit by Hutherfort under Section 7.3 as provided for above). Licensee shall not compromise or settle litigation under this Section without the prior written consent of Hutherfort, which consent shall not be unreasonably withheld or delayed. In the event Licensee exercises its right to sue pursuant to this Section 7.2, it shall first reimburse itself out of any sums recovered in such suit or in

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settlement thereof for all costs and expenses of every kind and character, including reasonable attorneys’ fees, necessarily incurred in the prosecution of any such suit. If, after such reimbursement, any funds shall remain from said recovery, then Hutherfort shall receive an amount of such remaining funds equal to the applicable percentage in Section 4.6 had the infringer been a Sublicensee instead (and such recovery was Non-Royalty Sublicense Income paid under a Sublicense executed on the effective date of the settlement or the date of entry of judgment by the court awarding such recovered sums, whichever is applicable), and the remainder of such funds shall be retained by Licensee.

7.3 Suit by Hutherfort. If Licensee does not take action in the prosecution, prevention, or termination of any Infringement pursuant to Section 7.2 above, and has not commenced negotiations with the infringer for the discontinuance of said Infringement, within [\*\*] days after receipt of notice to Licensee by Hutherfort of the existence of an actual Infringement, then Hutherfort may elect to do so. Should Hutherfort elect to bring suit against an infringer and Licensee is joined as party plaintiff in any such suit, Licensee shall have the right to approve the counsel selected by Hutherfort to represent Hutherfort and Licensee, such approval not to be unreasonably withheld. Any and all expenses, including reasonable attorneys’ fees, incurred by Licensee with respect to the prosecution, adjudication and/or settlement of such suit, including any related appeals, shall be paid for entirely by Hutherfort and Hutherfort shall hold Licensee free, clear and harmless from and against any and all such expenses. Hutherfort shall not compromise or settle such litigation without the prior written consent of Licensee, which consent shall not be unreasonably withheld or delayed; provided, however, that Licensee shall retain the sole authority to grant Sublicenses in its discretion. In the event Hutherfort exercises its right to sue pursuant to this Section 7.3, it shall first reimburse itself out of any sums recovered in such suit or in settlement thereof for all costs and expenses of every kind and character, including reasonable attorneys’ fees, necessarily incurred in the prosecution of any such suit. If, after such reimbursement, any funds shall remain from said recovery, then Hutherfort shall retain an amount of such funds equal to [\*\*] the applicable percentage in Section 4.6 had the infringer been a Sublicensee instead (and such recovery was Non-Royalty Sublicense Income paid under a Sublicense executed on the effective date of the settlement or the date of entry of judgment by the court awarding such recovered sums, whichever is applicable), and the remainder of such funds, if any, shall be paid to Licensee.

7.4 Own Counsel. Each party shall always have the right to be represented by counsel of its own selection and at its own expense in any suit instituted under this Article 7 by the other party for Infringement.

7.5 Cooperation. Each party agrees to cooperate fully in any action under this Article 7 that is controlled by the other party, provided that the controlling party reimburses the cooperating party promptly for any costs and expenses incurred by the cooperating party in connection with providing such assistance. This includes the obligation to be named as a party plaintiff or to join as a necessary or indispensable party in the other party’s permitted suits under Section 7.2 or 7.3, if needed for standing or otherwise necessary to pursue the suit.

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7.6 Declaratory Judgment. If a declaratory judgment action is brought naming Licensee and/or any of its Affiliates or Sublicensees as a defendant and alleging invalidity or unenforceability of any claims within the Patent Rights, Licensee shall promptly notify Hutherfort in writing. Similarly, if Hutherfort is named as a defendant in a declaratory judgment action related to the Patent Rights, Hutherfort shall promptly notify Licensee in writing. In either case, Hutherfort may elect, upon written notice to Licensee (such written notice to be given within [\*\*] days after Hutherfort receives notice of the commencement of such action, in the case of actions of which Licensee notifies Hutherfort) to conduct or to take over the sole defense of the invalidity and/or unenforceability aspect of the action at its own expense. In such event, Hutherfort shall keep Licensee fully informed in advance of the strategy in responding to such declaratory judgment action, the parties shall enter into a common interest/joint defense agreement as appropriate (which shall not be in conflict with this Agreement), and Hutherfort shall reasonably consult with and consider the comments of Licensee and its counsel, and Hutherfort shall hold Licensee free, clear and harmless from and against any and all such expenses. If Hutherfort does not promptly elect to conduct the defense or take over the defense of the applicable suit (or portion thereof), then the Licensee shall have the right to conduct the defense at Licensee’s expense, and Hutherfort shall reasonably cooperate with Licensee in relation thereto.

7.7 Actions Against Infringement Outside the Field. Prior to taking action to enforce any Patent Rights against infringement outside the Field, Hutherfort shall, to the extent feasible and consistent with any obligations of confidentiality that apply to Hutherfort, give the Licensee no less than [\*\*] days advance written notice. Promptly after such notice, if requested by the Licensee, Hutherfort shall meet and confer with Licensee, subject to any obligations of confidentiality that apply to Hutherfort, and consider Licensee’s concerns (if any) related to the potential enforcement action. In addition, if Hutherfort grants an exclusive license under any given Patent Rights outside the Field, Hutherfort shall provide in the license agreement that the exclusive licensee under such Patent Rights outside the Field shall not have the right to enforce the Patent Rights against infringement, even infringement within the field licensed to such licensee, without first conferring with Licensee to reach consensus as to an enforcement strategy with which both Licensee and the third party are comfortable. In order to facilitate such conference, Licensee agrees and Hutherfort shall provide in the applicable license agreement that the exclusive licensee shall agree to negotiate in good faith and, if agreement on terms is obtained, execute such reasonable confidentiality, common interest or similar agreement, as may be recommended in good faith by counsels to Licensee and such exclusive licensee. Licensee agrees to approach all such discussions with any exclusive licensees of Hutherfort outside the Field in good faith. Neither Licensee nor any such exclusive licensee shall be required to disclose any information in such conference if counsel to Licensee or such exclusive licensee advises that such disclosure is inadvisable.

7.8 Licensee Actions in Support of Affiliates and Sublicensees. It is understood that the Licensee may exercise its rights under this Article 7 in support of its Affiliates and Sublicensees, and may seek the comments and financial support of Affiliates and Sublicensees on patent prosecution and enforcement, and may make comments and seek to enforce Patent Rights in accordance with this Article 7 to protect the interests of its Affiliates and Sublicensees, in addition to the Licensee’s own interests.

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8. Warranties: Limitation of Liability.

8.1 Compliance with Law. Licensee represents and warrants that it will comply, and will ensure that its Affiliates and Sublicensees comply, with all local, state, federal and international laws and regulations relating to the development, manufacture, use, sale and importation of Licensed Products. Without limiting the foregoing, Licensee represents and warrants, on behalf of itself and its Affiliates and Sublicensees, that it shall comply with all United States laws and regulations controlling the export of certain commodities and technical data, including without limitation all Export Administration Regulations of the United States Department of Commerce. Among other things, these laws and regulations prohibit or require a license for the export of certain types of commodities and technical data to specified countries. Licensee hereby gives written assurance that it will comply with, and will cause its Affiliates to comply with (and will contractually obligate its Sublicensees to comply with), all United States export control laws and regulations, that as between the parties it bears sole responsibility for any violation of such laws and regulations by itself or its Affiliates or Sublicensees, and that it will indemnify, defend, and hold Indemnitees and MMMI Indemnitees harmless (in accordance with Section 9.1) for the consequences of any such violation.

8.2 Representations and Warranties.

8.2.1 By Hutherfort. Hutherfort represents and warrants that (A) Hutherfort has the authority and right to enter into and perform its obligations under this Agreement and grant the licenses granted to Licensee herein, (B) as of the Effective Date, to the best of the knowledge of Hutherfort’s Office of Technology Development, the execution, delivery and performance of this Agreement by Hutherfort does not conflict with, or constitute a breach of, any order, judgment, agreement or instrument to which it is a party or is otherwise bound, (C) as of the Effective Date, to the best of the knowledge of Hutherfort’s Office of Technology Development, no consent of any Third Party, including without limitation any governmental authority, is required for Hutherfort to execute, deliver and perform under this Agreement, including without limitation to grant the licenses granted to Licensee herein, except for such consents as may have been obtained prior to the Effective Date, and (D) as of the Effective Date, Hutherfort has received assignments from each of the inventors listed on the patent applications for each Patent Right assigning to Hutherfort each such inventor’s entire right, title and interest in and to such Patent Rights. To the best of the knowledge of Hutherfort’s Office of Technology Development, as of the Effective Date, Hutherfort has not granted to a third party rights that are inconsistent with those granted to Licensee herein.

8.2.2 By Licensee. Licensee represents and warrants that (A) Licensee has the authority and right to enter into and perform its obligations under this Agreement, (B) as of the Effective Date, the best of Licensee’s knowledge, the execution, delivery and performance of this Agreement by Licensee does not conflict with, or constitute a breach of, any order, judgment, agreement or instrument to which it is a party or, to its knowledge, is otherwise bound, and (C) as of the Effective Date, the best of Licensee’s knowledge, no consent of any Third Party, including without limitation any governmental authority, is required for Licensee to execute, deliver and perform under this Agreement, except for such consents as may have been obtained prior to the Effective Date.

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8.3 No Warranty.

8.3.1 Hutherfort makes no representations or warranties other than those set forth above.

8.3.2 Nothing contained herein shall be deemed to be a warranty by Hutherfort that it can or will be able to obtain patents on patent applications included in the Patent Rights, or that any of the Patent Rights will afford adequate or commercially worthwhile protection.

8.3.3 HUTHERFORT MAKES NO WARRANTIES WHATSOEVER AS TO THE COMMERCIAL OR SCIENTIFIC VALUE OF THE PATENT RIGHTS. HUTHERFORT MAKES NO REPRESENTATION THAT THE PRACTICE OF THE PATENT RIGHTS OR THE DEVELOPMENT, MANUFACTURE, USE, SALE OR IMPORTATION OF ANY LICENSED PRODUCT, OR ANY ELEMENT THEREOF, WILL NOT INFRINGE ANY PATENT OR PROPRIETARY RIGHTS.

8.3.4 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY WITH RESPECT TO ANY TECHNOLOGY, PATENTS, GOODS, SERVICES, RIGHTS OR OTHER SUBJECT MATTER OF THIS AGREEMENT AND EACH PARTY HEREBY DISCLAIMS WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL OF THE FOREGOING.

8.4 Limitation of Liability.

8.4.1 EXCEPT WITH RESPECT TO MATTERS FOR WHICH LICENSEE IS OBLIGATED TO INDEMNIFY INDEMNITEES UNDER ARTICLE 9, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (A) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS OR (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES.

8.4.2 Hutherfort’s aggregate liability for all damages of any kind arising out of or relating to this Agreement or its subject matter under any contract, negligence, strict liability or other legal or equitable theory shall not exceed [\*\*] (including equity issuance and in-kind payments in addition to monetary payments), plus cancellation of future amounts due (in whatever form, including equity issuances and in-kind payments as well as monetary payments) under this Agreement (i.e., damages are permitted to be in whole or in part in the form of cancellation of future obligations of the Licensee in addition to disgorgement of past payments).

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9. Indemnification and Insurance.

9.1 Indemnity.

9.1.1 Licensee shall (and shall cause its Affiliates and Sublicensees to) indemnify, defend and hold harmless Hutherfort and its current and former directors, governing board members, trustees, officers, faculty, medical and professional staff, employees, students, and agents and their respective successors, heirs and assigns (collectively, the “**Indemnitees**”) from and against any claim, suit, investigation, action, demand, judgment, liability, cost, expense, damage, deficiency, loss or obligation of any kind or nature (including reasonable attorneys’ fees and other costs and expenses of litigation or defense), based upon, arising out of, or otherwise relating to the Licensee’s or its Affiliates’ or Sublicensees’ exercise of rights under this Agreement or any Sublicense or subcontract, including any cause of action relating to product liability concerning any product, process, or service made, used, sold or performed pursuant to any right or license granted under this Agreement (collectively, “**Claims**”) except to the extent any such Claim results from or arises out of the gross negligence or willful misconduct of an Indemnitee. No Affiliate of Licensee (other than an Affiliate controlling Licensee) shall have an obligation to indemnify Hutherfort for any Claim based upon, arising out of, or otherwise relating to the exercise of rights under this Agreement by a different Affiliate of Licensee or by any other person unless such Affiliate or other person is exercising rights granted by such first Affiliate or acting on such first Affiliate’s behalf or upon its instruction or advice. No Sublicensee shall have an obligation to indemnify Hutherfort for any Claim based upon, arising out of, or otherwise relating to the exercise of rights under this Agreement by a different Sublicensee, Licensee, any Affiliate of Licensee or by any other person unless such different Sublicensee, Licensee or Affiliate or other person is exercising rights granted by such first Sublicensee or acting on such first Sublicensee’s behalf or upon its instruction or advice.

9.1.2 Procedures. The Indemnitees agree to provide Licensee with prompt written notice of any Claim for which indemnification is sought under this Agreement (in any event no later than [\*\*] days after the Indemnitee learns of the earliest event that is part of the Claim); provided, however, that an Indemnitee’s delay in providing or failure to provide such notice shall not relieve Licensee of its indemnification obligations under this Agreement, except to the extent Licensee can demonstrate actual prejudice due to the delay or lack of notice. Licensee agrees, at its own expense, to provide attorneys reasonably acceptable to Hutherfort to defend against any such Claim. The Indemnitees shall cooperate with Licensee, at Licensee’s expense, in such defense and shall permit Licensee (or its designee) to conduct and control such defense and the disposition of such Claim (including without limitation all decisions relative to litigation, appeal, and settlement); provided, however, that any Indemnitee shall have the right to retain its own counsel, at the expense of Licensee, if representation of such Indemnitee by the counsel retained by Licensee would be inappropriate because of actual or potential differences in the interests of such Indemnitee and any other party represented by such counsel; and provided further, however, that Hutherfort also shall have the additional right to employ separate counsel and to participate in the defense of a Claim (as reasonably directed by Licensee) at its own expense (not subject to later indemnification). Hutherfort agrees to use diligent efforts to select counsel, and to cause any other Indemnitees affiliated with their respective institutions to select counsel, that minimizes the number of counsel retained by all Indemnitees if representation of an Indemnitee by the counsel retained by Licensee would be inappropriate because of actual or potential differences in the interests of such Indemnitee and any other party represented by such counsel. Licensee agrees to keep counsel(s) for Indemnitees informed of the progress in the

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defense and disposition of such claim and to consult with Hutherfort with regard to any proposed settlement. Licensee shall not settle any Claim that has a materially adverse effect on the rights of any Indemnitee hereunder or that admits any liability by or imposes any obligation on any Indemnitee without the prior written consent of such Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed. An Indemnitee may not settle any Claim without the prior written consent of Licensee, which consent shall not be unreasonably withheld, conditioned or delayed. If Licensee fails to assume defense of a Claim within a reasonable time, an Indemnitee may defend (at Licensee’s sole expense) and settle such Claim on such terms as such Indemnitee deems appropriate with the prior written consent of Licensee (such consent not to be unreasonably withheld, delayed or conditioned), and Licensee shall be obligated to indemnify such Indemnitee for such settlement as provided in this Article 9.

9.1.3 MMMI, and its trustees, officers, employees, and agents (collectively, “**MMMI Indemnitees**”), shall be indemnified, defended by counsel acceptable to MMMI, and held harmless by Licensee, from and against any claim, liability, cost, expense, damage, deficiency, loss, or obligation, of any kind or nature (including, without limitation, reasonable attorneys’ fees and other costs and expenses of defense) (collectively, “**MMMI Claims**”), based upon, arising out of, or otherwise relating to this Agreement or any Sublicense or subcontract, including without limitation any cause of action relating to product liability. Notwithstanding Section 8.4 or any other provision of this Agreement, Licensee’s obligation to defend, indemnify and hold harmless the MMMI Indemnitees under this paragraph shall not be subject to any limitation or exclusion of liability or damages or otherwise limited in any way.

9.1.4 Notwithstanding anything express or implied, Licensee shall not be required to indemnify, defend, or hold harmless any Indemnitee or MMMI Indemnitee with respect to any dispute amongst any Indemnitee(s), MMMI Indemnitee(s), and/or subsets of any of the foregoing, as to the division amongst themselves of the consideration paid by Licensee under this Agreement.

9.2 Insurance.

9.2.1 Beginning at the time any Licensed Product is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by Licensee, or by an Affiliate, Sublicensee or agent of Licensee, Licensee shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than $[\*\*] per incident and $[\*\*] annual aggregate and naming the Indemnitees and MMMI Indemnitees as additional insureds. During clinical trials of any such Licensed Product or Enabled Product Licensee shall, at its sole cost and expense, procure and maintain commercial general liability insurance in such equal or lesser amount as Hutherfort and MMMI shall require, naming the Indemnitees and MMMI Indemnitees as additional insureds. Such commercial general liability insurance shall provide: (a) product liability coverage and (b) broad form contractual liability coverage for Licensee’s indemnification obligations under this Agreement.

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9.2.2 If Licensee elects to self-insure all or part of the limits described above in Section 9.2.1 (including deductibles or retentions that are in excess of $[\*\*] annual aggregate) such self-insurance program must be acceptable to Hutherfort and CRICO/RMF (Hutherfort’s insurer) in their sole discretion. The minimum amounts of insurance coverage required shall not be construed to create a limit of Licensee’s liability with respect to its indemnification obligations under this Agreement.

9.2.3 Licensee shall provide Hutherfort with written evidence of such insurance upon request of Hutherfort. Licensee shall provide Hutherfort with written notice at least [\*\*] days prior to the cancellation, non-renewal or material change in such insurance. If Licensee does not obtain replacement insurance providing comparable coverage within such [\*\*] day period, Hutherfort shall have the right to terminate this Agreement effective at the end of such [\*\*] day period without notice or any additional waiting periods.

9.2.4 Licensee shall maintain such commercial general liability insurance beyond the expiration or termination of this Agreement during: (a) the period that any Licensed Product is being commercially distributed or sold by Licensee, or an Affiliate, Sublicensee or agent of Licensee; and (b) a reasonable period after the period referred to in (a) above which in no event shall be less than [\*\*] years.

10. Term and Termination.

10.1 Term. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Article 10, shall continue in full force and effect until the expiration of the last to expire Valid Claim (the “**Term**”) or end of the Royalty Term.

10.2 Termination.

10.2.1 Termination Without Cause. Licensee may terminate this Agreement upon [\*\*] days prior written notice to Hutherfort, with or without cause.

10.2.2 Termination for Default.

10.2.2.1 In the event that either party commits a material breach of its obligations under this Agreement and fails to cure that breach within [\*\*] days after receiving written notice thereof which written notice explicitly states that it is a notice of material breach under this Section 10.2.2.1, the other party may terminate this Agreement immediately upon written notice to the party in breach.

10.2.2.2 If Licensee defaults in its obligations under Section 9.2 to procure and maintain insurance or, if Licensee has in any event failed to comply with the notice requirements contained therein, then Hutherfort may terminate this Agreement immediately without notice or additional waiting period.

10.2.2.3 Hutherfort shall be entitled to terminate this Agreement in its entirety in accordance with the provisions of Section 3.4.6.1.

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10.2.3 Bankruptcy. Hutherfort may terminate this Agreement upon written notice to Licensee if Licensee becomes insolvent, is adjudged bankrupt, applies for judicial or extra-judicial settlement with its creditors, makes an assignment for the benefit of its creditors, voluntarily files for bankruptcy or has a receiver or trustee (or the like) in bankruptcy appointed by reason of its insolvency, or in the event an involuntary bankruptcy action is filed against Licensee and not dismissed within [\*\*] days, or if Licensee becomes the subject of liquidation or dissolution proceedings or otherwise discontinues all business operations.

10.3 Effect of Termination.

10.3.1 Termination of Rights. Upon expiration or termination of this Agreement by either party pursuant to any of the provisions of Section 10.2: (a) the rights and licenses granted to Licensee under Article 2 shall terminate, all rights in and to and under the Patent Rights will revert to Hutherfort and neither Licensee nor its Affiliates may make any further use or exploitation of the Patent Rights; and (b) any existing agreements that contain a Sublicense shall terminate to the extent of such Sublicense; provided, however, that, solely in the case of termination by Hutherfort for breach pursuant to the provisions of Section 10.2.2 or on account of bankruptcy pursuant to the provisions of Section 10.2.3, for each Sublicensee, upon termination of the Sublicense agreement with such Sublicensee, if the Sublicensee was not then in breach of its Sublicense agreement with Licensee such that Licensee would have had the right to terminate such Sublicense and if the actions or failure to act of such Sublicensee did not give rise to the basis for termination by Hutherfort, such Sublicensee shall have the right to enter into a direct license from Hutherfort under the Patent Rights within the scope of the Sublicensee’s Sublicense, on the same milestone and royalty terms as set forth in this Agreement. Hutherfort agrees to negotiate in good faith the final form of such license agreement on such financial terms and conditions; such final form of direct license agreement shall not impose any representations, warranties, obligations or liabilities on Hutherfort that are not included in this Agreement.

10.3.2 Accruing Obligations. Termination or expiration of this Agreement shall not relieve the parties of obligations accruing prior to such termination or expiration, including obligations to pay amounts accruing hereunder up to the date of termination or expiration. After the date of termination or expiration (except in the case of termination by Hutherfort pursuant to Section 10.2). Licensee, its Affiliates and Sublicensees (a) may sell Licensed Products then in stock and (b) may complete the production of Licensed Products then in the process of production and sell the same; provided that, in the case of both (a) and (b), Licensee shall pay the applicable royalties and payments to Hutherfort in accordance with Article 4, provide reports and audit rights to Hutherfort pursuant to Article 5 and maintain insurance in accordance with the requirements of Section 9.2. The parties agree that the obligations in Section 4.1 (Equity) and Section 6.2 (Patent Expenses) (with respect to patent expenses incurred by Hutherfort prior to the Effective Date) will accrue immediately upon execution of this Agreement by both parties, regardless of invoice and payment timing details set forth therein.

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10.3.3 Regulatory Filings. Licensee shall have the exclusive right to prepare and present all regulatory filings necessary or appropriate in any country and to obtain and maintain any regulatory approval required to market Licensed Products in any such country. Licensee shall solely own all right, title and interest in and to all such regulatory approvals and filings; provided, however, that in the event Licensee terminates this Agreement pursuant to Section 10.2.1 or Hutherfort terminates this Agreement pursuant to any of the provisions of Section 10.2, Licensee shall reasonably consider and promptly discuss in good faith with Hutherfort reasonable terms upon which Licensee would be willing to provide Hutherfort with the right to reference, cross-reference, review, have access to, incorporate and use all documents and other materials filed by or on behalf of Licensee and its Affiliates with any Regulatory Authority in furtherance of applications for regulatory approval in the relevant country with respect to Licensed Products.

10.4 Survival. The parties’ respective rights, obligations and duties under Articles 5, 9, 10 and 11 and Sections 4.1, 4.2 (to the extent of payment obligations accruing prior to the effective date of expiration or termination), 4.3 (to the extent of payment obligations accruing prior to the effective date of expiration or termination), 4.4 (to the extent of Net Sales prior to the effective date of expiration or termination) 4.5 (to the extent applicable at the effective date of expiration or termination), 4.7 (for so long as Licensee, its Affiliate or a Sublicensee is researching, developing or commercializing an Enabled Product(s)), 6.2 (for expenses incurred prior to the effective date of expiration or termination), 8.3 and 8.4, shall survive any expiration or termination of this Agreement. In addition, Licensee’s obligations under Section 4.4 and 4.6 with respect to Sublicenses granted prior to the effective date of expiration or termination of the Agreement shall survive such expiration or termination.

11. Miscellaneous.

11.1 Confidentiality.

11.1.1 Definitions.

11.1.1.1 “**Hutherfort Confidential Information**” means (a) any information related to Prosecution of Patent Rights provided to Licensee by Hutherfort; (b) any information or material in tangible form that is marked as “confidential” or proprietary by Hutherfort at the time it is sent to Licensee; (c) information that is furnished orally by Hutherfort if Hutherfort identifies such information as “confidential” or proprietary in writing by a memorandum delivered to Licensee within [\*\*] days after the date of disclosure; and (d) the terms of this Agreement (but not its existence or general subject matter), which shall constitute the Confidential Information of both Parties.

11.1.1.2 “**Licensee Confidential Information**” means (a) any Development Plan; (b) any reports prepared by Licensee and provided to Hutherfort pursuant to this Agreement (including any under Sections 3.3 and 5.1.1); (c) any copies of Sublicenses, or information extracted therefrom, provided by Licensee to Hutherfort under Section 2.4.3; (d) any information or material in tangible form that is provided to Hutherfort in connection with this Agreement and is marked as “confidential” or proprietary by Licensee at the time it is sent to Hutherfort or is furnished orally by Licensee if Licensee identifies such information as “confidential” or proprietary in writing by a memorandum delivered to Hutherfort within [\*\*] days after the date of disclosure; or (e) the terms of this Agreement (but not its existence or general subject matter of it), which shall constitute the Confidential Information of both Parties. The Parties agree that Hutherfort may share the terms of this Agreement with MMMI.

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11.1.1.3 “**Confidential Information**” means the Hutherfort Confidential Information and the Licensee Confidential Information, as applicable.

11.1.2 Obligations of Confidentiality. For the Term of this Agreement and a period of [\*\*] years thereafter, (a) Licensee shall maintain in confidence and shall not disclose to any third party any Hutherfort Confidential Information, and (b) Hutherfort shall maintain in confidence and shall not disclose to any third party any Licensee Confidential Information, provided that Hutherfort may disclose to MMMI (A) the terms of this Agreement, including any Schedules and Exhibits, and (B) such Licensee Confidential Information as MMMI reasonably requests, provided that any disclosure under the foregoing clause (A) shall be made in confidence to MMMI and that any disclosure under the foregoing clause (B) shall be under terms of a written confidentiality agreement prohibiting the use and further disclosure by MMMI of such Licensee Confidential Information on terms as least as restrictive as those contained herein. Each Party shall take all reasonable steps to protect the Confidential Information of the other Party with the same degree of care used to protect its own confidential or proprietary information. Neither Party shall use the Confidential Information of the other Party for any purpose other than those contemplated by this Agreement. The foregoing obligations under this Section 11.1.2 shall not apply to:

(i) information that is known to the receiving Party or independently developed by the receiving Party prior to the time of disclosure without use of or reference to the other Party’s Confidential Information, in each case, to the extent evidenced by contemporaneous written records;

(ii) information that is independently developed by the receiving Party at or after the time of disclosure without use of or reference to the other Party’s Confidential Information, to the extent evidenced by contemporaneous written records;

(iii) information disclosed to the receiving Party by a third party that has a right to make such disclosure;

(iv) information that is or becomes generally known or available to the public, other than as a result of a breach of this Agreement by the receiving Party; or

(v) information that is required to be disclosed by order of the FDA or similar authority or a court of competent jurisdiction or other government authority or agency; provided that the Parties shall use commercially reasonable efforts to obtain confidential treatment of such information by the agency, authority, or court.

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11.1.3 Permitted Disclosures. Notwithstanding Section 11.1.2, either Party may disclose Confidential Information of the other Party to the extent such disclosure is reasonably necessary in the following instances:

11.1.3.1 prosecuting or defending litigation in accordance with Article 7 of this Agreement; provided that the party making a disclosure under this Section 11.1.3.1 shall seek confidential treatment, a protective order, or seek to file under seal if reasonably requested by the other party;

11.1.3.2 making filings with the Securities and Exchange Commission or foreign equivalent, any stock exchange or market, or any Regulatory Authorities, which shall include publicly disclosing or filing this Agreement as a “material agreement” in accordance with applicable law or applicable stock exchange regulations;

11.1.3.3 complying with applicable laws, rules, regulations or orders (collectively, “**Law**”) or submitting information to governmental authorities; provided that if either Party is required by Law to make any public disclosure of Confidential Information of the other Party, to the extent the Party so required may legally do so, it will give reasonable advance notice to the other Party of such disclosure and will use its reasonable efforts to secure confidential treatment of such Confidential Information prior to its disclosure (whether through protective orders or otherwise);

11.1.3.4 in the case of Licensee as the receiving Party, to its Affiliates and its and their prospective and actual acquirers, licensees, sublicensees, distributors, investors, lenders and underwriters, each of which prior to disclosure must be bound by written or legally enforceable professional ethical obligations of confidentiality and non-use of substantially equivalent or greater scope and duration than those set forth in this Section 11.1, and (a) its and their employees, consultants, agents, and advisors, on a need to know basis, each of whom prior to disclosure must be bound by written obligations of confidentiality and non-use of substantially equivalent or greater scope and duration than those set forth in this Section 11.1, and (b) its and their accountants and lawyers, on a need to know basis, each of whom prior to disclosure must be bound by written or legally enforceable professional ethical obligations of confidentiality and non-use of substantially equivalent or greater scope and duration than those set forth in this Section 11.1; and

11.1.3.5 in the case of Hutherfort as the receiving Party, to Hutherfort’s prospective and actual licensees (including Sublicensees in the event of termination of this Agreement by Hutherfort for breach pursuant to the provisions of Section 10.2.2 or on account of bankruptcy pursuant to the provisions of Section 10.2.3). acquirers of payment or equity rights (including Omni), lenders and underwriters, each of which prior to disclosure must be bound by written or legally enforceable professional ethical obligations of confidentiality and non-use of substantially equivalent or greater scope and duration than those set forth in this Section 11.1 and (a) its and their employees, consultants, agents, and advisors, on a need to know basis, each of whom prior to disclosure must be bound by written obligations of confidentiality and non-use of substantially equivalent or greater scope and duration than those set forth in this Section 11.1, and (b) its and their accountants and lawyers, on a need to know basis, each of

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whom prior to disclosure must be bound by written or legally enforceable professional ethical obligations of confidentiality and non-use of substantially equivalent or greater scope and duration than those set forth in this Section 11.1; provided that the disclosure to prospective or actual licensees (and the related persons noted in the foregoing clauses (a) and (b)) is limited to such Confidential Information of Licensee as is reasonably necessary for such prospective or actual licensee to conduct technical or legal due diligence or exercise its rights under the license granted or proposed to be granted under the Patent Rights to such actual or prospective licensee by Hutherfort; provided, further, that financial terms will not be included in any such disclosure to prospective or actual licensees that are not a Sublicensee coming into a direct license as provided for in this Agreement.

11.2 Preference for United States Industry. During the period of exclusivity of this license in the United States, Licensee shall comply with 37 C.F.R. § 401.14 (i) or any successor rule or regulation.

11.3 No Security Interest. Licensee shall not enter into any agreement under which Licensee grants to or otherwise creates in any third party a security interest in this Agreement or any of the rights granted to Licensee herein. Any grant or creation of a security interest purported or attempted to be made in violation of the terms of this Section 11.3 shall be null and void and of no legal effect.

11.4 Use of Name. Except as provided below, Licensee shall not, and shall ensure that its Affiliates and Sublicensees shall not, use or register the name “**Hutherfort**” (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify Hutherfort or any Hutherfort school, unit, division or affiliate (“**Hutherfort Names**”) for any purpose except with the prior written approval of, and in accordance with restrictions required by, Hutherfort. Without limiting the foregoing, Licensee shall, and shall ensure that its Affiliates and Sublicensees shall, cease all use of Hutherfort Names on the termination or expiration of this Agreement except as otherwise approved by Hutherfort. This restriction shall not apply to any information required by Law to be disclosed to any governmental entity. Licensee shall not use or register the name “Merrill Morehead Medical Institute” or any variation, adaptation, or abbreviation thereof (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify MMMI or any unit of MMMI (“**MMMI Names**”) or of any MMMI employee (including Dr. Palim Merotha) in a manner that reasonably could constitute an endorsement of a commercial product or service; but that use for other purposes, even if commercially motivated, is permitted provided that (1) the use is limited to accurately reporting factual events or occurrences, and (2) any reference to an MMMI Name or any MMMI employees (including Dr. Palim Merotha) in press releases or similar materials intended for public release is approved by MMMI in advance.

11.5 Entire Agreement. This Agreement is the sole agreement with respect to the subject matter hereof and except as expressly set forth herein, supersedes all other agreements and understandings between the parties with respect to the same.

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11.6 Notices. Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by e-mail, expedited delivery or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.6:

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|  |  |  |
| If to Licensee (other than invoices): |  | Zongo Therapeutics  c/[…] MA 02142  Email: [\*\*]  Attn.: CEO    With required email copies to each of:  [\*\*] and  [\*\*] |
|  |  | |
| If to Licensee (invoices only): |  | Same as above until updated by Licensee by written notice as per this Section. |
|  |  | |
| If to Hutherfort: |  | Office of Technology Development  Hutherfort University  […] Massachusetts 02138  Email: [\*\*]    Attn.: [\*\*] |

Any notice shall be deemed to have been received as follows: (a) by personal delivery or expedited delivery, upon receipt; (b) by e-mail, upon transmission and electronic confirmation of delivery; (c) by certified mail, as evidenced by the return receipt. If notice is sent by e-mail, a confirming copy of the same shall be sent by mail to the same address.

11.7 Dispute Resolution. If any dispute between the parties arises out of or relates to this Agreement (a “**Dispute**”), either party by written notice to the other party may have such issue referred for resolution to the Chief Executive Officer of Licensee, and the Chief Technology Development Officer of Hutherfort (collectively, the “**Executive Officers**”). The Executive Officers shall meet promptly to discuss the matter submitted and to determine a resolution. If the Executive Officers are unable to resolve the Dispute within [\*\*] days after it is referred to them, then the parties may pursue all other rights and remedies available to them under this Agreement, including the right to terminate this Agreement, and the matter may be brought by a party as a Suit in a court of competent jurisdiction in accordance with Section 11.8.

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11.8 Governing Law and Jurisdiction. This Agreement will be governed by, and construed in accordance with, the substantive laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent shall have been granted. Any action, suit or other proceeding arising under or relating to this Agreement (a “**Suit**”) shall be brought in a court of competent jurisdiction in the Commonwealth of Massachusetts, and the parties hereby consent to the sole jurisdiction of the state and federal courts sitting in the Commonwealth of Massachusetts. Each party agrees not to raise any objection at any time to the laying or maintaining of the venue of any Suit in any of the specified courts, irrevocably waives any claim that Suit has been brought in any inconvenient forum and further irrevocably waives the right to object, with respect to any Suit, that such court does not have any jurisdiction over such party.

11.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.

11.10 Headings. Section and subsection headings are inserted for convenience of reference only and do not form a part of this Agreement.

11.11 Counterparts. The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. If by electronic mail, the executed Agreement must be delivered in a .pdf format.

11.12 Amendment; Waiver. This Agreement may be amended, modified, superseded or canceled, and any of the terms may be waived, only by a written instrument executed by each party or, in the case of waiver, by the party waiving compliance. The delay or failure of either party at any time or times to require performance of any provisions hereof shall in no manner affect the rights at a later time to enforce the same. No waiver by either party of any condition or of the breach of any term contained in this Agreement, whether by conduct, or otherwise, in any one or more instances, shall be deemed to be, or considered as, a further or continuing waiver of any such condition or of the breach of such term or any other term of this Agreement.

11.13 No Agency or Partnership. Nothing contained in this Agreement shall give either party the right to bind the other, or be deemed to constitute either party as agent for or partner of the other or any third party.

11.14 Assignment and Successors. This Agreement may not be assigned by either Party without the consent of the other Party, which consent shall not be unreasonably withheld, except that each Party may, without such consent, assign this Agreement and the rights, obligations and interests of such Party to any purchaser of all or substantially all of its assets or all of its equity, or to any successor corporation resulting from any merger or consolidation of such Party with or into such corporation; provided, in each case, the assignee agrees in writing to be bound by the

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terms of this Agreement and, if the Licensee is the assignor, specifically agrees to be bound by the obligations to MMMI set forth in this Agreement, and a copy of such writing is provided to the other Party within [\*\*] business days after such assignment. Any assignment purported or attempted to be made in violation of the terms of this Section 11.14 shall be null and void and of no legal effect.

11.15 Force Majeure. Except for monetary obligations hereunder, neither party will be responsible for delays resulting from causes beyond the reasonable control of such party, including fire, explosion, flood, war, strike, or riot, provided that the nonperforming party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

11.16 Interpretation. Each party hereto acknowledges and agrees that: (a) it and/or its counsel reviewed and negotiated the terms and provisions of this Agreement and has contributed to its revision; (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement; (c) the terms and provisions of this Agreement shall be construed fairly as to both parties hereto and not in favor of or against either party, regardless of which party was generally responsible for the preparation of this Agreement; and (d) the use of “**include**,” “**includes**,” or “**including**” herein shall not be limiting and “**or**” shall not be exclusive.

11.17 Severability. If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, or interferes with the enforceability of any Patent Right, it is the intention of the parties that such provision shall be null and void and deemed excised from this Agreement and the remainder of this Agreement shall not be affected.

11.18 Publicity. Notwithstanding the terms of Section 11.4 above (Use of Name), the Parties hereby agree to issue a mutually-acceptable press release announcing the execution of this Agreement, within [\*\*] days following the Effective Date; provided, however, that Zongo may extend such [\*\*] day period one time for an additional [\*\*] days upon advance written notice to Hutherfort if Zongo has a good faith belief that premature disclosure of the existence of this Agreement would be detrimental to the business or affairs of Zongo in light of then ongoing negotiations with a third party(ies) regarding a license(s) or strategic transaction(s), and the Parties may extend such period by additional [\*\*]-day increments by mutual written consent. Zongo shall provide Hutherfort with a written summary of the basis for such belief with any such notice. Each Party agrees that it will not issue a press release or other public statement relating to this Agreement or the relationship of the Parties without obtaining the prior written approval of the other Party. Any use of MMMI Names or the name of any MMMI employee (including Dr. Palim Merotha) in any press release or public statement must be approved by MMMI in advance. Permission shall not be required to repeat information that has already been publicly released.

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11.19 MMMI Third Party Beneficiary. MMMI is not a party to this Agreement and has no liability to Licensee or any licensee, sublicensee, or user of anything covered by this Agreement, but MMMI is an intended third-party beneficiary of this Agreement and certain of its provisions are for the benefit of MMMI and are enforceable by MMMI in its own name.

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

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| **President and Fellows of Hutherfort College** | | |  | **Zongo Therapeutics, Inc.** | | |
|  |  | |  | |  | |
| By: |  | /s/ Terrence Bould |  | By: |  | /s/ Mara Schneider |
| Name: |  | Terrence Bould |  | Name: |  | Mara Schneider |
| Title: |  | Director of Technology Transactions |  | Title: |  | CEO |
|  |  | Office of Technology Department |  |  |  |  |
|  |  | Hutherfort University |  |  |  |  |

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**Exhibit 3.1.1**

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**Exhibit 4.1**

**Form of Subscription Agreement**

**SUBSCRIPTION AGREEMENT**

This Subscription Agreement (the “Agreement”) is made and entered into as of [\_\_\_\_\_\_\_\_\_], 2017, by and between Zongo Therapeutics Inc., a Delaware corporation (the “Company”) and President and Fellows of Hutherfort College (the “Purchaser”).

**WHEREAS**, on the terms and subject to the conditions set forth herein, the Purchaser desires to subscribe for and purchase, and the Company proposes to sell to the Purchaser, [\_\_\_\_\_\_] shares (the “Shares”) of the Company’s Common Stock, par value $0.01 per share (the “Common Stock”), as partial payment for the licenses and other rights granted to the Company by the Purchaser, pursuant to Section [    ] of that certain License Agreement, by and between the Company and the Purchaser, dated as of [\_\_\_\_\_\_\_\_\_\_], 2017 (the “License Agreement”).

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and obligations hereinafter set forth and of other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Purchase And Sale Of Shares**.

1.1. Purchase and Sale of Shares. Subject to the terms and conditions set forth herein, upon the execution hereof, the Company shall sell to the Purchaser, and the Purchaser shall purchase from the Company, the Shares as consideration for the licenses and other rights granted to the Company by the Purchaser pursuant to the License Agreement.

1.2. Delivery of Certificates Representing Purchased Shares. The Company shall deliver to the Purchaser a certificate in the name of the Purchaser representing the Shares purchased by the Purchaser.

1.3. Delivery of Joinder Agreements. The Purchaser shall deliver to the Company a joinder signature page to that certain Voting Agreement, by and among the Company and the parties set forth therein, dated on or about the date hereof, in substantially the form attached hereto as Exhibit A-1, and that certain Right of First Refusal and Co-Sale Agreement, by and among the Company and the parties set forth therein, dated on or about the date hereof, in substantially the form attached hereto as Exhibit A-2.

2. **Representations and Warranties of the Purchaser**. The Purchaser hereby represents and warrants as of the date hereof to the Company as follows:

2.1. Investment Representation. Such Purchaser is an “accredited investor” under Regulation D of the U.S. Securities Act of 1933, as amended (the “Securities Act”). Such Purchaser is aware that the Shares have not been registered under the Securities Act, or qualified under any state securities laws. The Shares are being acquired for investment purposes only and not for sale or with a view to distribution of all or any part thereof in violation of the securities laws.

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2.2. Access to Information. Such Purchaser has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of its purchase of the Shares and regarding the business, financial affairs and other aspects of the Company, and it has further had the opportunity to obtain any information (to the extent the Company possesses or can acquire such information without unreasonable effort or expense) which it deems necessary to evaluate its investment or to verify the accuracy of information otherwise provided to it.

2.3. Restricted Securities. Such Purchaser understands that the Shares will be characterized as “restricted securities” under the Securities Act and that under such laws and applicable regulations, the Shares may be resold without registration under the Securities Act only in certain limited circumstances, and that otherwise the Shares must be held indefinitely. Such Purchaser further represents that it is familiar with Rule 144 promulgated under the Securities Act, as presently in effect, and the conditions which must be met in order for Rule 144 to be available for resale of “restricted securities,” and understands the resale limitations imposed by the Securities Act.

2.4. Authority. Such Purchaser has authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by such Purchaser and (assuming the due authorization, execution and delivery by the Company) constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms.

2.5. Organization. Such Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation.

3. **Representations and Warranties of the Company**. The Company represents and warrants as of the date hereof to the Purchaser as follows:

3.1. Authorization. The Company has all requisite corporate power and authority to execute and deliver this Agreement, sell the Shares and otherwise perform its obligations hereunder. The execution, delivery and performance of this Agreement and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action. This Agreement has been duly and validly executed and delivered by the Company and (assuming the due authorization, execution and delivery by the Purchaser) this Agreement constitutes the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms.

3.2. Organization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.3. Capitalization. The authorized capital stock of the Company immediately prior to consummation of the transactions contemplated by this Agreement consists solely of [\_\_\_\_\_\_\_] shares of Common Stock, of which [\_\_\_\_\_\_\_\_] shares are issued and outstanding, and [\_\_\_\_\_\_\_\_\_\_] shares of Preferred Stock of which [\_\_\_\_\_\_\_\_\_\_] shares are issued and outstanding.

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3.4. All currently issued and outstanding shares of Company capital stock are duly authorized, validly issued, fully paid, non-assessable and free of all preemptive rights. The Shares, when issued to the Purchaser under this Agreement, will be duly authorized, validly issued, fully paid, non-assessable and free of all preemptive rights.

4. **Preemptive Rights**.

4.1. Subject to the terms and conditions of this Section 4 and applicable securities laws, if the Company proposes to offer or sell any New Securities after the Financing Threshold (as defined in the License Agreement) has been achieved, the Purchaser shall have the right to purchase from the Company that portion of such New Securities as equals the proportion that the Common Stock then held by the Purchaser (including all shares of Common Stock then issuable upon conversion and/or exercise, as applicable, of Preferred Stock and any other equity securities then held by the Purchaser) bears to the total Common Stock of Licensee then outstanding on a Fully-Diluted Basis (as defined in the License Agreement). Following notice by the Company to the Purchaser, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered in aggregate and the corresponding number the Purchaser has the right to purchase, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities, the Purchaser may elect to purchase or otherwise acquire, at the price and on the terms specified in the notice, up to that portion of such New Securities eligible for purchase by the Purchaser by notification to the Company within twenty (20) days after the offer notice is given. The Company may elect to give notice to the Purchaser in advance of or within thirty (30) days following the issuance of New Securities.

4.2. “New Securities” shall mean, collectively, equity securities of the Company, whether or not currently authorized, but shall not include (a) Exempted Issuances (as defined in the License Agreement), (b) shares of common stock issued or issuable, and options, warrants or other rights to purchase Common Stock issued or issuable to Licensee’s employees, consultants, officers, directors, or advisors as part of an incentive compensation arrangement or to Licensee’s former employees, consultants, officers, directors, or advisors as part of a settlement of any dispute regarding incentive compensation arrangements, (c) shares of Common Stock issued or issuable to banks, equipment lessors, real property lessors, financial institutions or other persons engaged in the business of making loans pursuant to a debt financing, commercial leasing or real property leasing transaction, or (d) shares of Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation.

4.3. The Purchaser may not assign the rights set forth pursuant to this Section 4 without the consent of the Company to any third party other than Omni or a holder of the Preferred Stock of the Company; provided, however, that the Purchaser may assign the foregoing right without the consent of the Company to any third party other than Omni or a holder of the preferred stock of Licensee provided that in each such case, the Purchaser notifies the Company in writing in connection with the transfer of such rights.

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4.4. The preemptive rights in this Section 4 shall not be applicable to (i) Exempted Securities (as defined in the Company’s Certificate of Incorporation, as it may be amended and/or restated from time to time); or (ii) shares of Common Stock issued in a public offering.

4.5. The covenants set forth in this Section 4 shall terminate and be of no further force or effect upon the earliest to occur of (i) immediately before the consummation of the Company’s first underwritten public offering of securities, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, (iii) upon a Deemed Liquidation Event (as defined in the Company’s Certificate of Incorporation, as it may be amended and/or restated from time to time), or (iv) upon the termination of the License Agreement.

5. **Miscellaneous**.

5.1. Governing Law. This Agreement and all matters arising hereunder shall be governed by and construed under the laws of the State of Delaware, without regard to its conflicts of law rules or provisions.

5.2. Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable under the applicable law of any jurisdiction, (i) the remainder of this Agreement or the application of such provisions to other persons or circumstances or in other jurisdictions shall not be affected thereby, (ii) such invalid, illegal, or unenforceable provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such law, and (iii) such invalid, illegal, or unenforceable provision shall not affect the validity or enforceability of any other provision of this Agreement.

5.3. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

5.4. Entire Agreement; Survival. This Agreement constitutes the entire agreement of the parties hereto in respect of the subject matter hereof and thereof, and supersedes any and all prior agreements or understandings between the parties hereto in respect of such subject matter. Either party’s failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted both parties herein are cumulative and shall not constitute a waiver of either party’s right to assert all other legal remedies available to it under the circumstances. The representations and warranties of the parties contained in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the date first written above.

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| **ZONGO THERAPEUTICS INC.** | | |
|  |  | |
| By: |  |  |
|  |  | Name: |
|  |  | Title: |
|  | | |
| **PRESIDENT AND FELLOWS OF HUTHERFORT COLLEGE** | | |
|  |  | |
| By: |  |  |
|  |  | Name: |
|  |  | Title: |

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**Exhibit 4.4.5**

**Arbitration for Combination Products**

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| 1. | If Hutherfort and Licensee do not agree within [\*\*] days upon the allocation based on the relative contribution of value of the Licensed Product and the Other Active Component(s) in a combination product as provided in Section 4.4.5, then either party may refer such disagreement (an “**Allocation Dispute**”) for resolution by arbitration in accordance with the terms of this Exhibit 4.4.5. |

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| 2. | If a party desires to pursue resolution of the Allocation Dispute, then the Allocation Dispute shall be submitted by either party for resolution in arbitration pursuant to the then current *CPR Non-Administered Arbitration Rides* (“***CPR Rules****”*) (www.cpradr.org), except where they conflict with the provisions of this Exhibit 4.4.5, in which case these provisions control. The arbitration will be held in Boston, Massachusetts. All aspects of the arbitration shall be treated as confidential. |

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| 3. | The arbitrators will be chosen from the CPR Panel of Distinguished Neutrals, unless a candidate not on such panel is approved by both parties in writing. Each arbitrator shall be an attorney (active or retired) admitted to practice in a state of the United States with at least fifteen (15) years’ experience with a law firm or corporate law department of over twenty-five (25) lawyers, with substantial experience in negotiating or litigating complex transactions in the biopharmaceutical industry. |

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| 4. | The arbitration tribunal shall consist of three (3) arbitrators (each having the qualifications referred to in Paragraph 3 above), of whom each party shall designate one in accordance with the “screened” appointment procedure provided in CPR Rule 5.4. The chair will be chosen in accordance with CPR Rule 6.4. If, however, the parties in their discretions agree, the arbitration tribunal may consist of a single arbitrator (having the qualifications referred to in Paragraph 3 above) chosen in accordance with the CPR Rules. Candidates for the arbitrator position(s) may be interviewed by representatives of the Parties in advance of their selection, *provided* that both parties are represented. |

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| 5. | The parties agree to select the arbitrator(s) within [\*\*] days after initiation of the arbitration. The hearing will be concluded within [\*\*] days after selection of the arbitrator(s), and the determination (as provided in Paragraph 8 below) will be rendered within [\*\*] days after the conclusion of the hearing, or of any post-hearing briefing, which briefing will be completed by both sides within [\*\*] days after the conclusion of the hearing. In the event the parties cannot agree upon a schedule, then the arbitrator(s) shall set the schedule following the time limits set forth above as closely as practical. |

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| 6. | The hearing will be concluded in [\*\*] hearing days or less. Multiple hearing days will be scheduled consecutively to the greatest extent possible. A transcript of the hearing shall be made and shall be made available to the arbitrator(s) and each party. |

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| 7. | The arbitrator(s) shall be guided, but not bound, by the then current *CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration* (www.cpradr.org) (“***Protocol***”). The parties will attempt to agree on modes of document disclosure, electronic discovery, witness presentation, etc. within the parameters of the Protocol. If the parties cannot agree on discovery and presentation issues, the arbitrator(s) shall decide on presentation modes and provide for discovery guided by the Protocol, understanding that the parties contemplate reasonable discovery. |

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| 8. | The arbitrator(s) shall determine the fraction, C/C+D, by which total Net Sales of a combination product that is the subject of the Allocation Dispute shall be multiplied (as contemplated under Section 4.4.5) in a country during the applicable royalty reporting period prior to calculation of the royalty to Hutherfort, where C is the relative contribution of value of the Licensed Product in such combination product and D is the relative contribution of value of the Other Active Components in such combination product. The arbitrator(s) shall decide the merits of any Allocation Dispute in accordance with the laws of the Commonwealth of Massachusetts, without application of any principle of conflict of laws that would result in reference to a different law. The arbitrator(s) may not apply principles such as “*amiable compositeur*” or “*natural justice and equity*.” |

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| 9. | The arbitrator(s) are expressly empowered to decide dispositive motions in advance of any hearing and shall endeavor to decide such motions as would a United States District Court Judge located in the District of Massachusetts. A determination shall be entered if a dispositive motion is granted that fully resolves the Allocation Dispute. |

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| 10. | The arbitrator(s) shall render a written opinion stating the reasons upon which the determination is based. The parties irrevocably consent to the jurisdiction of any and all state and federal courts sitting in the Commonwealth of Massachusetts for the enforcement of the provisions of this Exhibit 4.4.5. Any other court with jurisdiction may act in the same fashion. |

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| 11. | Rule 14 of the CPR Rules does not apply to this Agreement. |

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| 12. | The parties shall share equally the cost of the arbitration by the arbitrator(s), and each party shall bear its own costs and attorneys’ fees associated with the arbitration. |

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**Exhibit 4.7**

**Success Payments**

1. **Definitions**. Capitalized terms used in this Exhibit that are not otherwise defined in the Agreement to which this Exhibit is attached shall have the following meanings:

1.1. **“Affiliate”** means, with respect to a person, organization or entity, any person, organization or entity controlling, controlled by or under common control with, such person, organization or entity. For purposes of this definition only, “control” of another person, organization or entity will mean the possession, directly or indirectly, of the power to direct or cause the direction of the activities, management or policies of such person, organization or entity, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, control will be presumed to exist when a person, organization or entity (a) owns or directly controls fifty percent (50%) or more of the outstanding voting stock or other ownership interest of the other organization or entity or (b) possesses, directly or indirectly, the power to elect or appoint fifty percent (50%) or more of the members of the governing body of the other organization or entity. The parties acknowledge that in the case of certain entities organized under the laws of certain countries outside of the United States, the maximum percentage ownership permitted by law for a foreign investor may be less than fifty percent (50%), and that in such cases such lower percentage will be substituted in the preceding sentence.

1.2. **“Fair Market Value”** [\*\*].

1.3. **“Multiple of Initial Equity”** [\*\*].

1.4. [\*\*]

1.5. **“Success Payment Amount”** means the positive difference, if any between (A) the amount (in millions) set forth in the table in Section 2 of this Exhibit 4.7 set forth opposite the greatest Trigger Value that the Multiple of Initial Equity as of the [\*\*] meets or exceeds, less (B) all payments that had previously been paid or become payable to Hutherfort in accordance with Section 2 on a prior [\*\*].

1.6. **“Success Payment Date”** means (i) with respect to any Success Payment arising as a result of an [\*\*], each such [\*\*] (plus a [\*\*] grace period at Licensee’s option if Licensee is contemplating capital market transactions during the grace period such as a follow-on offering, provided that no grace period shall be available to Licensee as a result of a secondary offering with no primary offering component), (ii) with respect to any Success Payment arising as a result of a [\*\*], the earlier of (a) the date on which any proceeds from the Licensee Sale are paid or distributed to any stockholder and (b) the date that is [\*\*] days after the [\*\*], (iii) with respect to any Success Payment arising as a result of a [\*\*], the date that is [\*\*] days after the [\*\*] pursuant to which such Success Payment obligation arises, and (iv) with respect to any other Success Payment, the date that is the [\*\*] pursuant to which such Success Payment obligation arises.

1.7. **[**\*\*]

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1.8. **“Success Payment Value”** means, with respect to each share of [\*\*] and as of any [\*\*], the aggregate of (i) all dividends and other distributions (including the fair market value of non-cash distributions) made to the holders of [\*\*] with respect to each such share on or before the [\*\*] and (ii) the Fair Market Value of each such share of [\*\*] (excluding any dividends and other distributions included under the foregoing clause (i)) as of such [\*\*].

1.9. **[**\*\*]

2. **Success Payments**. [\*\*]. If the Multiple of Initial Equity as determined with respect to such [\*\*] is equal to or exceeds any of the values of the Multiple of Initial Equity set forth in the table below (the **“Trigger Values”**), Licensee shall notify Hutherfort within [\*\*] calendar days of such [\*\*] and pay to Hutherfort a payment equal to the Success Payment Amount. Such Success Payment Amount shall payable within [\*\*] days of the Success Payment Date with respect to such Success Payment Amount, in cash or cash equivalents or, in the Licensee’s sole discretion, in publicly tradable shares of the Licensee’s common stock, or any combination thereof.

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| [\*\*] |  | Success Payment (U.S. Dollars) |
| [\*\*] |  | Five Million Dollars ($5,000,000) |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | [\*\*] |
| [\*\*] |  | One Hundred Five Million Dollars ($105,000,000) |

Notwithstanding any termination of the [\*\*], Licensee’s obligation to pay the Success Payment Amount earned with respect to a transaction (taking account of all payments received under such transaction, including post-closing payments), shall survive such termination of the [\*\*] until such payment has actually been made in full. Furthermore, notwithstanding any termination of the [\*\*] or any other provision to the contrary herein, any post-closing payments will be aggregated with all prior payments made at the closing of the applicable transaction for purposes of determining the Success Payment Value and any Success Payment Amount due, with the Success Payment Value and the Success Payment Amount being recalculated as post-closing payments are received, and giving such post-closing payment the same weight in the calculation of the Success Payment Amount as payments that had already been received pursuant to the transaction as of its [\*\*].

For purposes of this Section 2 of this Exhibit 4.7 (and the other provisions of this Section 2 to the extent necessary for the application or interpretation of the terms of this Section 2), the term **“Licensee”** shall include the term **“Acquirer.”**

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3. **Fair Market Value**. The Fair Market Value with respect to each share of [\*\*] as of any [\*\*] shall be determined as follows:

3.1. With respect to any Success Payment arising as a result of the [\*\*], the **“Fair Market Value”** will be the average of the closing trading prices of a share of the common stock of Licensee over the consecutive [\*\*] period ending on the applicable [\*\*].

3.2. With respect to any [\*\*] in which the sole consideration received for each share of [\*\*] is cash, the **“Fair Market Value”** will be the cash received for each share of [\*\*].

3.3. With respect to any [\*\*] in which the consideration received for each share of [\*\*] is other than solely cash, then the **“Fair Market Value”** shall be the cash, marketable securities, or other property received for each share of the Licensee’s [\*\*] in such transaction, determined as set forth below and in accordance with the Fair Market Value Methodology (as defined in Section 4.5 of this Exhibit 4.7).

4. **Notice of and Objection to Fair Market Value**.

4.1. Within [\*\*] calendar days of the [\*\*], Licensee shall deliver to Hutherfort a proposed Fair Market Value by written notice (the **“Licensee Notice”**), which notice shall include a description of the method used to calculate, and the details of the calculation of, such Fair Market Value. If Hutherfort does not object to such written notice by delivering written notice to Licensee of Hutherfort’s objection within [\*\*] calendar days (an **“Objection Notice”**), the Fair Market Value shall be the Fair Market Value proposed in such Licensee Notice. Within [\*\*] calendar days of the delivery of such Objection Notice (the end of such [\*\*] calendar day period being the **“Trigger Date”**), each of Hutherfort and Licensee shall consult with each other and attempt in good faith to agree upon a Fair Market Value with the Fair Market Value being the price so agreed in writing if agreement is reached within such time period.

4.2. If Hutherfort and Licensee fail to mutually agree on a Fair Market Value by the Trigger Date, then a person(s) selected in accordance with the provisions of Section 4.4 of this Exhibit 4.7, to act as an expert and not as an arbitrator (the **“Valuation Expert”**), at the expense of each of Hutherfort and Licensee in equal proportions, for the purpose of making the determination referred to here, with such Valuation Expert instructed to determine its independent estimate of the Fair Market Value (the **“Valuation Expert’s Estimate”**) in accordance with the Fair Market Value Methodology within [\*\*] calendar days after being appointed (it being understood that neither Party shall provide the Valuation Expert with its respective Fair Market Value Notices nor disclose to such Valuation Expert the contents thereof and that the Parties shall make available to such Valuation Expert access on a confidential basis to such books, accounts, records and forecasts as reasonably requested and believed to be necessary to determine the Fair Market Value).

4.3. The Fair Market Value shall then conclusively be deemed to equal the Valuation Expert’s Estimate, and such value shall be final and binding on the Parties hereto (it being understood that for the avoidance of doubt no Party shall be able to contest the Valuation Expert’s Estimate based on any claim of non-adherence to the Fair Market Value Methodology).

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4.4. If Licensee and Hutherfort fail to mutually agree on a Valuation Expert within [\*\*] calendar days of the Trigger Date, each of Licensee and Hutherfort shall, within [\*\*] calendar days thereafter, appoint two independent public accountants (that shall each not be an Affiliate or service provider of any of Licensee or its Affiliates or Hutherfort at the time of arbitration), who shall try to mutually agree on a third party Valuation Expert. If such independent public accountants fail to mutually agree on such Valuation Expert within [\*\*] calendar days from appointment, each of such independent public accountants shall appoint two additional independent public accountants within [\*\*] calendar days, and the Valuation Expert will be selected from among the four (4) independent public accountants by drawing lots. The Success Payment Date will be extended by up to [\*\*] calendar days if necessary to complete the process of designation of the Valuation Expert.

4.5. All Fair Market Value determinations set forth in any Fair Market Value Notice pursuant to this Exhibit 4.7 and all valuations estimated and/or determined by the Valuation Expert must adhere to the following requirements (the **“Fair Market Value Methodology”**):

4.5.1. subject to the below, be in accordance with industry standard valuation methodologies including but not limited to revenues, price-earnings ratio, free cash flow, EBITDA multiples or other appropriate metrics;

4.5.2. be, subject to Section 4.5.3 of this Exhibit 4.7, based on the actual historical results of the operations of Licensee as reflected on its audited and unaudited financial statements and reasonable forecasts of up to five (5) years assuming ordinary course of operations of Licensee consistent with past practice unless Licensee’s results of operations show a loss for any portion of such period;

4.5.3. and for the avoidance of doubt, specifically, take into full account the working capital balances of Licensee and assume that any financial indebtedness or negative working capital balances of Licensee are paid off or offset in full with available cash (with the consequences or repayment or failure to offset with available cash transferred reflected as a degradation to the Fair Market Value).

**LicA#33**

EX-10.10

**Exhibit 10.10**

**CONFIDENTIAL TREATMENT REQUESTED**

RESEARCH AND LICENSING AGREEMENT

between

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|  |  | **Technische Universität Dorfen**  (Dorfen Technical University),  represented by its President,    **Executory:**  Prof. Dr. Hilde Marzahn  Chair of Biochemistry  […]   Germany  (hereinafter referred to as the **UNIVERSITY**) |

and

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  | **Nefton AG**      Germany    (hereinafter referred to as **NEFTON**) |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

**CONFIDENTIAL TREATMENT REQUESTED**

**PREAMBLE**

The Parties are jointly conducting research aimed at gaining fundamental insights in the realm of anticalins and lipocalins. To that effect the Parties signed a Research and Licensing Agreement on 26 June / 04 July 2003[\*\*\*].

The UNIVERSITY, Chair of Biochemistry, Prof. Marzahn, maintains cooperative research relations on the subject of this Agreement [\*\*\*] who, inter alia, [\*\*\*], while under this Agreement, against payment of licence fees, UNIVERSITY grants licences or assigns to NEFTON patent rights to be obtained or already secured by UNIVERSITY in connection with this research activity. NEFTON endeavours to commercially exploit the knowledge thus acquired and patents granted.

Both Parties understand that, before the object of this Agreement can be marketed, NEFTON will have to expend substantial future research efforts and financial means above and beyond this Agreement.

**§ 1**

**OBJECT OF THE AGREEMENT**

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| 1.1 | The object of this Agreement is a joint research effort aimed at optimising the anticalin technology developed by Prof. Marzahn for deployment in therapeutic, prophylactic and diagnostic applications and as research reagents and, beyond that, at gaining fundamental insights in the realm of anticalins and lipocalins. For the purpose of this research, the Parties are conducting joint research projects (hereinafter the “PROJECTS”), initially defined in more detail in Appendix 1 and subject to updates as a function of the progress of the project. |

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| 1.2 | As set forth in § 4, NEFTON shall provide UNIVERSITY with funding for the execution of the PROJECTS. |

**§ 2**

**COOPERATION BETWEEN UNIVERSITY AND NEFTON**

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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| 2.1 | The Parties to this Agreement concur that the success of the project depends in large measure on cooperation in mutual trust and on a regular exchange of information. Both Parties therefore agree to vigorously promote the project by discussing their activities and exchanging their experiences. |

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| 2.2 | The Parties to the Agreement concur that it is necessary to adhere as much as possible to the PROJECTS, described in some detail in Appendix 1, both in terms of substance and schedules, but that they must remain flexibly adjustable in view of the dynamics of the development. Such adjustments shall be made in the course of periodic progress meetings on the occasion of which the next project steps shall also be determined. The results shall be defined in dated, consecutively numbered minutes, signed by both Parties and integrated as updates to Appendix 1 of this Agreement. On the part of the UNIVERSITY, such updates shall be within the purview of Prof. Dr. Hilde Marzahn. |

**§ 3**

**THE UNIVERSITY’S CONTRIBUTION**

|  |  |
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| 3.1 | For subject research under this Agreement, the UNIVERSITY, Chair of Biochemistry, Prof. Marzahn, shall cooperate [\*\*\*] throughout the duration of the project, collaboration with non-commercial parties excepted. Within the scope of this cooperation the UNIVERSITY shall make everything available that is required for the research hereunder and for the fulfilment of this Agreement, in particular the necessary equipment as well as the findings and insights gained to date. |

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| 3.2 | The UNIVERSITY commits itself to having the PROJECTS carried out by at least [\*\*\*] or, alternatively, by [\*\*\*]. The extent of the activities will be determined by the respective update to Appendix 1. |

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| 3.3 | These activities shall be supervised by Prof. Dr. Hilde Marzahn, Chair of Biochemistry at the Technical University in […]. Prof. Marzahn will perform his activities within the scope of the research project without basing it on any employment status with NEFTON. [\*\*\*]. |

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| 3.4 | The UNIVERSITY and its associates shall make every effort, in due consideration of the latest scientific findings, to advance the project to the best of their ability. |

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| 3.5 | On at least [\*\*\*] basis the UNIVERSITY shall prepare a written summary of the project status attained, indicating the deployment of personnel and materials, and submit these reports to NEFTON. |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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| 3.7 | Both Parties concur that the data, MATERIALS or patents conveyed by UNIVERSITY to NEFTON within the scope of this Agreement shall [\*\*\*] in accordance with [\*\*\*]. In the event of [\*\*\*] UNIVERSITY shall [\*\*\*]. Independent thereof, UNIVERSITY shall [\*\*\*]. |

**§ 4**

**NEFTON’ CONTRIBUTION**

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| 4.1 | As its contribution to the funding of the cost of personnel and materials incurred by Prof. Marzahn’s work group in connection with the PROJECTS, NEFTON shall allocate to the UNIVERSITY the total amount of EUR[\*\*\*] for PROJECT [\*\*\*] during the period [\*\*\*], [\*\*\*] EUR[\*\*\*] at the [\*\*\*]. NEFTON shall remit all payments, identified by an accounting entry code to be provided by the UNIVERSITY in each case and with the annotation “Chair of Biochemistry, Prof. Dr. Marzahn”, into account number [\*\*\*]. The payee and owner of that account is [\*\*\*]. |

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| 4.2 | The Parties to this Agreement concur that the PROJECTS described in more detail in Appendix 1 hereto shall be adhered to as much as possible in terms of substance and target dates. NEFTON expressly abstains from committing [\*\*\*] extending beyond the term of this Agreement. NEFTON is aware, however, of the fact that [\*\*\*]. In the event of a premature cancellation of this Agreement brought about by NEFTON, NEFTON shall [\*\*\*] stated under 4.1. |

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| 4.3 | To the extent that within the scope of the PROJECTS and as agreed with NEFTON, joint work sessions or the support services to be provided by the UNIVERSITY involve travel expenses, NEFTON shall reimburse the UNIVERSITY [\*\*\*]. |

**§ 5**

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**CONFIDENTIAL TREATMENT REQUESTED**

**CONFIDENTIALITY**

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| 5.1 | Each Party to this Agreement agrees to treat as confidential vis-à-vis third parties all documentation and other data received from the respective other Party as well as the results achieved within the scope of this project and the MATERIAL made available by the respective other Party and developed MATERIAL (information), subject to the provisions of § 5.3 and § 5.4, and to publish them only with the prior consent of the respective other Party to this Agreement. The Parties to the Agreement shall limit the dissemination of data to the group of persons participating in the project. This obligation shall not apply if the information was (i) verifiably available to the recipient prior to the date of this Agreement, was in the public domain or was generally accessible prior to the publication; or (ii) essentially corresponds to data disclosed or made accessible to the recipient at any given time by an authorised third party; or (iii) the data are verifiably based on an independent development made by the recipient. |

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| 5.2 | Each Party to this Agreement shall make certain that the persons engaged in this project, including in particular Prof. Marzahn, are made aware of, and consent to, the conditions of this Agreement, especially with regard to the confidentiality obligation. Each Party hereto agrees to have all persons involved in the project sign a corresponding confidentiality undertaking (Appendix 2), providing the respective other Party with a copy thereof prior to the inception of the project. |

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| 5.3 | For NEFTON the confidentiality-related provisions of this § 5 shall not be applicable to the extent that the information-related MATERIAL had been turned over to NEFTON or the information-related patents were transferred to NEFTON by way of assignment or licensing or if the release of the information to potential or current investors is desirable or otherwise customary. NEFTON may share the information with sub-licensees or collaborative partners only if these commit to the customary extent of confidentiality or if the UNIVERSITY waives the confidentiality requirement. |

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| 5.4 | UNIVERSITY shall not pass on to third parties biological material previously or subsequently given to it by NEFTON or any biological material generated within the scope of this Agreement. UNIVERSITY shall bring this obligation to the attention of its co-workers who are involved in the research project under this Agreement. The exceptional release of biological material to third parties by UNIVERSITY shall require a written consent via a Material Transfer Agreement, attached hereto as Appendix 4. Upon request by NEFTON, the transfer of biological material from NEFTON to UNIVERSITY shall also be documented in writing by way of a Material Transfer Agreement. In that case, clause 6 |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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|  | of the Material Transfer Agreement per Appendix 4 shall not apply to the relationship between UNIVERSITY and NEFTON with regard to material which was transferred during the PROJECT PHASE per § 8.1. Per mutual consent, both Parties shall be able to modify Appendix 4 in individual cases or to waive the use of Appendix 4. |

**§ 6**

**PUBLICATIONS**

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| 6.1 | The Parties concur that the objective of their cooperation consists in the development of exploitable inventions and their protection through patents or other intellectual property rights. Patent protection, however, can only be obtained if at the time the application is filed the novel realisations have not yet been published. On the other hand, the UNIVERSITY and its participating co-workers have an interest in publishing the results achieved and scientific knowledge gained at the University during the cooperative activity. Nevertheless, patent applications planned by NEFTON or the UNIVERSITY on the object of the research or this Agreement must not be jeopardised by prepublications prejudicial to novelty. |

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| 6.2 | UNIVERSITY agrees that, when publishing scientific papers including dissertations, it will take NEFTON’ interests into account. Therefore, [\*\*\*] prior to such publication, UNIVERSITY shall submit to NEFTON the text of the intended publication or dissertation. Upon request by NEFTON, both Parties shall deliberate a wording that satisfies the interests of both Parties. |

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| 6.3 | NEFTON agrees to review the proposed publications (manuscripts) with regard to prepublication [\*\*\*] within [\*\*\*] and to correspondingly advise UNIVERSITY of its position. If after expiration of [\*\*\*] UNIVERSITY has not received a written position statement from NEFTON, NEFTON’s consent regarding publication shall be deemed to have been given, provided NEFTON has at least acknowledged to UNIVERSITY, in writing, the receipt of the publication proposal. After the expiration of [\*\*\*] from its submittal to NEFTON, the manuscript may be published irrespective of any consent by NEFTON. Dissertations, however, may in any event be published after expiration of [\*\*\*] from submittal to NEFTON. |

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| 6.4 | If so requested by it, publications shall name NEFTON as a co-initiator and sponsor of the study. |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**§ 7**

**USE RIGHTS, INTELLECTUAL PROPERTY RIGHTS**

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| 7.1 | In accordance with this § 7, UNIVERSITY shall assign to NEFTON the property as well as the right to use all material results of its work (MATERIAL). MATERIAL as defined for the purpose of this Agreement shall include all biological and other materials, records, laboratory books, data and other relevant activity results, the reports and documents generated as well as the copyrights on these, derived within the scope of the PROJECTS per 1.1. To the extent that UNIVERSITY is required by law to store or archive parts of the MATERIALS, NEFTON grants UNIVERSITY proprietary rights restricted to that purpose. |

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| 7.2 | In addition, UNIVERSITY assigns the right to use all non-patentable expertise, know-how and all other intangible results generated within the framework of the projects. |

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| 7.3 | The Parties concur that (i) in the course of the PROJECTS, inventions and thus rights to patents (intellectual property rights) may be generated and that (ii) the Parties shall be entitled to these rights as follows: |

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|  | (a) | NEFTON INVENTIONS |

Inventions made exclusively by NEFTON employees (hereinafter “NEFTON INVENTIONS”) shall belong exclusively to NEFTON;

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|  | (b) | JOINT INVENTIONS |

Inventions made by both NEFTON employees and UNIVERSITY personnel (including Prof. Dr. Hilde Marzahn) with at least [\*\*\*] inventive contribution by NEFTON employees (hereinafter “JOINT INVENTIONS”) shall be exclusively credited to NEFTON. To that effect, under this § 7, the UNIVERSITY hereby assigns in advance its proportional rights in such JOINT INVENTIONS to NEFTON.

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|  | (c) | UNIVERSITY INVENTIONS |

Inventions made exclusively by UNIVERSITY personnel or inventions in which the inventive contribution by NEFTON employees is [\*\*\*] (hereinafter “UNIVERSITY INVENTIONS”) are credited to the UNIVERSITY with the proviso

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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that, by advance assignment per this § 7, the UNIVERSITY grants NEFTON exclusive rights to use these UNIVERSITY INVENTIONS.

In the event that controversies regarding the proportional inventive contribution cannot be resolved, the case shall be decided by an arbitration tribunal according to § 11.3.

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| 7.4 | In exchange for participation in accordance with the licensing model per § 9 under the Research and Licensing Agreement of [\*\*\*], extended and modified by the Amended and Continued Agreement of [\*\*\*] and incorporated in this present Agreement, UNIVERSITY has legally assigned to NEFTON the rights to patent [\*\*\*], already applied for by NEFTON, retroactively to [\*\*\*] and to [\*\*\*] (see Appendix 5.1). In addition, in exchange for participation in accordance with the licensing model per § 9, UNIVERSITY is hereby assigning the patent rights, already applied for by NEFTON, to “[\*\*\*]” (see Appendix 5.1). For these rights, NEFTON has defrayed all application, maintenance and internal administrative costs in the past and shall cover them in the future as well. Furthermore, in exchange for participation in accordance with the licensing model per § 9 of this Agreement, the University hereby grants NEFTON an exclusive licence, unlimited in time and geography, and revocable only per §§ 8.2, 8.3, sub-licensable and freely transferable, for the use of the patent rights under “[\*\*\*]” (see Appendix 5.2), with the proviso that the rights of [\*\*\*] project, derived from the [\*\*\*]”, especially with regard to [\*\*\*], shall be protected and shall take precedence over this present Agreement. |

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| 7.5 | In accordance with this § 7, UNIVERSITY shall inform NEFTON of additional inventions and developments within the scope of the PROJECTS, granting NEFTON an exclusive licence, unlimited in time and geography, and revocable only per §§ 8.2, 8.3, sub-licensable and freely transferable, on new UNIVERSITY INVENTIONS per § 7.3 c). In addition, UNIVERSITY shall assign to NEFTON the entirety of its share in JOINT INVENTIONS per § 7.3.b). In exchange, NEFTON shall pay royalties per § 9. |

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| 7.6 | On licensed UNIVERSITY INVENTIONS and assigned JOINT INVENTIONS, NEFTON shall grant the UNIVERSITY and its participating co-workers a free, non-transferable, non-exclusive research and teaching licence subject to the provisions of the confidentiality undertaking (co-worker declaration) and, to the same extent, the right to use all activity results. This precludes the right to perform contract research for third parties as well as any research projects and cooperative research activities that would involve the transfer of research results to commercial third parties. |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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| 7.7 | The MATERIAL generated by the UNIVERSITY in the course of the PROJECTS shall be disclosed to NEFTON as soon as possible, completely and comprehensively, handed over in its original form or copies thereof, and made over, along with the use rights necessary for its exploitation. Within its legal possibilities, UNIVERSITY shall make certain by appropriate measures that the employees report inventions in compliance with Employee Inventions Act § 5. |

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| 7.8 | For JOINT INVENTIONS and UNIVERSITY INVENTIONS per § 7.3.b) and c), UNIVERSITY shall promptly inform NEFTON of reports submitted in compliance with Employee Inventions Act § 5, indicating the date of the invention report and the names of the persons involved. NEFTON shall promptly send to the University a written acknowledgment indicating the date the information was received. |

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| 7.9 | NEFTON shall advise the University whether it is interested in these inventions. NEFTON shall provide a corresponding written statement within a maximum of [\*\*\*] after having received the information from UNIVERSITY. After a positive assessment by NEFTON, UNIVERSITY shall claim unrestricted ownership of the invention. UNIVERSITY shall ensure compensation of its employed inventors in accordance with the Employee Inventions Act. If within the stated time limit NEFTON does not assess or positively assess a reported invention, the UNIVERSITY shall have exclusive rights to the invention concerned or to the corresponding share in the invention. |

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| 7.10 | The patent rights, once claimed, shall be listed in Appendix 5. |

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| 7.11 | The exclusive licence for UNIVERSITY INVENTIONS includes the right to file a patent or utility-patent application for such UNIVERSITY INVENTIONS in the name of the UNIVERSITY and to use them for research, development as well as any commercial or other exploitation. |

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| 7.12 | “Exploitation” as defined for the purpose of this Agreement includes the use, manufacture, out-sourced manufacture, sub-licensing, advertising, marketing, selling, renting, leasing and any other paid-for utilisation of the JOINT INVENTIONS and/or UNIVERSITY INVENTIONS. Paid-for utilisation also includes valuable consideration generated by NEFTON or its sub-licensees through the use of the contractual patent rights in connection with cross-licensing, arm’s-length agreements and all other contracts with third parties which contain a negative or positive licence or which are secured on the basis of court proceedings (before a court of justice and/or an arbitration tribunal) and in judicial and/or extrajudicial adjustment procedures. Any exploitation should take place under standard commercial conditions. Valuable consideration does not include R&D expenses paid by third parties to NEFTON. |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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| 7.13 | The Parties to this Agreement shall inform each other of any patent infringements of which they become aware and, in the event of an infringement and/or nullity suit, to compare notes on a |

suitable approach. Neither Party shall have the obligation to take action against infringing persons. Should UNIVERSITY prefer not to take action against infringers, NEFTON shall be free, at its own expense, to take action against infringements of the patent rights. In that case, NEFTON shall promptly inform UNIVERSITY ahead of its action and UNIVERSITY shall immediately provide NEFTON with all necessary information, carrying out measures of its own, declarations and actions only as instructed by NEFTON.

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| 7.14 | [\*\*\*] shall assume all reasonable or generally customary costs, [\*\*\*], in connection with the patent application ([\*\*\*]), defence and enforcement including all attorneys’ fees verifiably paid or payable in connection with patents to which NEFTON has been granted exclusive rights, or if NEFTON itself pursues the assigned patent rights or has given its written consent to having an attorney handle the application and follow-up on the exclusively licensed patent rights. The selection of appropriate attorneys shall be made by [\*\*\*]. [\*\*\*] shall fully exempt the attorneys from the confidentiality obligation while requiring them to keep [\*\*\*] informed. |

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| 7.15 | If because of the use of intellectual property rights either Party is sued for the infringement of the rights of a third party, it shall immediately notify the respective other Party hereto. The respective other Party shall in any such case have the right to join in the legal dispute. |

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| 7.16 | Should one of the Parties to this Agreement choose not to continue pursuing a patent, it shall so advise the respective other Party hereto early enough to enable the other Party to further pursue the patent concerned within a time limit of [\*\*\*]. The Party concerned shall offer the respective other Party the assignment of the patent rights concerned under simultaneous recognition of a free, non-exclusive right to use the inventions/patent rights for its own research purposes (not including contract research for third parties nor exploitation per § 7.12) while, if applicable, providing the other Party hereto with the documentation needed for further pursuing the patent and submitting any other additionally required explanations. In the event of an assignment of the patent rights the receiving Party hereto shall exempt the other Party from its obligations vis-à-vis the latter’s employed inventors. If the offer is accepted, the accepting Party shall defray the cost of maintaining the patent rights assigned to it. In addition, in the event of a reverse assignment, UNIVERSITY shall cover the investments made by NEFTON toward the development of the patent rights as well as all costs and fees incurred as of that date in connection with the patent, with UNIVERSITY only having to make these payments out of royalty income and other payments received from third parties relative to the patent, as well as out of |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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|  | its own net proceeds analogously defined in § 9.5.4. The costs incurred by the UNIVERSITY for continuing the patent rights as well as a reasonable risk allowance shall be deducted from these payments. |

**§ 8**

**TERM OF THIS AGREEMENT**

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| 8.1 | The individual PROJECT PHASES extend over a period of 24 months, to wit: PROJECT PHASE 1 from 1 March 2003 through 28 February 2005, PROJECT PHASE 2 from 1 March 2005 through 28 February 2007, and PROJECT PHASE 3 from 1 March 2007 through 28 February 2009. If NEFTON intends to extend the Research Agreement, it shall so inform the UNIVERSITY by 31 December 2008 at the latest. Thereupon, by 31 January 2009, UNIVERSITY shall advise in writing whether it agrees to an extension. 8.2 The licensing provisions of this Agreement set forth in §§ 7 and 9 shall remain in effect until the patent concerned expires or at least for as long as royalties have to be paid according to § 9, unless this Agreement is prematurely cancelled in its entirety or for individual patents. The stipulations regarding publication and confidentiality per §§ 5 and 6 shall become void five years after the expiration of the specific PROJECT PHASE concerned. |

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| 8.3 | The Parties to this Agreement may prematurely cancel the licensing arrangements for cause only. On the part of the UNIVERSITY, such cause exists if, a written reminder and a reasonable deadline notwithstanding, NEFTON has failed twice to pay the fees due according to the Agreement. The notice of cancellation must be in writing and delivered via registered mail. NEFTON may cancel the Licensing Agreement for individual and/or all licensed patent rights at 3 months’ notice as of the end of a month. No such right to cancel exists with regard to patents assigned to NEFTON, but NEFTON shall have the right to offer such patents per 7.16 for reverse assignment to the UNIVERSITY. |

**§ 9**

**License Fees**

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| 9.1 | In exchange for the assignment or licensing of shares in JOINT INVENTIONS and/or UNIVERSITY INVENTIONS by UNIVERSITY to NEFTON, a remuneration along a licence model per §§ 9.3 – 9.6 shall be payable. To the extent that it relates to UNIVERSITY INVENTIONS, the licence model shall apply in full. In the case of JOINT INVENTIONS, the license fee amounts shown shall be prorated according to the proportion of the invention contributed by UNIVERSITY. |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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| 9.2 | The payments required per §§ 9.3 – 9.6 shall not begin until the time of the first patent application and end upon expiration of the longest-running patent. |

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| 9.3 | If a licensed or assigned patent is legally declared null and void, no further license fee payments shall be due for that particular patent. NEFTON cannot require repayment of fees paid per § 9. |

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| 9.4 | For all patents covered under this Agreement, NEFTON shall make the following [\*\*\*] license fee payment in the year concerned (all amounts shown below are in Euros), if no other income has been or is being generated through sales revenues or other valuations, the total of which results in an income for UNIVERSITY that exceeds the respective annually payable minimum license fee according to the following table (if the total amount of such other income is higher than the minimum license fee for a given year, the excess amount shall be applied toward the minimum license fee for the subsequent years): |

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| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |
| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |
| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |
| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |
| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |
| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |
| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |
| [\*\*\*] |  |  | [\*\*\*] Euros |  |  |  | [\*\*\* | ] |

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| 9.5 | For [\*\*\*] the following amounts shall be paid: |

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|  | 9.5.1 | If the development of an anticalin is based on one or several patents covered by this Agreement, the following [\*\*\*] license fees shall be payable in each case of [\*\*\*] of an anticalin [\*\*\*]: |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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[\*\*\*] Euros

[\*\*\*] Euros

[\*\*\*] Euros

[\*\*\*] Euros

[\*\*\*] Euros

An [\*\*\*]” as defined for the purpose of this provision is [\*\*\*]. A “[\*\*\*]” as defined herein refers to [\*\*\*].

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|  | 9.5.2 | In addition, a [\*\*\*] payment of EUR [\*\*\*] Euros [\*\*\*] shall be due for [\*\*\*] based on one or several patents covered by this Agreement and shall be payable after a [\*\*\*]. |

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|  | 9.5.3 | If [\*\*\*] are based on one or more patents covered by this Agreement are [\*\*\*], a royalty of [\*\*\*] of the |

[\*\*\*].

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|  | 9.5.4 | The term [\*\*\*] as defined in this Agreement refers to [\*\*\*]. |

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| 9.6 | In case of [\*\*\*], NEFTON shall pay the following amounts: |

In each case of [\*\*\*] per § 7.12 [\*\*\*], NEFTON shall make a payment in the amount of [\*\*\*]) of [\*\*\*] to NEFTON as the [\*\*\*] to the UNIVERSITY, but at least [\*\*\*] of the [\*\*\*] which the UNIVERSITY would receive as a result in the case of [\*\*\*] by NEFTON according to art. 9.5 and 9.8, limited, however, to a maximum of [\*\*\*] of the total annual revenue achieved by NEFTON in a [\*\*\*].

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| 9.7 | In [\*\*\*] per art. 7.12, NEFTON shall pay [\*\*\*] of the [\*\*\*] thereby achieved or, in the event of some other exploitation, of the pecuniary-value benefits derived via a [\*\*\*]. |

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| 9.8 | If in the case of [\*\*\*] per § 7.12 NEFTON has to pay a total in excess of [\*\*\*] in [\*\*\*] to third parties, unrelated to [\*\*\*], the UNIVERSITY shall receive [\*\*\*] according to the table below. In any such case of [\*\*\*] NEFTON shall pay an amount of [\*\*\*] (see definition below) of the [\*\*\*] of the [\*\*\*] as [\*\*\*] to the UNIVERSITY, but at least [\*\*\*] of the license fee which the UNIVERSITY would receive as a result of [\*\*\*]. [\*\*\*], not exceeding, however, a maximum of [\*\*\*] of [\*\*\*] NEFTON would achieve in [\*\*\*]. However, that license fee shall never be less than [\*\*\*]. NEFTON shall provide the UNIVERSITY with [\*\*\*] of the amount of [\*\*\*] or it shall [\*\*\*]. |

In the event of [\*\*\*] [\*\*\*], the payment to UNIVERSITY shall be calculated as follows:

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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A = The [\*\*\*] payable by NEFTON to the UNIVERSITY shall be [\*\*\*] to NEFTON.

B = For [\*\*\*] covered by this Agreement, NEFTON shall pay [\*\*\*].

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|  |  |  |
| B |  | A |
| [\*\*\*] |  | [\*\*\*] |
| [\*\*\*] |  | [\*\*\*] |
| [\*\*\*] |  | [\*\*\*] |
| [\*\*\*] |  | [\*\*\*] |

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| 9.9 | If and to the extent that, within the framework of joint research during PROJECT [\*\*\*], public or otherwise sponsored projects are carried out, the rights of the [\*\*\*] concerned as well as the obligations of the Parties under [\*\*\*] shall [\*\*\*]. |

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| 9.10 | Should NEFTON close down its business operation or face insolvency procedures, it shall immediately notify the UNIVERSITY in writing. In the event a petition in bankruptcy is filed, the UNIVERSITY shall have the first right of refusal on all patents, proportional patent rights and patent applications assigned to NEFTON. |

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| 9.11 | As of [\*\*\*] of each consecutive year, NEFTON shall [\*\*\*] covered by this Agreement. In the case of [\*\*\*], NEFTON shall [\*\*\*]. An account statement prepared by [\*\*\*] shall be made available to the UNIVERSITY. [\*\*\*], the UNIVERSITY may appoint an independent, sworn auditor who will review the information provided by NEFTON, or, if [\*\*\*], examine the business records of NEFTON to obtain [\*\*\*] covered by this Agreement. NEFTON shall be required to provide the auditor with all data and materials needed for verification of the information. In the case of [\*\*\*], NEFTON shall [\*\*\*] to permit an audit by the auditor appointed by NEFTON. If the [\*\*\*], NEFTON shall absorb the cost of the audit, otherwise the UNIVERSITY shall absorb it. [\*\*\*] |

All payments shall be made within [\*\*\*] from the payment due date. Payments per § 9, including the applicable value-added tax, shall be remitted

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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into a bank account to be named by the UNIVERSITY.

The remittance shall be in EUR[\*\*\*] and with indication of the bank ID number to be provided by the UNIVERSITY.

**§ 10**

**Liability**

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| 10.1 | NEFTON develops and markets products, developed on the basis of this Agreement, for its own account and without the right of participation or opposition on the part of the UNIVERSITY. Accordingly, NEFTON [\*\*\*]. When marketing products that are also based on patents owned by UNIVERSITY, NEFTON shall provide to the UNIVERSITY, by [\*\*\*], proof of customary product liability insurance by submitting a copy of the respectively valid insurance policy for the products manufactured and marketed by NEFTON. |

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| 10.2 | NEFTON shall [\*\*\*]. |

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| 10.3 | The Parties hereto assume no guarantee or liability for the patentability and the commercial exploitability of the rights that constitute the subject matter of this Agreement. Nor do the Parties hereto assume any guarantee or liability to the effect that the use of the patent rights under this Agreement would not interfere with industrial patents, copyrights or other rights of third parties nor lead to losses on the part of the licensee or of third parties. |

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| 10.4 | The above disclaimers of liability shall be invalid in cases of malicious intent and gross negligence on the part of the Parties or their employees. |

**§ 11**

**MISCELLANEOUS**

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| 11.1 | This Agreement in its present wording definitively governs the relations between the Parties with regard to the object of the Agreement. Collateral parol evidence does not exist or is voided. A notice of cancellation, any amendments and additions as well as a rescission of this Agreement must be in writing. Documentation supporting the content of this Agreement as well as any waiver of this written-form requirement must be in writing. |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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| 11.2 | Should one or more of the provisions of this Agreement be or become invalid, the Parties shall be obligated to replace the invalid provisions with other, valid provisions the financial result of which comes so close to that of the invalid provisions that the Parties can be reasonably expected to have signed the Agreement with that clause as well. |

If such a solution cannot be found, the invalidity of one or several provisions of the Agreement shall not affect the validity of this Agreement in its entirety unless the significance of the invalid provisions is such that the Parties could be reasonably expected not to have signed this Agreement without the invalid stipulations.

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| 11.3 | Any disputes arising in connection with this Research and Licensing Agreement, its interpretation or execution or its validity, relating in particular to proprietary rights to the inventions per § 7, shall be negotiated and finally decided in the German language, admitting of no legal appeal, by an arbitration tribunal with three arbitrators, in accordance with the Arbitration Rules of the Deutsche Institution für Schiedsgerichtbarkeit e.V. (DIS) [German Institute for Arbitral Jurisdiction]. The arbitration tribunal may also make a binding decision on the validity of this arbitration clause. The venue of arbitration shall be Dorfen. The governing law shall be that of Germany. |

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| 11.4 | Appendices 1 – 5 to this Agreement including the separately signed addenda to Appendices 1 and 5 constitute an essential, integral part of this Agreement. |

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| 11.5 | By having the respective project director sign the research-project declaration form per Appendix 3, each Party hereto shall ensure that the project director concerned is made aware of the provisions of this Agreement and commits to abiding by these. |

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| 11.6 | This Agreement shall also be binding on successors in title of both Parties. Specifically, a change in the corporate or ownership structure of the Parties shall not justify a cancellation of this Agreement for cause. |

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|  |  |  |  |  |  |  |
| Freising, 26/6/2003 |  |  |  |  |  | Freising, 04/07/2003 |
|  |  | |  | |  | |
| /s/ Werner von Gruen |  |  |  |  |  | /s/ Hilde Marzahn |
|  |  | |  | |  | |
| NEFTON Proteolab AG |  |  |  |  |  | Technische Universität Dorfen |
|  |  | |  | | | |
|  |  |  |  | (stamp: TECHNISCHE UNIVERSITÄT DORFEN) | | |
|  |  |  |  | Contract Management & Legal Services | | |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**APPENDICES**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Appendix 1** |  | **Project Description** | | |
|  |  | | | |
| **Appendix 2** |  | **Confidentiality Agreement / Co-Worker’s Declaration** | | |
|  |  | | | |
| **Appendix 3** |  | **Project Director’s Countersignature** | | |
|  |  | | | |
| **Appendix 4** |  | **Material Transfer and Confidentiality Agreement** | | |
|  |  | | | |
| **Appendix 5** |  | **Patent Rights** | | |
|  |  | |  | |
|  |  | **I.** |  | **Assigned Patent Rights** |
|  |  | |  | |
|  |  | **II.** |  | **Patent Rights exclusively licensed to NEFTON Proteolab AG** |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**APPENDIX 1**

**PROJECT DESCRIPTION**

[\*\*\*]

[\*\*\*]

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**APPENDIX 2**

CO-WORKER’S DECLARATION

On the Research Project titled: Advancement of the Anticalin Technology

between:

Technische Universität Dorfen

Study Group: Prof. Marzahn

Chair of Biochemistry

[…]

and:

NEFTON Proteolab AG, […]

|  |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |
| Name of Co-Worker: |  | Mr./Ms. |  |  |  |  |

As a co-worker participating in the above Research Project undertaken by the Parties named, I hereby pledge to NEFTON to treat as confidential the objective of this Research Project, the data received from NEFTON and the results of the work performed under the joint research and development programme. I have been informed of the confidentiality exception clauses with regard to publication per § 6 of the Agreement on which this Research Project is based. I have also been advised that materials transferred by NEFTON to the University or generated in the course of this cooperation must not be made available to third parties. I have understood these instructions and I pledge to comply with them.

|  |
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| Place, Date and Co-Worker’s Signature |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**APPENDIX 3**

To

Technische Universität Dorfen

Central Department 6 – Legal Affairs

[…]

80333 Dorfen

Re-Research Project: Advancement of the Anticalin Technology

Declaration regarding the Research Project

I am aware that outside grants provided at my request and incorporated in the budget of the University are subject to the rules of budget compliance, unless the Grant Agreement contains different stipulations. I have taken note that [\*\*\*]% of the project funding will be going to the University as a contribution to its infrastructure.

In order to permit compliance with the obligations stated in the aforementioned Agreement, I shall bind all participants in the research project, whether or not in the employ of the University, through a signed pledge to observe the conditions of the Agreement and to take all actions necessary for the University to fulfil its obligations under the Agreement. All inventions generated within the scope of the research project will be promptly reported to the University Administration in a manner satisfying the requirements of Employee Invention Act § 5 sec. 1 and 2.

In addition, I shall take appropriate measures to ensure that all other conditions of the aforementioned Agreement as well can be properly fulfilled and that no consequential costs or other detriments arise to the University or to the Free State of Bavaria. Any additional expenditures incurred during or upon completion of the research project can be covered out of the outside funding granted to that effect or out of the institute’s / department’s budget.

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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|  |  |  |  | (seal) |
| Signature of Prof. Dr. Hilde Marzahn, Department Chair |  |  |  |  |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**APPENDIX 4**

**MATERIALS TRANSFER AND CONFIDENTIALITY AGREEMENT**

[\*\*\*]

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| [\*\*\*] |  | [\*\*\*] |
| [\*\*\*] |  | [\*\*\*] |
|  |  | [\*\*\*] |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**Attachment A**

Description of Research Project:

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**APPENDIX 5**

|  |  |
| --- | --- |
| 1) | Patent Rights assigned by the UNIVERSITY to NEFTON [\*\*\*] |

|  |  |
| --- | --- |
| 2) | Patents exclusively licensed to NEFTON [\*\*\*] |

***Portions of the exhibit, indicated by the mark “[\*\*\*],” were omitted and have been filed separately with the Securities and Exchange Commission pursuant to the Registrant’s application requesting confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.***

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**LicA#34**

EX-10.9

**Exhibit 10.9**

[\*\*\*] INDICATES MATERIAL THAT HAS BEEN OMITTED AND FOR WHICH CONFIDENTIAL

TREATMENT HAS BEEN REQUESTED. ALL SUCH OMITTED MATERIAL HAS BEEN FILED WITH THE

SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 PROMULGATED UNDER THE

SECURITIES ACT OF 1933, AS AMENDED

**LICENSE AGREEMENT**

This License Agreement (this “**Agreement**”) is made and is effective this 21th day of June, 2017 (the “**Effective Date**”) between MP4 Therapeutics, Inc., a Delaware corporation (“**MP4**”) and having an address at […], MA 02142, and Cutter Therapeutics, Inc., a Delaware corporation (“**CUTTER**”) and having an address at Suite […], CA 94080. MP4 and CUTTER are each referred to as a “**Party**” and collectively referred to as the “**Parties**.”

**Recitals**

**WHEREAS**, MP4 and CUTTER are engaged in the research and development of therapeutics for the treatment of diseases;

**WHEREAS**, each Party possesses certain technology and related intellectual property rights useful for the research, development, and commercialization of therapeutics for the treatment of diseases;

**WHEREAS**, MP4 granted to CUTTER certain rights under the Material Transfer Agreement dated August 7, 2016 (the “OMDC MTA”);

**WHEREAS**, CUTTER granted to MP4 certain rights under the Material Transfer Agreement dated October 28, 2016 (the “ MTA”);

**WHEREAS**, MP4 wishes to grant to CUTTER, a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid up license under the Licensed MP4 Patent Rights (as defined below) to develop, make, have made, use, import, export, offer for sale or sell or otherwise commercialize Products (as defined below) with the right to sublicense, in all cases subject to the terms and conditions of this Agreement;

**WHEREAS**, CUTTER wishes to grant to MP4, a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid up license under the Licensed CUTTER Patent Rights (as defined below) to develop, make, have made, use, import, export, offer for sale or sell or otherwise commercialize Products (as defined below) with the right to sublicense, in all cases subject to the terms and conditions of this Agreement;

**NOW THEREFORE**, MP4 and CUTTER, intending to be legally bound, agree as follows:

**ARTICLE 1**

**Definitions**

1.1    “**Affiliate**” means, with respect to a Party, any Person that controls, is controlled by, or is under common control with such Party. For purposes of this Section 1.1, “control” shall refer to (i) in the case of a Person that is a corporate entity, direct or indirect ownership of more

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than fifty percent (50%) of the stock or shares having the right to vote for the election of directors of such Person and (ii) in the case of a Person that is not a corporate entity, the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

1.2    “**Base OMDC Binder**” means the OMDC antibody sequence set forth on Exhibit A.

1.3    “**Base KLHY Binders**” means the KLHY antibody sequences set forth on Exhibit B.

1.4    “**Base Binders**” means either Base OMDC Binder or Base KLHY Binders.

1.5    “**Confidential Information**” means any confidential or proprietary information furnished by one Party to the other Party in connection with this Agreement, *provided* that such information is (i) specifically designated as confidential or (ii) reasonably identifiable by an individual familiar with the industry as confidential or proprietary. Confidential Information includes:

(a)    non-public information disclosed by either Party to the other Party in the initial and any subsequent Regulatory Base Binder Reports pursuant to Section 3.3;

(b)    the know how set forth on Exhibit E that is disclosed or made available by CUTTER to MP4 pursuant to the grant of a know how license under Section 2.1(iii); and

(c)    information of one Party received by the other Party prior to the Effective Date pursuant to the Confidentiality Agreement between the Parties, dated as of September 1, 2015, the OMDC MTA and the MTA.

1.6    “**Controlled**” means, with respect to Patent Rights, that a Party owns or has a license or sublicense to such Patent Rights and has the ability to grant a license or sublicense to such Patent Rights as provided for in this Agreement, or has the ability to assign its right, title and interest in and to such Patent Rights, without violating the terms of any agreement or other arrangement with any Third Party.

1.7    “**Cover**,” “**Covering**” or “**Covered**” means, with respect to a product, technology, process or method, that in the absence of ownership of or a license granted under Licensed Patent Rights, the manufacture, use, offer for sale, sale, exportation or importation of such product or the practice of such technology, process or method would infringe such Licensed Patent Rights.

1.8    “**CUTTER Improved OMDC Binders**” means the OMDC antibody sequences derived from, or improvements to, the Base OMDC Binder that may have been generated, developed or invented by or on behalf of CUTTER prior to the Effective Date, or are generated, developed or invented by or on behalf of CUTTER on and after the Effective Date

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pursuant to Section 3.2. Such derivations and improvements may include, but are not limited to, humanization, affinity enhancement, and cross reactivity optimization.

1.9    “**Improved Binders**” means any and all of CUTTER Improved OMDC Binders, and MP4 Improved KLHY Binders (as defined below).

1.10    “**IND**” means an investigational new drug application filed by either Party with the FDA, or the equivalent application in any foreign jurisdiction filed with another Regulatory Authority.

1.11    “**Intellectual Property**” means ideas, concepts, discoveries, inventions, developments, know-how, trade secrets, techniques, methodologies, modifications, processes, innovations, improvements, writings, documentation, electronic code, data and rights (whether or not protectable under state, federal or foreign patent, trademark, copyright or similar laws) or the like, whether or not written or otherwise fixed in any form or medium, regardless of the media on which contained and whether or not patentable or copyrightable.

1.12    “**Law**” means all federal, state, provincial, local, supranational, national and regional laws, statutes, rules, codes, regulations, orders, judgments, ordinances, guidelines, directives and regulatory requirements applicable to a Party, this Agreement or the activities contemplated hereunder.

1.13    “**Licensed CUTTER Patent Rights**” means any patents or patent applications and any and all related Patent Rights (a) listed on Exhibit D, but only to the extent such patents or patent applications and any and all related Patent Rights Cover the Base KLHY Binders, or (b) to the extent Covering the Base KLHY Binders. CUTTER shall endeavor to amend and update Exhibit D to incorporate the details of any additional Licensed CUTTER Patent Rights during the Term.

1.14    “**Licensed Patent Rights**” means either Licensed MP4 Patent Rights (as defined below) or Licensed CUTTER Patent Rights.

1.15    “**Licensed MP4 Patent Rights**” means any patents or patent applications and any and all related Patent Rights (a) listed on Exhibit C, but only to the extent such patents or patent applications and any and all related Patent Rights Cover the Base OMDC Binders, or (b) Covering the Base OMDC Binder. MP4 shall endeavor to amend and update Exhibit C to incorporate the details of any additional Licensed MP4 Patent Rights during the Term.

1.16    “**Patent Rights**” means with respect to any patents or patent applications, any and all (a) patents issuing from such patent applications, (b) substitutions, divisionals, renewals, continuations or continuations-in-part (only to the extent of claims that are entitled to the priority date of the parent application); (c) patents of addition, restorations, extensions, supplementary protection certificates, registration or confirmation patents, patents resulting from post-grant proceedings, re-issues and re-examinations; (d) other patents or patent applications claiming and entitled to claim priority to (i) such patents and patent applications and any patent or patent application specified in (a), (b) or (c), or (ii) any patent or patent application from which such

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patents and patent applications or a patent or patent application specified in (a), (b) or (c) claims and is entitled to claim priority; (d) all rights of priority attendant to such patents and patent applications and any of the patents and patent applications listed in (a) through (c); and (e) in each case of such patents and patent applications and of the patents and patent applications described in (a) through (d), including all counterparts and foreign equivalents thereof filed in any country, territory or jurisdiction in the world.

1.17    “**Person**” means any natural person or any corporation, company, partnership, joint venture, firm or other entity, including a Party, or any government or agency or political subdivision thereof.

1.18    “**Product**” means, on a country-by-country basis, any product or part of a product containing either a Base Binder or Improved Binder, the making, using, selling, offering for sale, importing or exporting of which in such country would, but for the licenses granted herein, infringe any of the Licensed Patent Rights in such country.

1.19    “**Prosecution and Maintenance**” or “**Prosecute and Maintain**” means, with respect to the applicable Patent Rights, the preparation, filing, prosecution and maintenance of such Patent Rights, as well as re-examinations, reissues, appeals, and requests for patent term adjustments and patent term extensions with respect to such Patent Rights, together with the initiation or defense of interferences, the initiation or defense of oppositions, post grant review, and other similar proceedings with respect to the particular Patent Rights, and any appeals therefrom. For clarification, “Prosecution and Maintenance” or “Prosecute and Maintain” shall not include any other enforcement actions taken with respect to Patent Rights.

1.20    “**Regulatory Approval**” means, with respect to a country or territory, the approvals (including any applicable governmental price and reimbursement approvals), licenses, registrations or authorizations of Regulatory Authorities necessary for the commercialization of a pharmaceutical product in such country or territory, including, as applicable, approval of a BLA or comparable filing in the United States or approval of a comparable filing in any other country or jurisdiction, including a marketing authorization approval by the EMA.

1.21    “**Regulatory Authority**” means a federal, national, multinational, state, provincial or local regulatory agency, department, bureau or other governmental entity with authority over the testing, manufacture, use, storage, import, export, promotion, marketing or sale of a product in the applicable country.

1.22    “**Regulatory Base Binder Information**” means any information related to a Base Binder that a comparable Third Party in the same industry would reasonably be expected to provide to the Regulatory Authority in order to file an IND and/or seek Regulatory Approval for the Product containing such Base Binder.

1.23    “**Sublicensee**” shall have the meaning set forth in Section 2.2(a).

1.24    “**MP4 Improved KLHY Binders**” means the KLHY antibody sequences derived from, or improvements to, the Base KLHY Binders that may have been generated,

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developed or invented by or on behalf of MP4 prior to the Effective Date, or are generated, developed or invented by or on behalf of MP4 on and after the Effective Date pursuant to Section 3.2. Such derivations and improvements may include, but are not limited to, humanization, affinity enhancement, and cross reactivity optimization.

1.25    “**Term**” means the term of this Agreement as provided in Section 9.1.

1.26    “**Third Party**” means any Person other than a Party or any of its Affiliates.

1.27    Additional Definitions. Each of the following definitions is set forth in the section of this Agreement indicated below:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Definition** |  | **Section** |
| AAA |  | 10.11(b)(i) |
| Bankruptcy Code  CUTTER Intellectual Property |  | 2.5(a)  5.1 |
| Prosecuting Party |  | 5.2(b) |
| MP4 Intellectual Property |  | 5.1 |

**ARTICLE 2**

**Grant of License**

2.1    License Grant.

Subject to the terms and conditions of this Agreement, without additional consideration, (i) MP4 hereby grants to CUTTER a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid up license under the Licensed MP4 Patent Rights, with the right to grant sublicenses as set forth in Section 2.2, to research, develop, make, have made, use, sell, have sold, offer to sell, import, export, commercialize or otherwise exploit Products containing the Base OMDC Binder, itself and through its Affiliates and Third Parties; (ii) CUTTER hereby grants to MP4 a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid up license under the Licensed CUTTER Patent Rights, with the right to grant sublicenses as set forth in Section 2.2, to research, develop, make, have made, use, sell, have sold, offer to sell, import, export, commercialize or otherwise exploit Products containing Base KLHY Binders, itself and through its Affiliates and Third Parties; and (iii) CUTTER hereby grants to MP4 a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid up, non-exclusive license, with the right to grant sublicenses as set forth in Section 2.2, to use the know-how that is set forth on Exhibit E hereto. For the avoidance of doubt, CUTTER does not grant to MP4 any rights or licenses whatsoever with respect to any CUTTER Improved OMDC Binders or Products containing the Base OMDC Binder or any CUTTER Improved

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OMDC Binders, and CUTTER shall not update Exhibit E (such that the know how that is being licensed by CUTTER to MP4 hereunder, is limited to the know how that is set forth on Exhibit E as of the Effective Date). It is understood and agreed that MP4 shall not use the know-how that is licensed hereunder in any way that would preclude or prevent CUTTER from being able to use any of the licensed know how without restriction, or that would otherwise impair CUTTER’s ability to use any of the licensed know-how without restriction.

2.2    Sublicensing.

(a)    Each Party shall have the right to grant sublicenses under the license granted to it under Section 2.1 hereof (a “**Sublicensee**”); *provided* that each such sublicense shall be subject to all relevant provisions, restrictions and limitations set forth in this Agreement. Each Party shall be responsible for each of its Sublicensee’s complying with all obligations of such Party under this Agreement that are applicable to sublicenses.

(b)    If this Agreement is terminated for any reason, then, at the option of any Sublicensee not in default of the applicable sublicense (or any provision of this Agreement applicable to such Sublicensee), it shall become a direct licensee under, and subject to the terms and conditions of, this Agreement, subject only to modifications with respect to territory, field and exclusivity (as applicable) so as to accommodate all such Sublicensees.

2.3    Affiliates and Sublicensees. Each Party may exercise or perform, or have exercised or performed on its behalf, some or all of its rights or obligations under this Agreement by one or more of such Party’s Affiliates or Sublicensees. Each Party shall be responsible for each of its Affiliates’ and Sublicensees’ compliance with all obligations of such Party under this Agreement.

2.4    Subcontractors. Each Party may exercise or perform some or all of its rights or obligations under this Agreement by subcontracting the exercise or performance of all or any portion of such rights and obligations on the Party’s behalf, provided that the Party shall be responsible for each of its subcontractors complying with all obligations of the Party under this Agreement.

2.5    Section 365(n) of the Bankruptcy Code.

(a)    All rights and licenses granted under or pursuant to any section of this Agreement are and will otherwise be deemed to be for purposes of Section 365(n) of the United States Bankruptcy Code (Title 11, U.S. Code), as amended or any comparable Law outside the United States (the “**Bankruptcy Code**”), licenses of rights to “intellectual property” as defined in Section 101(35A) of the Bankruptcy Code. Each Party agrees that each Party, as a party to this Agreement, will retain and may fully exercise all of its rights and elections under the Bankruptcy Code or any other provisions of Law outside the United States that provide similar protection for “intellectual property.” Any agreement supplemental hereto will be deemed to be “agreements supplementary to” this Agreement for purposes of Section 365(n) of the Bankruptcy Code.

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(b)    In the event that either Party is unable to obtain or retain the licenses set forth in Section 2.1 of this Agreement as a result of a bankruptcy proceeding by or against the other Party under provisions of applicable Law analogous to Section 365(n) of the Bankruptcy Code, such Party shall have a right to purchase such other Party’s right, title and interest in and to Licensed Patent Rights of such other Party at fair market value, provided that such Party gives such other Party written notice of such intention no later than four (4) weeks after such Party becomes aware of the commencement of such bankruptcy proceeding. The fair market value of the Licensed Patent Rights shall be determined by an assessment made by a mutually agreed upon third party, or, if the Parties do not agree within thirty (30) days of such Party’s written notice, a third party reasonably selected by such Party with a background in conducting such assessments. The costs of any such assessment shall be borne equally by the Parties.

**ARTICLE 3**

**Development and Commercialization**

3.1    Compliance. Each Party shall, and shall ensure that its Affiliates and Sublicensees, and its and their subcontractors, conduct all research and development, manufacture and commercialization of Base Binders, Improved Binders, and Products Covered under Licensed Patent Rights in compliance with all Laws.

3.2    Research and Development Activities. MP4 may at its sole discretion and expense, and without restriction, carry out research and development activities on Base KLHY Binders and Improved KLHY Binders during the Term and thereafter. CUTTER may at its sole discretion and expense, and without restriction, carry out research and development activities on the Base OMDC Binder and Improved OMDC Binders during the Term and thereafter. For the avoidance of doubt, any and all Intellectual Property (and all associated Patent Rights) arising from, made or developed solely by or on behalf of the Party carrying out such research and development activities (“Developed IP” ) shall also be solely owned by such Party.

3.3    Regulatory Base Binder Information. Each Party shall provide, within twenty (20) days of receipt of written request from the other Party made anytime during the Term, a written report of Regulatory Base Binder Information on the Base Binder(s) Covered under the Licensed Patent Rights of such Party.

**ARTICLE 4**

**Consideration**

The Parties jointly and severally represent, warrant and covenant that each has received full and sufficient consideration for all grants made and obligations undertaken under this Agreement.

**ARTICLE 5**

**Intellectual Property Protection and Related Matters**

5.1    Ownership.

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5.1.1    As between the Parties, other than as provided for in this Section 5.1, each Party shall solely own all Intellectual Property, including Patent Rights related thereto, made, conceived, reduced to practice, or otherwise discovered, whether prior to, on or after the Effective Date, solely by employees, agents, contractors or consultants of such Party or its Affiliates. For purposes of determining ownership under this Section 5.1, inventorship shall be determined in accordance with the Laws of the United States.

5.1.2    Notwithstanding the foregoing or anything to the contrary herein, the Parties agree that all Intellectual Property, including Patent Rights related thereto, made, conceived, reduced to practice, or otherwise discovered, whether prior to, on or after the Effective Date, by or on behalf of a Party or its Affiliates, alone or with others, pertaining to:

(i)    any and all Base KLHY Binders (either isolated or as incorporated into a composition),

(ii)    any and all CUTTER Improved OMDC Binders,

(iii)    any and all products containing CUTTER Improved OMDC Binders or the Base OMDC Binder, which products are covered by any claims in [\*\*\*], and

(iv)    any and all Products containing CUTTER Improved OMDC Binders or the Base OMDC Binder, which Products are developed and/or commercialized by or on behalf of CUTTER or its Affiliates or Sublicensees,

in each case, shall be solely owned by CUTTER (“CUTTER Intellectual Property”).

5.1.3 Notwithstanding the foregoing or anything to the contrary herein, the Parties agree that all Intellectual Property, including Patent Rights related thereto, made, conceived, reduced to practice, or otherwise discovered, whether prior to, on or after the Effective Date, by or on behalf of a Party or its Affiliates, alone or with others, pertaining to:

(i)    any and all Base OMDC Binders (either isolated or as incorporated into a composition),

(ii)    any and all MP4 Improved KLHY Binders,

(iii)    any and all products containing MP4 Improved KLHY binders or Base KLHY Binders, which products are covered by any claims in [\*\*\*], and

(iv)    any and all Products containing MP4 Improved KLHY Binders or Base KLHY Binders, which Products are developed and/or commercialized by or on behalf of MP4 or its Affiliates or Sublicensees.

in each case, shall be solely owned by MP4 (“MP4 Intellectual Property”).

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5.1.4    Accordingly and without additional consideration, (i) MP4 hereby assigns and agrees to assign to Cutter, all CUTTER Intellectual Property, including Patent Rights related thereto and enforcement rights, made, conceived, reduced to practice, or otherwise discovered, whether prior to, on or after the Effective Date, and MP4 shall cause its employees, agents, contractors and Affiliates to do the same; and (ii) CUTTER hereby assigns and agrees to assign to MP4, all MP4 Intellectual Property, including Patent Rights related thereto and enforcement rights, made, conceived, reduced to practice, or otherwise discovered, whether prior to, on or after the Effective Date, and CUTTER shall cause its employees, agents, contractors and Affiliates to do the same. For the avoidance of any doubt, under no circumstances and in no event, under this Agreement or otherwise, shall MP4 acquire any ownership rights in any Base KLHY Binder, nor shall CUTTER acquire any ownership rights in the Base OMDC Binder.

5.2    Prosecution and Maintenance of Licensed Patent Rights.

(a)    During the Term and thereafter, CUTTER shall remain solely responsible for the Prosecution and Maintenance of all CUTTER Intellectual Property worldwide and MP4 shall remain solely responsible for the Prosecution and Maintenance of all MP4 Intellectual Property worldwide.

(b)    The Party controlling the Prosecution and Maintenance of the applicable Licensed Patent Rights in accordance with Section 5.2(a) is referred to as the “**Prosecuting Party**”. The Prosecuting Party shall be responsible for all fees and costs charged by patent counsel with respect to the Prosecution and Maintenance of the applicable Licensed Patent Rights and all other out-of-pocket costs and expenses incurred by the Prosecuting Party in connection with such Prosecution and Maintenance of the applicable Licensed Patent Rights during the Term. For clarity, such expenses shall not include any actions undertaken by the other Party other than at the Prosecuting Party’s request.

5.3    Third Party Infringement.

Each Party shall notify the other Party promptly of any knowledge it acquires of any actual or potential infringements of the Licensed Patent Rights with respect to any activities of a Third Party in any country in the world and shall provide the other Party with all available evidence regarding such known or suspected infringement or unauthorized use.

**ARTICLE 6**

**Confidentiality**

6.1    Confidential Obligations. Each Party shall (a) maintain in strict confidence the Confidential Information of the other Party to the same extent such Party maintains its own confidential information, but in no event less than a reasonable degree of care, (b) not disclose such Confidential Information to any Third Party without the prior written consent of the other Party (except as permitted pursuant to Section 6.3 below), and (c) not use such Confidential Information for any purpose except those expressly permitted by this Agreement. The obligations of confidentiality, non-disclosure and non-use under this Section 6.1 shall be in full

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force during the Term and for a period of ten (10) years thereafter. Each Party, upon the request of the other Party, will return all copies of or destroy (and certify such destruction in writing) the Confidential Information disclosed or transferred to it by the other Party pursuant to this Agreement, within sixty (60) days of such request or, if earlier, the termination or expiration of this Agreement; provided however that a Party may retain (i) Confidential Information of the other Party which expressly survives such termination pursuant to this Agreement, and (ii) one (1) copy of all other Confidential Information in archives solely for the purpose of establishing the contents thereof; provided, further, that a Party is not required to return or destroy Confidential Information contained in electronic back-ups unless and until such Confidential Information is accessed.

6.2    Exceptions to Confidentiality. Notwithstanding the foregoing, the obligations of confidentiality set forth in Section 6.1 shall not apply to information that, in each case as demonstrated by competent written documentation:

(a)    is publicly disclosed or made generally available to the public by the disclosing Party, either before or after it becomes known to the receiving Party;

(b)    was known to the receiving Party, without any obligation to keep it confidential, prior to the date of first disclosure by the disclosing Party to the receiving Party, as shown by the receiving Party’s files and records;

(c)    is subsequently disclosed to the receiving Party by a Third Party lawfully in possession thereof without obligation to keep it confidential and without a breach of such Third Party’s obligations of confidentiality;

(d)    has been publicly disclosed or made generally available to the public other than through any act or omission of the receiving Party or its Affiliates or Sublicensees in breach of this Agreement; or

(e)    has been independently developed by the receiving Party without the aid, application or use of or reliance on or reference to the disclosing Party’s Confidential Information (the competent written proof of which must be contemporaneous with such independent development).

6.3    Authorized Disclosure. Notwithstanding Section 6.1, a Partymay disclose Confidential Information of the other Party to the extent such disclosure is reasonably necessary in the following instances:

(a)    complying with applicable Laws or submitting information to governmental authorities; *provided* that if a Party is required by Law or governmental authority to make any public disclosure of Confidential Information of the other Party, to the extent it may legally do so, it will give reasonable advance written notice to the other Party of such disclosure and will use its reasonable efforts to challenge or limit such required disclosure or secure confidential treatment of such Confidential Information prior to its disclosure (whether through protective orders or otherwise);

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(b)    to obtain and maintain Regulatory Approval of Products or to research, develop, make, have made, use, have used, offer to sell, sell, import, export, commercialize or otherwise exploit Products subject to and in accordance with this Agreement;

(c)    to its Affiliates, its and their directors, and to prospective and actual acquirers, lenders, licensees, investors and sublicensees, and to each of their employees, consultants, contractors, agents, accountants, lawyers, advisors, investors and underwriters, on a need to know basis, each of whom, in the case of Third Parties, prior to disclosure must be bound by written or professional ethical obligations of confidentiality and non-use equivalent in scope to those set forth in this Article 6; or

(d)    to the extent mutually agreed to in writing by the Parties.

**ARTICLE 7**

**Representations and Lack of Warranties**

7.1    Representations of Authority. Each Party represents and warrants to the other that as of the Effective Date it has full right, power and authority to enter into this Agreement and to perform its respective obligations under this Agreement.

7.2    Consents. Each Party represents and warrants that as of the Effective Date all necessary consents, approvals and authorizations of all government authorities and other Persons required to be obtained by such Party in connection with execution, delivery and performance of this Agreement have been obtained.

7.3    No Conflict. Each Party represents and warrants that, as of the Effective Date, the execution and delivery of this Agreement and the performance of such Party’s obligations hereunder (a) do not conflict with or violate any requirement of applicable Laws and (b) do not conflict with, violate or breach or constitute a default of, or require any consent under, any contractual obligations of such Party, except such consents as have been obtained as of the Effective Date.

7.4    Employee, Consultant and Advisor Obligations. Each Party represents and warrants that, as of the Effective Date, each of its and its Affiliates’ employees, consultants and advisors has executed an agreement or has an existing obligation under law obligating such employee, consultant or advisor to maintain the confidentiality of Confidential Information to the extent required under Article 6.

7.5    No Warranties. **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE PARTIES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THERE ARE NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE MADE OR GIVEN BY OR ON BEHALF OF A PARTY. EACH PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED,**

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**REGARDING THE PATENTABILITY, VALIDITY OR ENFORCEABILITY OF ANY LICENSED PATENT RIGHTS. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.**

**ARTICLE 8**

**Indemnification; Limitation on Damages**

8.1    By CUTTER. CUTTER agrees to defend MP4, its Affiliates and their respective directors, officers, employees, consultants and agents at CUTTER’s cost and expense, and shall indemnify and hold harmless MP4 and its Affiliates and their respective directors, officers, employees, consultants and agents from and against any liabilities, losses, costs, damages, fees or expenses (including without limitation, attorney fees and the costs of litigation, investigation and settlement regardless of outcome) arising out of any Third Party claim, suit, action or demand to the extent resulting from (i) any breach by CUTTER of any of its representations, warranties or obligations pursuant to this Agreement, (ii) the alleged or actual infringement or misappropriation of any Third Party Intellectual Property by the manufacture, use or sale of the Base OMDC Binder, any CUTTER Improved OMDC Binder, or Product containing the Base OMDC Binder or CUTTER Improved OMDC Binder, in each case by or on behalf of CUTTER or its Affiliates or Sublicensees, (iii) personal or bodily injury, illness or death, property damage or other loss or damage resulting from the research, development, making, having made, using, offering for sale, selling, having sold, importing, exporting, commercialization or other exploitation of Products containing the Base OMDC Binder or any CUTTER Improved OMDC Binder, in each case by or on behalf of CUTTER or its Affiliates or Sublicensees.

8.2    By MP4. MP4 agrees to defend CUTTER, its Affiliates and their respective directors, officers, employees, consultants and agents at MP4’s cost and expense, and shall indemnify and hold harmless CUTTER and its Affiliates and their respective directors, officers, employees, consultants and agents from and against any liabilities, losses, costs, damages, fees or expenses (including without limitation, attorney fees and the costs of litigation, investigation and settlement regardless of outcome) arising out of any Third Party claim, suit, action or demand to the extent resulting from (i) any breach by MP4 of any of its representations, warranties or obligations pursuant to this Agreement, (ii) the alleged or actual infringement or misappropriation of any Third Party Intellectual Property by the manufacture, use or sale of any Base KLHY Binder, MP4 Improved KLHY Binder, or Product containing a Base KLHY Binder or MP4 Improved KLHY Binder, in each case by or on behalf of MP4 or its Affiliates or Sublicensees, (iii) personal or bodily injury, illness or death, property damage or other loss or damage resulting from the research, development, making, having made, using, offering for sale, selling, having sold, importing, exporting, commercialization or other exploitation of Products containing Base KLHY Binders or MP4 Improved KLHY Binders, in each case by or on behalf of MP4 or its Affiliates or Sublicensees.

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8.3    Procedures. A Person entitled to indemnification under this Article 8 (an “**Indemnified Party**”) shall give prompt written notification to the Party from whom indemnification is sought (the “**Indemnifying Party**”) of any claim, suit, action or demand for which indemnification is sought under this Agreement; provided, however, that no delay or failure on the part of an Indemnified Party in so notifying the Indemnifying Party shall relieve the Indemnifying Party of any liability or obligation hereunder except to the extent of any damage or liability caused by or arising out of such delay or failure. Within thirty (30) days after delivery of such notification, the Indemnifying Party may, upon written notice thereof to the Indemnified Party, assume control of the defense and settlement of such claim, suit, action or demand with counsel reasonably satisfactory to the Indemnified Party. If the Indemnifying Party does not assume control of such defense, the Indemnified Party shall control such defense. The Party not controlling such defense may participate therein with counsel of its own choosing at its own expense; *provided* that, the Indemnified Party shall have the right to retain its own counsel, at the expense of the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate because of actual or potential differences in the interests of such Indemnified Party and any other party represented by such counsel. The Indemnified Party shall cooperate with the Indemnifying Party in its defense and settlement of any claim, suit, action or demand for which indemnification is sought under this Agreement, and the Indemnified Party shall not agree to any disposition, compromise or settlement of such action, suit, proceeding or claim without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, delayed or conditioned.

**8.4    NEITHER PARTY HERETO WILL BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS OR LOSS OF USE, ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH LOSSES OR DAMAGES OR IF A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. THIS EXCLUSION OF LOSSES AND DAMAGES SHALL NOT APPLY WITH RESPECT TO A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 8.1 AND 8.2.**

**ARTICLE 9**

**Term and Termination**

9.1    Term. This Agreement shall become effective as of the Effective Date and unless earlier terminated as set forth in this Article 9, shall otherwise remain in effect on a Product-by- Product basis until it expires (the “**Term**”) in its entirety upon the expiration of all Licensed Patent Rights.

9.2    Termination for Material Breach. Upon any material breach of this Agreement by either Party, the other Party may terminate this Agreement by providing sixty (60) days’ prior written notice to the breaching Party, specifying the material breach. The termination shall become effective at the end of the sixty (60) day period unless the breaching Party cures such breach during such sixty (60) day period.

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9.3    Termination for Bankruptcy. To the extent allowed under applicable Law, either Party shall have the right to terminate this Agreement in the event of the commencement of any proceeding in or for bankruptcy, insolvency, dissolution or winding up by or against the other Party (other than pursuant to a corporate restructuring) that is not dismissed or otherwise disposed of within sixty (60) days thereafter and/or the administrator of the bankruptcy estate or the Party under in-court restructuring has not, within five (5) days after the receipt of an inquiry from the other Party, confirmed that the bankruptcy estate or the Party under in-court restructuring will adopt this Agreement.

9.4    Effects of Termination.

(a)    Generally. Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. Any expiration or termination of this Agreement shall be without prejudice to the rights of either Party against the other accrued or accruing under this Agreement prior to expiration or termination. Termination of this Agreement shall be in addition to, and shall not prejudice, the Parties’ remedies at law or in equity, including the Parties’ ability to receive legal damages or equitable relief with respect to any breach of this Agreement, regardless of whether or not such breach was the reason for the termination.

(b)    Rights and Licenses. In the event of any termination of this Agreement by a Party pursuant to Section 9.2 or 9.3, notwithstanding anything contained in this Agreement to the contrary, upon the effective date of such termination: (i) all rights and licenses granted herein to the terminated Party shall automatically terminate and all such rights and licenses granted by the terminating Party to the terminated Party shall revert in their entirety to the terminating Party; and (ii) the terminated Party shall return or destroy all Confidential Information of the terminating Party.

9.5    Survival. The following provisions shall survive the expiration or termination of this Agreement: Article 1 (Definitions) (to the extent necessary to give effect to other surviving provisions), Article 5 (Intellectual Property), Article 6 (Confidentiality), Article 8 (Indemnification; Limitation on Damages) and Article 10 (Miscellaneous Provisions), and Sections 2.2 (Sublicensing) (and such other provisions of this Agreement as are necessary to give effect to the continuing licenses contemplated under Section 2.2), 9.4 (Effects of Termination) and this Section 9.5 (Survival).

**ARTICLE 10**

**Miscellaneous Provisions**

10.1    Governing Law; Language. This Agreement and all disputes arising out of or related to this Agreement shall be construed and the respective rights of the Parties determined in accordance with the laws of the State of New York, U.S.A., excluding application of any conflict of laws principles that would require application of the laws of a jurisdiction outside of New York, and will be subject to the exclusive jurisdiction of the courts of competent jurisdiction

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located in New York, New York. The Parties hereby expressly consent to the jurisdiction of such courts and irrevocably waive any objection to jurisdiction or venue. This Agreement and all communications related to it, or to any dispute or controversy arising out of it, shall be conducted in English.

10.2    Notice. Any notices required or permitted by this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be sent by hand, recognized national overnight courier, confirmed facsimile transmission, confirmed electronic mail or registered or certified mail, postage prepaid, return receipt requested, to the following address or facsimile number of the Parties:

If to CUTTER:

Cutter Therapeutics, Inc.

[…], CA 94080

Attention: Chief Executive Officer

If to MP4:

MP4Therapeutics, Inc.

[…] MA 02142

Attention: Chief Executive Officer

All notices under this Agreement shall be deemed effective upon receipt. A party may change its contact information immediately upon written notice to the other party in the manner provided in this Section 10.2.

10.3    Assignment. Either Party may assign this Agreement, in its entirety, without the consent of the other Party, (a) in connection with a sale or transfer of all or substantially all of the business and assets of the assigning Party to which this Agreement relates, including by way of merger, consolidation, transfer, or sale of assets related to this Agreement or (b) to an Affiliate. Any assignment in circumvention of the foregoing shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

10.4    Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements or understandings between the Parties relating to its subject matter including the Confidentiality Agreement, the OMDC MTA and the MTA.

10.5    Interpretation. The captions and headings to this Agreement are for convenience only, and are to be of no force or effect in construing or interpreting any of the provisions of this

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Agreement. Unless specified to the contrary, references to Articles, Sections or Exhibits mean the particular Articles, Sections or Exhibits to this Agreement and references to this Agreement include all Exhibits hereto. Unless context otherwise clearly requires, whenever used in this Agreement: (a) the words “include” or “including” shall be construed as incorporating, also, “but not limited to” or “without limitation;” (b) the word “day” or “year” means a calendar day or year unless otherwise specified; (c) the word “notice” shall mean notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement; (d) the words “hereof,” “herein,” “hereby” and derivative or similar words refer to this Agreement (including any Exhibits); (e) the word “or” shall be construed as the inclusive meaning identified with the phrase “and/or;” (f) provisions that require that a Party or the Parties hereunder “agree,” “consent” or “approve” or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter or otherwise; (g) words of any gender include the other gender; (h) words using the singular or plural number also include the plural or singular number, respectively; and (i) the word “law” (or “laws”) when used herein means any applicable, legally binding statute, ordinance, resolution, regulation, code, guideline, rule, order, decree, judgment, injunction, mandate or other legally binding requirement of a government entity, together with any then-current modification, amendment and re-enactment thereof, and any legislative provision substituted therefor. The Parties and their respective counsel have had an opportunity to fully negotiate this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. No prior draft of this Agreement shall be used in the interpretation or construction of this Agreement.

10.6    Amendment and Waiver. This Agreement may be amended, supplemented, or otherwise modified only by means of a written instrument signed by both Parties. Any waiver of any right or failure to act in a specific instance shall related only to such instance and shall not be construed as an agreement to waive any right or fail to act in any other instance, whether or not similar.

10.7    Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of this Agreement. The Parties shall consult one another and use reasonable efforts to agree upon a valid and enforceable provision that is a reasonable substitute for the invalid or unenforceable provision.

10.8    Use of Name. Neither Party shall use the other Party’s name (except in connection with disclosures permitted under Article 6) or logo without the other Party’s express prior written consent, which consent may be granted in the context of the Parties mutually approving in writing a press release or other public disclosure related to this Agreement.

10.9    Counterparts. This Agreement may be executed in counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

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10.10    Force Majeure. Neither Party will be responsible for delays (excluding delays in payment) resulting from causes beyond the reasonable control of such Party, including without limitation, fire, explosion, flood, war, strike, or riot, *provided* that the nonperforming Party promptly notifies the other Party in writing of such causes and uses commercially reasonable efforts for a company of its size and resources to avoid or promptly remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.

10.11    Dispute Resolution.

(a)    Escalation. If any dispute arises out of or relates to this Agreement, the Parties agree to first seek to resolve such dispute by referring such dispute to the respective Chief Executive Officers of each Party for resolution. Such referral shall take place within thirty (30) days after a written request by either Party to the other Party that resolution by the Chief Executive Officers be attempted. If, after an additional sixty (60) days, the Chief Executive Officers of the Parties have not succeeded in negotiating a resolution of the dispute, and a Party wishes to pursue the matter, such Party may initiate binding arbitration in accordance with Section 10.11(b).

(b)    Alternative Dispute Resolution. Any dispute arising out of or relating to this Agreement that has not been resolved pursuant to Section 10.11(a) shall be resolved through binding arbitration as follows:

(i)    A Party may submit such dispute to arbitration by notifying the other Party, in writing, of such dispute. Within thirty (30) days after receipt of such notice, the Parties shall designate in writing a single arbitrator to resolve the dispute; *provided, however*, that if the Parties cannot agree on an arbitrator within such 30-day period, the arbitrator shall be selected by the New York, New York office of the American Arbitration Association (the “**AAA**”). The arbitrator shall not be an Affiliate, employee, consultant, officer, director or stockholder of any Party.

(ii)    Within thirty (30) days after the designation of the arbitrator, the arbitrator and the Parties shall meet, at which time the Parties shall be required to set forth in writing all disputed issues and a proposed ruling on the merits of each such issue.

(iii)    The arbitrator shall set a date for a hearing, which shall be no later than forty-five (45) days after the submission of written proposals pursuant to Section 10.11(b)(ii), to discuss each of the issues identified by the Parties. The Parties shall have the right to be represented by counsel. Except as provided herein, the arbitration shall be governed by the Commercial Arbitration Rules of the AAA; *provided, however*, that the Federal Rules of Evidence shall apply with regard to the admissibility of evidence and the arbitration shall be conducted by a single arbitrator.

(iv)    The arbitrator shall use his or her best efforts to rule on each disputed issue within thirty (30) days after the completion of the hearings described in Section 10.11(b)(iii). The determination of the arbitrator as to the resolution of any

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dispute shall be binding and conclusive upon all Parties. All rulings of the arbitrator shall be in writing and shall be delivered to the Parties.

(v)    The attorneys’ fees of the Parties in any arbitration, fees of the arbitrator, and costs and expenses of the arbitration shall be borne by the Parties as determined by the arbitrator.

(vi)    Any arbitration pursuant to this Section 10.11 shall be conducted in New York, New York, U.S.A. and the arbitrator shall the laws of the State of New York. Any arbitration award may be entered in and enforced by any court of competent jurisdiction.

(c)    No Limitation. Nothing in this Section 10.11 shall be construed as limiting in any way the right of a Party to seek an injunction or other equitable relief with respect to any actual or threatened breach of this Agreement without having to prove actual damages or post a bond, or to bring an action in aid of arbitration. Should any Party seek an injunction or other equitable relief, or bring an action in aid of arbitration, then for purposes of determining whether to grant such injunction or other equitable relief, or whether to issue any order in aid of arbitration, the dispute underlying the request for such injunction or other equitable relief, or action in aid of arbitration, may be heard by the court in which such action or proceeding is brought.

10.12    No Third Party Beneficiaries. No Person other than CUTTER, MP4 and their respective Affiliates, successors and permitted assignees hereunder, shall be deemed an intended beneficiary hereunder or have any right to enforce any obligation of this Agreement.

10.13    Independent Contractors. It is expressly agreed that CUTTER and MP4 shall be independent contractors and that the relationship between CUTTER and MP4 shall not constitute a partnership, joint venture or agency. Neither CUTTER nor MP4 shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of such other Party.

10.14    No Implied Rights or Licenses. Other than as expressly provided for in this Agreement, there are no licenses, rights or interests in or to the Patent Rights or other Intellectual Property or Confidential Information of a Party granted or implied under this Agreement.

*[remainder of page intentionally left blank]*

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

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|  |  |  |  |  |  |  |  |  |
| CUTTER THERAPEUTICS, INC. | | |  |  |  | MP4 THERAPEUTICS, INC. | | |
|  |  | |  | |  | |  | |
| By: |  | /s/ Bernhard Show |  |  |  | By: |  | /s/ Victor Urban |
| Name: |  | Bernhard Show |  |  |  | Name: |  | Victor Urban |
| Title: |  | Chief Financial Officer |  |  |  | Title: |  | Chief Executive Officer |

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**Exhibit A**

**Base OMDC Binder Sequence**

[\*\*\*]

C-1

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**Exhibit B**

**Base KLHY Binders Sequences**

**[\*\*\*]**

D-1

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**Exhibit C**

**Licensed MP4 Patent Rights**

[\*\*\*]

D-1

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**Exhibit D**

**Licensed CUTTER Patent Rights**

[\*\*\*]

D-1

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**Exhibit E**

**Licensed Know How**

[\*\*\*]

**LicA#35**

EXHIBIT 10.3

**Exhibit 10.3**

**TRADENAME LICENSING AGREEMENT**

This TRADENAME LICENSING AGREEMENT (this “Agreement”) is dated as of May 10, 2019, by and between Mendoza Medical Holdings, Inc., a Delaware corporation, whose address is […] CA 91801 (“Mendoza”), and RD25 Medical Corporation, a California professional medical corporation, whose address is […], CA 91801 (“RD25”).

**Recitals:**

A.         RD25 is a professional medical corporation. RD25 and Medi Serve, Inc. (“MS”) have entered into a certain Administrative Services Agreement dated as of May 10, 2019 (the “Services Agreement”).

B.          In order to enhance its name recognition and facilitate the marketing of its services, RD25 desires to obtain from Mendoza, and Mendoza desires to grant to RD25 a nonexclusive license to use the name, “Mendoza Medical Associates.”

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

**Agreement:**

1.           License of Tradename to RD25. Mendoza hereby licenses to RD25 the nonexclusive, non-sublicensable, non-transferable (expect as permitted pursuant to Section 4.2) and royalty-bearing right to use the name “Mendoza Medical Associates” which shall only be used to market RD25’s services, and for no other purpose (the “Tradename License”). The exact manner of the use of such name by RD25 shall be subject to Mendoza’s prior written approval. RD25 shall not make any use of the name “Mendoza Medical Associates” in any marketing or advertising or in making business proposals to entities with which RD25 seeks to conduct business or does conduct business unless such marketing, advertising or business proposals are in accordance with the marketing, advertising or business plan adopted by RD25 and approved by Mendoza.

1.1          Protection of Mendoza Rights.

1.1.1           Non-exclusivity and Ownership. The Tradename License is nonexclusive. Mendoza retains the right to license the name “Mendoza Medical Associates” to others in the State of California and elsewhere, and to use the name “Mendoza Medical Holdings” in connection with all Mendoza operations and functions. Furthermore, RD25 acknowledges that the names “Mendoza Medical Holdings” and “Mendoza Medical Associates” are valuable assets of Mendoza which are unique and have an established secondary meaning and goodwill throughout the United States and the world. Mendoza retains all copyright, trademark and trade name rights in the name “Mendoza Medical Holdings” and “Mendoza Medical Associates,” and RD25 shall not acquire any right, title or interest in the name “Mendoza Medical Holdings” and/or “Mendoza Medical Associates.” RD25 shall not at any time during or after the term of this Agreement assert or claim any interest in, or do anything which may adversely affect the validity or enforceability of, any trademark, trade name, copyright or logo belonging to or licensed to Mendoza (including any act, or assistance to any act, which may infringe or lead to the infringement of any intellectual property/proprietary right in the name “Mendoza Medical Holdings” and/or “Mendoza Medical Associates”).

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1.1.2           Quality Control. RD25 shall use intellectual property licensed under the Tradename License in a manner and to a standard that is equal or better than the quality control standards and specifications applied by Mendoza.

1.1.3           Reservation of Rights. No rights are granted to RD25 hereunder except as expressly granted herein (including by implication or estoppels), and all rights in the intellectual property owned by Mendoza not expressly granted hereunder are reserved to Mendoza.

2.           Tradename License Fee. As a fee for the Tradename License, RD25 shall pay to Mendoza a fee (the “Tradename License Fee”) in United States dollars equal to the “Tradename License Fee Percentage,” multiplied by the gross revenues received by RD25 on an accrual basis during each calendar quarter during the term hereof (or portion thereof if the “Commencement Date,” as defined below, falls on a day other than the first day of a calendar quarter). The Tradename License Fee applicable to each calendar quarter (or portion thereof) shall be paid on the first day of each calendar quarter immediately succeeding the calendar quarter in which the Tradename License Fee is measured; provided that the payment of any and all Tradename License Fees shall be subject to the receipt by RD25 of the “Series A Dividend.” As used herein:

(a)          “Tradename License Fee Percentage” means the percentage specified on Schedule 1 attached hereto.

(b)          “Series A Dividend” shall have the meaning set forth in that certain Certificate of Determination of Preferences of Series A Preferred Stock of Allied Physicians of California, A Professional Medical Corporation, as filed with the California Secretary of State.

2.2          Annual Review of Tradename License Fee. The Tradename License Fee Percentage set forth above will be reviewed annually (commencing one year from the Commencement Date) to ensure that (i) the intended underlying economic arrangements between RD25 and Mendoza are preserved, and (ii) the Tradename License Fee accurately compensates Mendoza for the value of the Tradename License. If changes in state or federal laws or regulations, or changes in the amount or method of reimbursing healthcare services, result in a material adverse change in the economic benefits of this Agreement to RD25 or Mendoza, the fee set forth above shall be equitably adjusted on or before December 31 of the year such change takes place. If the parties agree to a modification of the Tradename License Fee, the parties shall make that modification by mutual written consent. Such adjustment of the Tradename License Fee may apply retroactively if the Parties agree in writing to the retroactive effective date.

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3.           Term and Termination.

3.1          Term. Unless sooner terminated pursuant to the terms of this Agreement, the term of this Agreement shall run concurrently and be coterminous with the term of the Services Agreement. In furtherance of the foregoing, the term of this Agreement shall commence on the commencement date of the Services Agreement (the “Commencement Date”), and shall end on the termination or expiration of the Services Agreement.

3.2          Termination of Tradename License. Notwithstanding anything herein to the contrary, Mendoza may at its option terminate the Tradename License upon the occurrence of any of the following events as follows:

(a)          Upon the mutual written agreement of RD25 and Mendoza.

(b)          Effective immediately upon (i) RD25’s violation of any applicable law, rule or regulation that would result in loss or suspension of licensure; or (ii) Mendoza’s determination that the health, safety or welfare of any individual receiving services from RD25 may be in jeopardy.

(c)          Effective immediately upon the liquidation, winding-up and dissolution of RD25.

(d)          Effective immediately upon the termination of the Services Agreement.

(e)          Effective immediately upon written notice by Mendoza to RD25 if RD25 materially breaches any term, covenant or condition hereof or violates any of its representations and warranties contained herein and fails to cure such breach or violation within ninety (90) calendar days after notice of said material breach or violation has been given to RD25 by Mendoza, or such longer period of time as may be reasonably needed to effectuate a cure of such breach.

(f)          Effective immediately in the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by RD25, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors by RD25, except for the filing of a petition in involuntary bankruptcy against RD25 which is dismissed within one hundred twenty (120) days thereafter.

3.3          Effect of Termination.

3.3.1           Immediately upon termination of the Tradename License, RD25 shall cease using the name “Mendoza Medical Associates” and every variation and portion of it, in every respect (including but not limited to signage), and RD25 shall not make any reference on its letterhead or other materials to its former or then current affiliation with Mendoza or its former license or use of said name.

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3.3.2           Upon termination, this Agreement shall be of no further force or effect and the parties shall be relieved and discharged of any future or continuing obligations arising hereunder, except for (i) the satisfaction of any covenant or performance of any obligation remaining outstanding as of the date of termination, (ii) the satisfaction or performance of any covenant or obligation which by its terms extends beyond the termination of this Agreement and (iii) any liability or obligation which at the time of such termination shall have already accrued to the other party or which thereafter may accrue in respect of any act or omission occurring prior to such termination (including, without limitation, any accrued and unpaid fees).

4.           Miscellaneous.

4.1          No Representations or Warranties. Each of the parties hereto acknowledges and agrees that (i) THE TRADENAME LICENSE IS PROVIDED “AS-IS” AND THAT NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE BY Mendoza OR BY ANY OF ITS LICENSORS, AGENTS, EMPLOYEES, REPRESENTATIVES OR ATTORNEYS WITH RESPECT TO THEM AND THAT ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED; (ii) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, express or implied, other than such as are set forth expressly in this Agreement; and (iii) it has been represented by legal counsel of its own choice in this matter or has affirmatively elected not to be represented by legal counsel.

4.2          Assignment. Except as otherwise provided in this Agreement, RD25 shall not consummate an Assignment (defined as the direct or indirect transfer of equity interests of RD25 and a direct or indirect change of control of RD25 shall constitute such transfer) or otherwise assign any rights or delegate any duties under this Agreement without the prior written consent of Mendoza. For purposes of this Agreement (including this Section 4.2), any change in the control or management of RD25 shall be deemed an assignment. Any unauthorized attempted or purported assignment by RD25 shall be null and void *ab initio* and of no force or effect. Mendoza, without any need to obtain RD25’s consent, may at any time during the term of this Agreement, assign this Agreement to any affiliate or successor in interest.

4.3          Successors and Assigns. Subject to the provisions against assignment as set forth in the preceding Section, the rights and obligations of the parties to this Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

4.4          Notices. All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered to the party to whom notice is to be given either (i) by personal delivery (in which case such notice shall be deemed to have been duly given on the date of delivery), (ii) by Federal Express or similar next business day air courier service (in which case such notice shall be deemed given on the business day following the date of deposit with the air courier service), or (iii) by first class United States mail, registered or certified, return receipt requested, postage prepaid (in which case such notice shall be deemed given on the third (3rd) day following the date of deposit in the mail), and properly addressed to the party on whom notice is to be delivered at the following addresses, or any changed address sent to the other parties hereto in accordance with the notice delivery requirements set forth above:

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| To Mendoza: | To RD25: |
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| Mendoza Medical Holdings, Inc. | RD25 Medical Corporation |
|  |
| […] |
| Attn: CEO | Attn: CEO |

4.5          No Waiver. No waiver of any provision of this Agreement shall be deemed to have been given by reason of any delay by a party in enforcing any provision of this Agreement. Any waiver of a provision under this Agreement shall be accomplished only by a written notice signed by the party making the waiver. A waiver to any one provision or a waiver to any particular default shall not constitute a continuing waiver in the future to any future default of that provision, unless the written waiver expressly specifies otherwise.

4.6          Validity. If for any reason any clause or provision of this Agreement or the application of any such clause or provision in a particular context or to a particular situation, circumstance or person, is held unenforceable, invalid or in violation of law by any court or other tribunal, then the application of such clause or provision in contexts or to situations, circumstances or persons other than that in or to which it is held unenforceable, invalid or in violation of law shall not be affected thereby, and the remaining clauses and provisions hereof shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is unenforceable, invalid or in violation of law, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

4.7          Effect of Headings. The titles or headings of the various paragraphs hereof are intended solely for convenience of reference and are not intended and shall not be deemed to modify, explain or place any construction upon any of the provisions of this Agreement.

4.8          Counterparts. This Agreement may be executed in counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement. A signature transmitted by facsimile shall be treated as an original signature.

4.9          Governing Law. This Agreement shall be interpreted and controlled by the laws of the State of California.

4.10       Attorney’s Fees and Costs. In the event of any action, arbitration or other proceedings between or among the parties hereto with respect to this Agreement, the non-prevailing party or parties to such action, arbitration or proceedings shall pay to the prevailing party or parties all costs and expenses, including reasonable attorneys’ fees, incurred in the defense or prosecution thereof by the prevailing party or parties. The party which is a “prevailing party” shall be determined by the arbitrator(s) or judge(s) hearing the matter and shall be the party who is entitled to recover his, her or its costs of suit, whether or not the matter proceeds to a final judgment, decree or determination. A party not entitled to recover his, her or its costs of suit shall not recover attorneys’ fees. If a prevailing party or parties shall recover a decision, decree or judgment in any action, arbitration or proceeding, the costs and expenses awarded to such party may be included in and as part of such decision, decree or judgment.

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4.11       Approvals. Whenever this Agreement refers to the approval of a party or the mutual agreement of the parties, such approval or agreement shall be evidenced by a writing signed by an authorized representative of the party or parties.

4.12       Amendments. Any amendments, modifications, supplements or other changes to this Agreement shall be effective only if made in writing and signed by the parties.

4.13       Agreement to Perform Necessary Acts. Each party shall perform any and all further acts and shall execute and deliver any further documents which may be reasonably necessary to carry out the provisions of this Agreement.

4.14        Enforcement. Because of the unique nature and importance of the tradename “Mendoza Medical Associates,” the parties hereto acknowledge that monetary damages will not be adequate and that Mendoza will be irreparably damaged in the event that the covenants and restrictions contained in this Agreement are breached by any person subject hereto. Accordingly, the parties hereto agree that all of the terms of this Agreement shall be specifically enforceable and that, in addition, Mendoza shall be entitled to the immediate remedy of a temporary restraining order or preliminary injunction and other temporary or permanent injunctive or equitable relief to restrain or enjoin a breach of this Agreement. These remedies shall be cumulative and shall be in addition to any other remedy which may be available to Mendoza. In addition, because of the unique nature and value of the tradenames to Mendoza, Mendoza shall have the unqualified right to specific performance of RD25’s covenants attendant to the termination of the licenses to avoid substantial damages which would be very difficult and burdensome to estimate or compensate by the payment of money damages and shall also be entitled to the immediate remedy of a temporary restraining order or preliminary injunction and other temporary or permanent injunctive or equitable relief to restrain or enjoin a breach of this Agreement or to specifically enforce the provisions hereof.

4.15        Entire Agreement. This Agreement and all other agreements executed on the same date hereof constitute all of the agreements between the parties, and supersede and replace and all other prior agreements, negotiations and understandings between the parties with respect to the topics covered by this Agreement. For avoidance of doubt, the Services Agreement is incorporated by reference herein in its entirety.

4.16        No Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any person other than the parties to this Agreement.

4.17        Referrals. The parties hereby acknowledge that none of the benefits to Mendoza, RD25 or any of their respective affiliates, is conditioned on any requirement that Mendoza, RD25 or any of their respective affiliates make referrals to, be in a position to make or influence referrals to, or otherwise generate business for Mendoza, RD25 or any of their respective affiliates.

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4.18        Ambiguities. The general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. In the event that any provision of this Agreement is found to be ambiguous, each party shall have an opportunity to present evidence as to the actual intent of the parties with respect to such ambiguous provision.

*[Signatures follow on next page]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

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| **“Mendoza”** | |  | **“RD25”** | |
|  |  |  |  | |
| MENDOZA MEDICAL HOLDINGS, INC. | |  | RD25 MEDICAL CORPORATION | |
|  | |  |  | |
| By: | */s/ Molly Dawson* |  | By: | */s/ Thomas S. Lam, M.D.* |
| Name: | Molly Dawson |  |  | Thomas S. Lam, M.D., |
| Title: | Independent Committee Director |  |  | Chief Executive Officer |

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| --- | --- | --- | --- |
| By: | */s/ Edgar Turner* |  |  |
| Name: | Edgar Turner |  |  |
| Title: | Chief Financial Officer |  |  |

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**LicA#36**

EX-10.16

**Exhibit 10.16**

**CERTAIN INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [\*], HAS BEEN OMITTED BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.**

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) dated as of January 29, 2019 (the “Effective Date”), is entered into between Loprophram, Inc., a Delaware corporation (“Lopro”), having an address at […], Seattle, WA 98109, and The Board of Trustees of the Woltshire, an institution of higher education having powers under the laws of the State of California (“Woltshire”), having an address at […], CA 94305-2038.

WHEREAS, Woltshire owns or has rights in the Licensed IP Rights (as defined below), which are invented in the laboratory of **[\*]**. Certain of the Licensed IP Rights were made in the course of research sponsored by the Werner Institute (“WERNER ”). The SRA Patents, which do not yet exist as of the Effective Date but are contemplated to arise under a sponsored research agreement which Lopro and Woltshire intend to negotiate and execute in 2019 (“SRA”), will be made in the course of research sponsored by Lopro. Certain Improvements, which do not yet exist as of the Effective Date but may arise in the future, may be sponsored in whole or in part by the U.S. Federal Government or other sponsors unknown as of the Effective Date. Woltshire wants to have the Licensed IP Rights perfected and marketed as soon as possible so that resulting products may be available for public use and benefit.

WHEREAS, Lopro desires to obtain an exclusive license under Woltshire’s rights in the Exclusive Licensed Patents in the Field of Use and a nonexclusive license under Woltshire’s rights in the Non-Exclusive Licensed Patents and Licensed Know-How in the Field of Use, on the terms and conditions set forth below.

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

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| 1. | DEFINITIONS |

For purposes of this Agreement, the terms defined in this Section 1 shall have the respective meanings set forth below:

1.1    “Affiliate” means any person, corporation or other entity that directly or indirectly, through one (1) or more intermediaries, Controls, is Controlled by or is under common Control with, such person, corporation or other entity.

1.2    “Business Days” means any day other than a Saturday, Sunday, bank holiday or public holiday in the State of Washington.

1.3    “Change of Control Transaction” means either (a) the acquisition of Lopro by another entity by means of any transaction or series of related transactions to which Lopro is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) that results in the voting securities of Lopro outstanding immediately prior thereto failing to represent immediately after such transaction or series of transactions (either by remaining outstanding or by being converted into voting securities of the surviving entity or the entity that controls such surviving entity) a majority of the total voting power represented by the outstanding voting securities of Lopro, such surviving entity or the entity that controls such surviving entity; (b) a sale, lease or other conveyance of all or substantially all of the assets of t yell to another entity; or (c) any Deemed Liquidation Event (as defined in the Lopro’s Certificate of Incorporation, as may be amended from time to time) that results in the liquidation of Lopro and the distribution of transaction proceeds to Lopro’s equity holders.

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1.4    “Control” means with regard to any person, corporation or other entity: (a) the legal or beneficial ownership, directly or indirectly, of more than fifty percent (50%) (or such lesser percentage that is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the voting stock or other ownership interest in such corporation or other entity or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such corporation or other entity, whether through ownership of voting stock or other ownership interest or by contract relating to voting rights or corporate governance.

1.5    “EMA” means the Regulatory Authority known as either the European Medicines Agency or the European Agency for the Evaluation of Medicinal Products, and any successor agency thereto.

1.6    “Exclusive” means that, subject to Sections 3.3 and 4, Woltshire will not grant further licenses under the Licensed Patents in the Field of Use in the Licensed Territory.

1.7    “Exclusive Licensed Patents” means the Licensed Patents listed in Appendix A under Exclusive Licensed Patents.

1.8    “FDA” means the United States Food and Drug Administration and any successor agency thereto.

1.9    “Field of Use” means all fields of use utilizing chimeric antigen receptors (“CARs”) and/or T-Cell Receptors (“TCRs”).

1.10    “First Commercial Sale” means, with respect to each Licensed Product, the first sale of the Licensed Product in a country after all applicable marketing and pricing approvals (if any) have been granted by the applicable Regulatory Authority of such country.

1.11    “Improvements” means any patent application and all patents issuing therefrom that (a) claim an improvement, derivative or subsequent iteration of the inventions described in the Existing Patents and that substantially incorporated, and could not reasonably have been generated without the use of, such composition or method claimed in the Existing Patents, but is not an invention generated under the SRA, (b) have a filing date prior to the date **[\*]** after the expiration or termination of the SRA, and (c) were developed in the laboratory of the Principal Investigator.

1.12    “Licensed IP Rights” means, collectively, the Licensed Patents and the Licensed Know-How.

1.13    “Licensed Know-How” means Woltshire knowledge or work that was developed in the laboratory of the Principal Investigator prior to the Effective Date (with respect to existing inventions claimed under clause (a) of the Licensed Patents) and under the SRA (with respect to subsequent inventions claimed under clauses (b) and (c) of the Licensed Patents), has been reduced to a tangible medium and is relevant to utilizing any of the Licensed Patents. No human subjects data is included under Licensed Know-How.

1.14    “Licensed Patents” means the following:

(a)    the patents and patent applications listed on Exhibit A (the “Existing Patents”);

(b)    Improvements added to the scope of this Agreement pursuant to Section 3.4;

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(c)    SRA Patents added to the scope of this Agreement pursuant to the SRA;

(d)    divisions, continuations, and claims in continuations in part that are entitled to claim priority to, or that share a common priority claim with, any item listed in clauses (a) – (c) and any patents issuing therefrom and in the case of continuations-in-part, those claims that are entitled to claim priority to, or that share a common priority claim with, any item listed in clauses (a) – (c);

(e)    extensions, renewals, substitutes, re-examinations and reissues of any of the foregoing; and

(f)    foreign counterparts of any of the foregoing.

1.15    “Licensed Product(s)” means any method, process, composition, product, service that would, but for the granting of the rights in the Agreement, infringe, induce infringement of, or contribute to infringement of a Valid Claim contained in the Licensed Patents.

1.16    “Net Sales” means, with respect to any Licensed Product, the gross amount billed or invoiced for the sale or other disposition of the Licensed Product by Lopro, its Affiliate or a sublicensee less, to the extent actually paid or accrued by and not reimbursed or refunded to Lopro or its Affiliate or sublicensees (as applicable), (a) credits, allowances, discounts and rebates to, and chargebacks from the account of, the customer for nonconforming, damaged, out-dated and returned Licensed Product; (b) to the extent they are separately stated on the invoice, freight and insurance costs; (c) cash, quantity and trade discounts, rebates and other price reductions for such Licensed Product given to the customer under price reduction programs; (d) to the extent they are separately stated on the invoice, sales, use, value-added and other direct taxes other than income taxes incurred on the sale of such Licensed Product to the customer; (e) to the extent they are separately stated on the invoice, customs duties , tariffs, surcharges and other governmental charges incurred in exporting or importing such Licensed Product to the customer; and (f) an allowance for uncollectible or bad debts determined in accordance with generally accepted accounting principles and consistently applied across all products sold by Licensee. If non-cash consideration is received by Lopro, its Affiliate or a sublicensee in exchange for the Licensed Product, then the consideration for the sale or disposition of the Licensed Product shall be an amount equal to the cash consideration that would have been received if the Licensed Product was sold or transferred to an unrelated, unaffiliated Third Party in an arm’s length transaction in similar quantities at the same time and place.

In the event a Licensed Product is sold in combination with other active, proprietary agents having functional biological activity for therapeutic effect that have been approved by a Regulatory Authority for use as a standalone product and as combined with the Licensed Product (“Combination Product”). Net Sales, for purposes of royalty payments hereunder, shall be calculated by multiplying the Net Sales of the Combination Product by the fraction A/(A+B), where A is the average gross selling price of the Licensed Product sold separately in finished form in like quantities and B is the average aggregate gross selling price of the such other active, proprietary agents in finished form in like quantities. In the event that no such separate sales are made of such other active, proprietary agents, Net Sales for purposes of royalty payments with respect to the Combination Product, shall be calculated by multiplying the Net Sales of the Combination Product by the fraction A/C where A is the average gross selling price of the Licensed Product sold separately in finished form in like quantities and C is the average gross selling price of the Combination Product. In the event that no such separate sales are made of such Licensed Product and/or such other active, proprietary agents, Net Sales for purposes of royalty payments with respect to the Combination Product, shall be **[\*]**

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1.17    “Net Sublicensing Revenues” means all consideration (including cash and the fair market value of non-cash consideration, including equity) received by Lopro or its Affiliates in consideration for sublicensing any of the Licensed IP Rights to a Third Party, excluding (a) royalties on Net Sales received from the Third Party, (b) amounts received by Lopro or its Affiliates to reimburse them for (i) their documented costs to perform research or development services for the purpose of developing Licensed Product for the benefit of the Third Party, or (ii) their out-of-pocket costs related to the Licensed Patents or (c) amounts they receive for the purchase of any debt or securities of Lopro or its Affiliates that are not in excess of the fair market value thereof.

1.18    “Non-Exclusive Licensed Patent” means the Licensed Patents listed in Appendix A under Non-Exclusive Licensed Patents.

1.19    “Phase I Clinical Trial” means a human clinical trial in any country that is intended to initially evaluate the safety and/or pharmacological effect of a Licensed Product in subjects or that would otherwise satisfy requirements of 21 C.F.R. 312.21(a) or its foreign equivalent.

1.20    “Phase II Clinical Trial” means a human clinical trial in any country that is intended to initially evaluate the effectiveness of a Licensed Product for a particular indication or indications in patients with the disease or indication under study or would otherwise satisfy requirements of 21 CFR 312.21(b) or its foreign equivalent.

1.21    “Principal Investigator” means **[\*]**.

1.22    “Regulatory Approval” means any and all permits, licenses, authorizations, registrations or regulatory approvals required and/or granted by any Regulatory Authority as a prerequisite to the marketing and selling of a product.

1.23    “Regulatory Authority” means any federal, national, multi-national, provincial, state or local regulatory agency, department, bureau or other governmental entity, within a regulatory jurisdiction, with the authority to grant any approvals, licenses, registrations or authorizations necessary for the development, manufacture, use or commercialization of a product, including the FDA and EMA.

1.24    “Royalty Term” means, on a Licensed Product-by-Licensed Product and country-by-country basis, the period commencing on the date of the First Commercial Sale of such Licensed Product in such country and ending on the expiration of the last Valid Claim covering such Licensed Product in such country.

1.25    “SRA Patent” means any patent application that claims inventions disclosed to OTL and that is funded and generated under that certain Sponsored Research Agreement that is intended to be entered into between the parties in 2019 (the “SRA”) and for which Lopro has exercised its right under the SRA to include such patent application in the scope of this Agreement and has paid the applicable upfront fee to Woltshire as set forth in the SRA. Once each SRA Patent has been disclosed to OTL, it will be added to Exhibit D, which will be amended as needed.

1.26    “Target” means a biological molecule, including but not limited to proteins and nucleic acids and all isoforms thereof, to which Licensed Product is directed or binds.

1.27    “Territory” means worldwide.

1.28    “Third Party” means any person or entity other than Woltshire, Lopro and their respective Affiliates.

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1.29    “Valid Claim” means a claim in an unexpired United States or foreign patent or pending patent application (that has not been pending for more than **[\*]** from date of filing of such application) included in the Licensed Patents that: (i) has not been held invalid, unpatentable, or unenforceable by a decision of a court or other governmental agency of competent jurisdiction and not subject to appeal, (ii) has not been admitted to be invalid or unenforceable through reissue, *inter partes* review, disclaimer, or otherwise, and (iii) has not been lost through an interference, reexamination, or reissue proceeding.

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| 2. | REPRESENTATIONS AND WARRANTIES |

2.1    Mutual Representations and Warranties. Each party hereby represents and warrants to the other party as follows:

(a)    Such party is a corporation duly organized, validly existing and in good standing under the laws of the state in which it is incorporated.

(b)    Such party (a) has the corporate power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder, and (b) has taken all necessary corporate action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid, binding obligation, enforceable against such party in accordance with its terms.

(c)    All necessary consents, approvals and authorizations of all governmental authorities and other persons or entities required to be obtained by such party in connection with this Agreement have been obtained.

(d)    The execution and delivery of this Agreement and the performance of such party’s obligations hereunder (a) do not conflict with or violate any requirement of applicable laws or regulations and (b) to the knowledge of each party (which in the case of Woltshire means the knowledge of Woltshire’s Office of Technology Licensing as of the Effective Date and without conducting any further investigation) do not conflict with, or constitute a default under, any contractual obligation of it.

2.2    Woltshire Representations and Warranties. Woltshire hereby represents and warrants to Lopro that to the knowledge of Woltshire’s Office of Technology Licensing as of the Effective Date and without conducting any further investigation:

(a)    Woltshire has assignments from all inventors known as of the Effective Date on the Existing Patents; and

(b)    Woltshire has the right to grant the rights in the Licensed Patents to Lopro in this Agreement.

2.3    Negation of Warranties. Woltshire provides Lopro the rights granted in this Agreement AS IS and WITH ALL FAULTS. Except as provided in Section 2.1 and 2.2, Woltshire makes no representations and extends no warranties of any kind, either express or implied. Among other things, Woltshire disclaims any express or implied warranty:

(a)    of merchantability, of fitness for a particular purpose;

(b)    of non-infringement; or

(c)    arising out of any course of dealing.

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2.4    No Representation of Licensed Patent. Lopro also acknowledges that Woltshire does not represent or warrant:

(a)    the validity or scope of any Licensed Patent; or

(b)    that the exploitation of Licensed IP Rights will be successful.

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| 3. | LICENSE GRANT |

3.1    Licensed IP Rights. Subject to the terms and conditions of this Agreement, Woltshire hereby grants to Lopro an Exclusive license, with the right to sublicense through multiple tiers, under the Exclusive Licensed Patents and a non-exclusive license under the Licensed Know-How and Non-Exclusive Licensed Patents to make, have made, use, offer to sell, sell, import or otherwise offer to dispose of Licensed Products in the Territory in the Field of Use. Lopro may have the right to sublicense under Licensed Know-How and the Non-Exclusive Licensed Patents only if such sublicense also includes additional intellectual property or technology (which may include data or the developed embodiments of such Licensed Know-How or Non-Exclusive Licensed Patents) owned or controlled by Lopro as part of that sublicense or if Lopro is granting a sublicense to a collaborator or development partner.

3.2    Sublicense Rights. Subject to the terms and conditions of this Agreement, including Section 3.1, Lopro may sublicense its license rights to the Licensed IP Rights to its Affiliates and to Third Parties through multiple tiers, but only if Lopro remains in the business of developing Licensed Products, whether itself or through research collaborators or development partners, or selling Licensed Products as of the effective date of such sublicense. Each sublicense (including a sublicense to Lopro’s Affiliates, for clarity, such Affiliates are only allowed to practice Licensed IP Rights under a sublicense) shall be subject to the terms and conditions set forth herein and will be subject to the following:

(a)    Lopro will remain liable to Woltshire for all payments due to Woltshire with respect to the activities of its sublicensees. If a sublicensee breaches the terms of this Agreement, Lopro shall promptly have such breach cured or terminate the sublicensee’s rights hereunder and under the sublicense (but in no event later than **[\*]**).

(b)    Lopro shall deliver to Woltshire a true, complete, and correct copy of each Third Party sublicense granted to any sublicensee, and any modification, amendment or termination thereof, within **[\*]** after execution, modification, or termination.

(c)    In the event of the termination of this Agreement, all sublicense rights and agreements shall terminate effective as of the termination of this Agreement, except for the right of a sublicensee to receive a direct license as set forth in Section 10.4(a).

(d)    Sublicenses will prohibit sublicensee from paying royalties to an escrow or other similar account.

(e)    Sublicenses will expressly include the provisions of Sections 5, 11, or 12 for the benefit of Woltshire and WERNER .

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(f)    Sublicenses must include the following clauses:

In the event sublicensee brings an action seeking to invalidate any Licensed Patent:

sublicensee will **[\*]** the payment paid to Lopro during the pendency of such action. Moreover, should the outcome of such action determine that any claim of a patent challenged by the sublicensee is both valid and infringed by a Licensed Product, sublicensee will pay **[\*]** times the payment paid under the original sublicense;

sublicensee will have no right to recoup any royalties paid before or during the period challenged;

any dispute regarding the validity of any Licensed Patent shall be litigated in the courts located in Santa Clara County, and the parties agree not to challenge personal jurisdiction in that forum;

sublicensee shall not pay royalties into any escrow or other similar account; and

sublicensee will provide written notice to Woltshire at least **[\*]** prior to bringing an action seeking to invalidate a Licensed Patent. Sublicensee will include with such written notice an identification of all prior art it believes invalidates any claim of the Licensed Patent.

(g)    In order to address unmet needs of neglected patient populations in markets in which Lopro is unable or unwilling to serve and for which there is a company willing to be a sublicensee, Lopro will, at Woltshire’s reasonable request, negotiate in good faith a sublicense with any such company, provided that Lopro will have no such obligation during the first **[\*]** following the Effective Date of this Agreement.

3.3    Retention of Rights. Woltshire retains for itself and other not-for-profit academic and research institutions, an irrevocable, nonexclusive license to practice Licensed IP Rights in the Field of Use for academic research, instructional, or any other academic or non-commercial and non-profit purpose, including sponsored research and collaborations.

3.4    Improvements. With respect to any improvements, Woltshire shall notify Lopro of the filing of any patents claiming such Improvements and Lopro shall have an exclusive right for a period of **[\*]** after receipt of such notice to include each patent family claiming any such invention by giving written notice to Woltshire and paying a one-time upfront fee on commercially reasonable terms, which terms shall be mutually agreed upon during such **[\*]** period (but in no event shall exceed **[\*]** per patent family). Upon Lopro exercising such right and making such payment, the applicable Improvements shall be included within the Licensed Patents and subject to the terms of this Agreement, including applicable royalty and other payments hereunder. If Lopro does not notify Woltshire and pay such fee during such **[\*]** period, then Woltshire may use, transfer, license to a third party, or otherwise exploit or dispose of such Improvements in any manner without accounting to Lopro, and Lopro shall have no rights to or with respect to such Improvements.

3.5    Exclusive Right of First Negotiation. Until the date that is **[\*]** after the expiration or termination of the SRA, solely at Woltshire’s discretion, Woltshire agrees to negotiate a license with Lopro (“RON”), on customary and commercially reasonable terms, subject to any third party rights in existence as of the date of receipt of invention disclosure to the Woltshire Office of Technology Licensing, to any patent applications or patents claiming inventions developed in the Principal Investigator’s laboratories at Woltshire that relate to and are necessary or useful in the Field of Use (“Subject Technology”) and that are not SRA Patents or Improvements. Woltshire shall notify Lopro of any Subject Technology within **[\*]** after the Woltshire Office of Technology Licensing receives an invention disclosure form covering the Subject

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Technology. Woltshire shall give Lopro a period of **[\*]** (the “RON Period”) to notify Woltshire if Lopro is interested in negotiating a license to such Subject Technology. If Lopro notifies Woltshire during the RON Period that Lopro is interested, then the parties shall seek to negotiate a mutually acceptable licensing agreement for a period of **[\*]** from the date Woltshire provides notice of the Subject Technology, which period is extendable upon the mutual agreement of the parties. If the parties are unable to reach agreement on a licensing agreement at the end of such **[\*]**, or if Lopro did not give notice to Woltshire of its interest during the RON Period, whichever occurs first, then Woltshire may use, transfer, license to a third party, or otherwise exploit or dispose of the Subject Technology in any manner without accounting to Lopro, and Lopro shall have no rights to or with respect to such Subject Technology.

3.6    Specific Exclusion. Woltshire does not:

(a)    grant to Lopro any other licenses, implied or otherwise, to any patents or other rights of Woltshire other than those rights granted under Licensed Patents, Licensed Know-How, Improvements and SRA Patents, regardless of whether the patents or other rights are dominant or subordinate to any Licensed Patent, or are required to exploit any Licensed IP Rights;

(b)    commit to Lopro to bring suit against third parties for infringement, except as described in Section 9.2; and

(c)    agree to furnish to Lopro any technology or technological information other than the Licensed Know-How or to provide Lopro with any assistance, except as provided for under the SRA.

3.7    Government Rights.

Rights that may be included within the scope of this Agreement after the Effective Date may be subject to Title 35 Sections 200-204 of the United States Code. Among other things, these provisions provide the United States Government with nonexclusive rights in the subject Licensed Patents. They also impose the obligation that Licensed Product sold or produced in the United States be “manufactured substantially in the United States.” Lopro will ensure all obligations of these provisions are met. Woltshire will notify Lopro in writing if any future rights to be added to this Agreement are subject to the foregoing.

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| 4. | FINANCIAL CONSIDERATIONS. |

4.1    Upfront Payment. Lopro shall pay to Woltshire four hundred thousand dollars ($400,000) within **[\*]** following the Effective Date.

4.2    Annual Maintenance Fee. Lopro shall pay to Woltshire a non-creditable, maintenance fee equal to **[\*]** on the second (2nd) anniversary of the Effective Date, and each anniversary of the Effective Date thereafter until the First Commercial Sale of a Licensed Product.

4.3    Development Milestones. Lopro shall pay to Woltshire the following development milestone payments within **[\*]** following the first achievement of the applicable milestone following the Effective Date by Lopro, its Affiliate or a sublicensee for each Licensed Product to a Target, on a Target-by-Target basis. For clarity, the development milestone payment shall be paid one time only with respect to each Target for the first Licensed Product to such Target to achieve the milestone:

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4.4    Commercial Milestones. Lopro shall pay to Woltshire the following commercial milestone payment within **[\*]** following the first achievement of the milestone based on the aggregate annual Net Sales by Lopro, its Affiliates and any sublicensees:

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|  | • |  | [\*] |

4.5    Royalties.

(a)    Royalty Rate.

(a)    During the applicable Royalty Term for a Licensed Product in a country and subject to the terms and conditions of this Agreement, Lopro shall pay to Woltshire royalties, with respect to each Licensed Product, equal to (i) **[\*]** of annual Net Sales of such Licensed Product by Lopro and its Affiliates and sublicensees, and (ii) **[\*]** of annual Net Sales of such Licensed Product by Lopro and its Affiliates and sublicensees **[\*]**. Only one royalty shall be owing for the Net Sales of a Licensed Product in a country, regardless of how many Valid Claims may cover such Licensed Product.

(b)    If a Licensed Product is covered by the Licensed Patents and is also covered by patent or other intellectual property rights granted by Woltshire to Lopro under other license agreements, such that the aggregate royalty owing under this Agreement and such other license agreements for Net Sales of such Licensed Product would be in excess of **[\*]**, then the royalties Lopro pays to Woltshire on the Net Sales of such Licensed Product under this Agreement and such other license agreements shall be reduced, using a method to be mutually agreed upon by Woltshire and Lopro at the time of execution of such other license agreements, until the total combined royalty due on the Licensed Product under both license agreements is equal to **[\*]**.

(c)    In the event that Lopro or its Affiliate or sublicensee is selling a Licensed Product for which the only claim of the Licensed Patents covering the Licensed Product is in a pending application that has been pending for more than **[\*]**, and during the period of time after the expiration of such **[\*]** a Licensed Patent issues with a claim covering such Licensed Product, then Lopro shall make a one-time milestone payment to Woltshire, due within **[\*]** after the date of issuance of such Licensed Patent, equal to the royalty that would have been due on the Net Sales of such Licensed Product under Section 4.5(a)(a) during the period commencing on the expiration of such **[\*]** period and continuing until the issuance of such Licensed Patent.

(d)    Notwithstanding the above, should Lopro or its Affiliates bring an action seeking to invalidate any Licensed Patent, Lopro will pay royalties to Woltshire at the rate of **[\*]** times the royalty that would otherwise be due under this Section 4.5 on Net Sales of all Licensed Products sold during the pendency of such action. Moreover, should the outcome of such action determine that any claim of a patent challenged by Lopro or its Affiliates is both valid and infringed by a Licensed Product, Lopro will pay royalties at the rate of **[\*]** times the royalty that would otherwise be due under this Section 4.5 on Net Sales of all Licensed Products sold.

(e)    A royalty is due Woltshire under this Agreement for any activity conducted under the licenses granted. For convenience’s sake, the amount of that royalty is calculated using Net Sales. Nonetheless, if certain Licensed Products are made, used, imported, or offered for sale before the date this Agreement expires or terminates, and those Licensed Products are sold after the expiration or termination date, Lopro will pay Woltshire an earned royalty for its exercise of rights based on the Net Sales of those Licensed Products.

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(f)    Lopro shall not pay royalties into any escrow or other similar account.

4.6    Sublicensing Revenues.

(a)    Solely Licensed IP. If Lopro or its Affiliate grants a sublicense to a sublicensee under any of the Licensed IP Rights (and no other (sub)license to intellectual property is granted by Lopro to the applicable sublicensee), then Lopro shall pay Woltshire **[\*]** of the Net Sublicensing Revenues received from such sublicensee. All amounts due under this Section 4.6.1 will be due and payable within **[\*]** after the last day of each calendar quarter in which the Net Sublicensing Revenue is received.

(b)    Licensed IP With Other IP. If Lopro or its Affiliate grants a sublicense under the Licensed IP Rights together with a (sub)license to other intellectual property, then Lopro shall pay Woltshire for each such sublicense granted by Lopro under the Licensed IP Rights for commercialization rights (for clarity, (i) such payment would not be due for sublicenses granted to Lopro’s CROs, service providers or collaborators conducting collaborative research with, or on behalf of, Lopro, and (ii) there may be multiple sublicenses granted by Lopro to the same sublicensee as different programs are optioned by such sublicensee, and the payment specified in this Section 4.6(b) would be paid for each such separate program option opt-in or sublicense):

(i)    **[\*]**;

(ii)    **[\*]**;

(iii)    **[\*]**.

All amounts due under this Section 4.6.2 will be due and payable within **[\*]** in which the upfront Net Sublicensing Revenues are received.

4.7    Patent Prosecution Expenses. Lopro shall pay to Woltshire one hundred percent (100%) of all expenses incurred by or on behalf of Woltshire to prepare, file, prosecute, maintain and, subject to Section 9.2, defend each of the Licensed Patents for so long as Lopro is the sole licensee of the Licensed Patents from Woltshire. If Woltshire grants rights under a Licensed Patent to one or more licensees (i.e. under fields of use other than the Field of Use), then Lopro shall only be obligated to pay for a pro-rata share of such future expenses based on the number of licensees following execution of each such license. For purposes of clarity, the foregoing sentence only applies to a grant to a Third Party of commercial rights to a Licensed Patent and, for example, not to licenses for evaluation purposes or licenses to other not-for-profit research institutions for research purposes only. In addition, within **[\*]** following the Effective Date, Lopro shall pay to Woltshire a payment of **[\*]** representing all of the past reasonable and documented expenses to file and prosecute the Licensed Patents Incurred by or on behalf of Woltshire (i.e. by WERNER ). Lopro shall have the right at any time by providing thirty (30) days prior written notice to Woltshire that it is terminating its obligation to reimburse Woltshire for expenses for any particular patent application or patent included within the Licensed Patents (“Patent Termination Notice”). Upon Lopro providing a Patent Termination Notice to Woltshire the applicable patent application and/or patent shall be removed from the Licensed Patents, and Lopro’s license rights thereto terminated.

4.8    Grant of Restricted Stock. Lopro shall grant to Woltshire a total of 910,000 shares of Lopro’s common stock, par value $0.0001 per share (the “Common Stock”), pursuant to the terms of the Restricted Stock Grant Agreement attached hereto as Exhibit B, which the parties shall execute and deliver as of the Effective Date.

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4.9    Purchase Right.

(A)    Woltshire shall have the right, but not the obligation, to purchase for cash up to **[\*]** (its “Share”) of the securities issued by Lopro in the next Qualifying Offering, on the terms, and subject to the conditions, set forth in this Section 4.9 and Section 4.10 (the “Purchase Right”).

For purposes of this Section 4.9 and Section 4.10, “Qualifying Offering” means the next private offering of Lopro’s equity securities for cash having its initial closing on or after the date of this Agreement and which includes investment by one or more venture capital, professional angel, corporate or other similar institutional investors other than Woltshire. For clarity, it is expected that the Qualifying Offering will be a Series B Preferred Stock financing, and it is agreed that under no circumstances will any further sales of Lopro’s Series A Preferred Stock that may occur be considered a Qualifying Offering.

(B)    In connection with any proposed offering that would meet the definition of a Qualifying Offering, Lopro shall give Woltshire written notice (the “Offering Notice”) of the material terms of the offering. The Offering Notice shall include: (i) a pre- and post- (projected) financing capitalization table; (ii) investor presentation (if available); and (iii) such other documents and information as has been provided to other prospective investors.

In order to exercise its Purchase Right, in whole or in part, in connection with the Qualifying Offering, Woltshire must provide by notice given to Lopro within **[\*]** after receipt of the Offering Notice (such period, the “Notice Period”), and must complete its purchase of securities in the Qualifying Offering (including by executing the stock purchase agreement and other investor documents that are executed by other investors participating on the Qualifying Offering and delivering funds for such purchase to Lopro) within **[\*]** thereafter (or if later, at the initial closing of the Qualifying Offering).

(C)    The Purchase Right shall terminate upon the earliest to occur of the following (each a “Termination Event”):

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|  | (1) | Woltshire’s execution of an investor rights agreement or similar agreement (each a “Rights Agreement”) in connection with the Qualifying Offering so long the Rights Agreement satisfies the terms of Section 4.10 below; |

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|  | (2) | Woltshire purchases less than its entire Share of a Qualifying Offering; |

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|  | (3) | Woltshire fails to give an election notice within the Notice Period for the Qualifying Offering, or fails to complete its purchase of securities in the Qualifying Offering within the time period specified in Section 4.9(B); |

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|  | (4) | The closing of a firm commitment underwritten public offering of Lopro’s common stock; or |

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|  | (5) | The closing of the sale of all or substantially all of Lopro’s assets to a company publicly traded on one of the major recognized exchanges. |

(D)    The Purchase Right shall not apply to the issuance of securities: (i) to employees, individuals who are members of Lopro’s Board of Directors as of the time of issuance, and service providers to Lopro pursuant to a plan approved by Lopro’s Board of Directors; or (ii) as additional consideration in lending or leasing transactions; or (iii) to an entity pursuant to an arrangement that Lopro’s Board of Directors determines in good faith is a strategic partnership or similar arrangement of Lopro (i.e., an arrangement in which the entity’s purchase of securities is not primarily for the purpose of financing Lopro); or (iv) to owners of another entity in connection with the acquisition of that entity by Lopro.

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(E)    For the avoidance of doubt: (i) any securities Woltshire may acquire or have the right to acquire under Section 4.8 shall not reduce the number of securities Woltshire may purchase under this Section 4.9 or under any applicable Rights Agreement; and (ii) Woltshire shall not be obligated to purchase under this Section 4.9 any Lopro securities it has the right to acquire under Section 4.8 above.

(F)    If Lopro has entered into more than one Exclusive (Equity) Agreement or other agreement to license intellectual property from Woltshire, and Woltshire has fully exercised its right to purchase its Share in connection with a Qualifying Offering under any such agreement, Woltshire will waive its right to purchase its Share in connection with a Qualifying Offering under all other applicable agreements. In the event that Woltshire has not fully exercised its right to purchase its Share in connection with a Qualifying Offering under any agreement, then Woltshire may only exercise its right to purchase under a single agreement, and will waive its right to purchase under all others.

4.10    Rights Agreements; Information Rights; Notice; Elections.

(A)    Lopro shall ensure that each Rights Agreement executed by Woltshire in connection with a Qualifying Offering will grant to Woltshire the same rights as all other investors who are parties to that Rights Agreement and who purchase an equivalent amount of securities in the Qualifying Offering. In particular, Lopro shall ensure that each such Rights Agreement will grant to Woltshire the same right to purchase additional securities in future offerings, the same information rights, and the same registration rights as are granted to other parties thereto who purchase an equivalent amount of securities in the Qualifying Offering.

(B)    Notwithstanding any terms to the contrary contained in any applicable Rights Agreement, Woltshire shall not have any representation on the Board of Directors or rights to attend meetings of the Board of Directors.

(C)    Notwithstanding any notice provision in this Agreement to the contrary, any notice given under this Agreement that refers or relates to any of Section 4.9 above or this Section 4.10 shall be copied concurrently to pvfnotices@Woltshire.edu; provided, however, that delivery of the copy will not by itself constitute notice for any purpose under this Agreement.

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| 5. | ROYALTY REPORT’S AND ACCOUNTING |

Royalty Reports. Within **[\*]** after the end of each calendar quarter during the term of this Agreement following First Commercial Sale of a Licensed Product in the Territory , or the first receipt of any Net Sublicensing Revenues by Lopro. Lopro will deliver to Woltshire a true and accurate report, giving such particulars of the Net Sublicensing Revenues or Net Sales of Licensed Products by Lopro, its Affiliates and any sublicensees during the preceding calendar quarter as necessary for Woltshire to account for Lopro’s payments due hereunder. This report will include pertinent data, including, but not limited to:

(a)    the accounting methodologies used to account for and calculate the items included in the report and any differences in such accounting methodologies since the previous report;

(b)    a list and description of each Licensed Product included in Net Sales;

(c)    the total quantities of each such Licensed Product on a country-by-country and product-by-product basis;

(d)    the total gross sales on a country-by-country and product-by-product basis;

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(e)    the calculation of Net Sales on a country-by-country and product-by-product basis, including itemization of permitted class of deductions from gross revenue applied to calculate Net Sales;

(f)    the exchange rates, if any, used in determining amounts in United States dollars;

(g)    the royalties so computed and due Woltshire, including application, if any, of the adjustments for Combination Products, on a country-by-country and product-by-product basis, and

(h)    the withholding taxes, if any, required by law to be deducted with respect to the royalty payments and in accordance with this Agreement.

With respect to sales of Licensed Products invoiced in United States dollars, the gross sales, Net Sales and royalties payable shall be expressed in United States dollars. With respect to Net Sales invoiced in a currency other than United States dollars, all such amounts shall be expressed both in the currency in which the distribution is invoiced and in the United States dollar equivalent. The United States dollar equivalent shall be calculated using the average of the exchange rate (local currency per US$1) published in The Wall Street Journal, Western Edition, under the heading “Currency Trading” on the last business day of each month during the applicable calendar quarter.

5.1    Records and Audits.

(a)    During the term of this Agreement and for **[\*]** thereafter, Lopro shall keep, and require its Affiliates and any sublicensees to keep, complete and accurate records of the manufacture, importation, sale, and use of a Licensed Product, including gross amounts billed or invoiced for the sale or disposition of Licensed Products. Net Sales, Net Sublicensing Revenues and any adjustments thereto, including adjustments for Combination Products in sufficient detail to enable the royalties and other payments due hereunder to be determined. Upon the written request of Woltshire and not more than **[\*]**, Lopro shall permit an independent certified public accounting firm of nationally recognized standing selected by Woltshire and reasonably acceptable to Lopro, at Woltshire’s expense, to have access during normal business hours to such of the financial records of Lopro, its Affiliates and any sublicensees as may be reasonably necessary to verify the accuracy of the payment reports hereunder for the **[\*]** immediately prior to the date of such request (other than records for which Woltshire has already conducted an audit under this Section).

(b)    If such accounting firm concludes that additional amounts were owed during the audited period. Lopro shall pay such additional amounts within **[\*]** after the date Woltshire delivers to Lopro such accounting firm’s written report so concluding. The fees charged by such accounting firm shall be paid by Woltshire; provided, however, if the audit discloses that the royalties or other amounts payable by Lopro for such period are more than **[\*]** of the amount actually paid for such period, then Lopro shall pay the reasonable fees and expenses charged by such accounting firm.

(c)    Woltshire shall cause its accounting firm to retain all financial information subject to review under this Section 5.1 in strict confidence; provided, however, that Lopro shall have the right to require that such accounting firm, prior to conducting such audit, enter into an appropriate non-disclosure agreement with Lopro regarding such financial information. The accounting firm shall disclose to Woltshire only whether the reports are correct or not and the amount of any discrepancy. No other information shall be shared. Woltshire shall treat all such financial information as Lopro’s Confidential Information in accordance with this Agreement.

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5.2    No Refund. In the event that a validity or non-infringement challenge of a Licensed Patent brought by Lopro is successful, Lopro will have no right to recoup any royalties paid before or during the period challenge.

5.3    Termination Report. Lopro will pay to Woltshire all applicable royalties and submit to Woltshire a written report within **[\*]** after the license terminates. Lopro will continue to submit earned royalty payments and reports to Woltshire after the license terminates, until all Licensed Products made or imported under the license have been sold.

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| 6. | PAYMENTS |

6.1    Payment Terms. Royalties shown to have accrued by each royalty report provided for under Section 5 shall be due on the date such royalty report is due. Payment of royalties in whole or in part may be made in advance of such due date.

6.2    Withholding Taxes. Lopro shall be entitled to deduct the amount of any withholding taxes, value-added taxes or other taxes, levies or charges with respect to such amounts, other than United States taxes, that are required by applicable law to be withheld by Lopro, its Affiliates or sublicensees from the royalty payments due Woltshire, to the extent Lopro, its Affiliates or sublicensees pay to the appropriate governmental authority on behalf of Woltshire such taxes, levies or charges. Lopro shall use reasonable efforts to minimize any such taxes, levies or charges required to be withheld on behalf of Woltshire by Lopro, its Affiliates or sublicensees. Lopro promptly shall deliver to Woltshire proof of payment of all such taxes, levies and other charges, together with copies of all communications from or with such governmental authority with respect thereto.

6.3    Dispute Resolution. Any dispute between the parties regarding any payments made or due under this Agreement will be settled by arbitration in accordance with the JAMS Arbitration Rules and Procedures, provided that in the case of a good faith dispute as to the amount due, the cure period under Section 10.3 will be tolled until the amount due has been finally determined in such an arbitration. The parties are not obligated to settle any other dispute that may arise under this Agreement by arbitration. Either party may request such arbitration. Woltshire and Lopro will mutually agree in writing on a third-party arbitrator within **[\*]** of the arbitration request. The arbitrator’s decision will be final and nonappealable and may be entered in any court having jurisdiction. The parties will be entitled to discovery as if the arbitration were a civil suit in the California Superior Court. The arbitrator may limit the scope, time, and issues involved in discovery. The arbitration will be held in Woltshire, California unless the parties mutually agree in writing to another place. Any dispute regarding the validity of any Licensed Patent shall be litigated in the courts located in Santa Clara County, California, and the parties agree not to challenge personal jurisdiction in that forum. Notwithstanding the foregoing, if Woltshire has a dispute regarding the royalty payments owing under this Agreement, Woltshire will first conduct an audit under the terms of Section 5.1 before bringing such dispute for arbitration under this Section 6.3.

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| 7. | RESEARCH AND DEVELOPMENT OBLIGATIONS |

7.1    Research and Development Efforts. Because the Licensed IP Rights are not yet commercially viable as of the Effective Date, Lopro shall, directly or through its Affiliates or sublicensees, use commercially reasonable efforts to develop, manufacture, and sell Licensed Product and will use commercially reasonable efforts to develop markets for Licensed Product. In addition, Lopro will meet the milestones shown in Exhibit C, and notify Woltshire in writing as each milestone is met. If any Licensed Patent has not been used in research, development or otherwise by Lopro or its Affiliates or sublicensees to develop any Licensed Product during the **[\*]** period commencing on the date such Licensed Patent was first added to this Agreement (each, an “Unused Licensed Patent”), then Woltshire

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shall notify Lopro in writing. If Lopro has not prepared a bona fide development plan acceptable to Woltshire (such acceptance not to be unreasonably withheld) or commenced the good faith development of a Licensed Product, which will include providing a development plan to Woltshire showing a commercially reasonable path towards sales of a Licensed Product, that is covered by such Unused Licensed Patent within **[\*]** of the date of such written notice, then all license and rights to such Unused Licensed Patent(s) shall terminate and revert to Woltshire at the end of such **[\*]** period, but only with respect to the Unused Licensed Patent. For clarity, a Licensed Product may be covered by multiple Licensed Patents and Lopro shall be deemed to have satisfied its diligence obligations with respect to each Licensed Patent if Lopro or an Affiliate or sublicensee is pursuing development of at least one lead candidate Licensed Product that is covered by such Licensed Patent in any country in accordance with development plan that is shared with Woltshire.

7.2    Records. Until **[\*]** after termination or expiration of this Agreement, Lopro shall maintain records, in sufficient detail and in good scientific manner, which shall reflect all work done and results achieved in the performance of its research and development regarding the Licensed Products.

7.3    Reports. Within **[\*]** following the end of each calendar year during the term of this Agreement or after termination or expiration of this Agreement, Lopro shall prepare and deliver to Woltshire a written summary report which shall describe (a) the research performed to date employing the Licensed IP Rights, (b) the progress of the development and commercialization over the last year by each Licensed Product and country or territory, including testing of each Licensed Product in a clinical trial, (c) the status of obtaining Regulatory Approval to market each Licensed Product in a country or territory, (d) the plans of each of Lopro, its Affiliates and any sublicensees for research and development of Licensed Products for the next **[\*]** or through termination or expiration of this Agreement, whichever occurs first and (e) specifically describe how each Licensed Product is related to each Licensed Patent. Lopro will provide additional detail upon request by Woltshire.

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| 8. | CONFIDENTIALITY |

8.1    Confidential Information. During the term of this Agreement, and for a period of **[\*]** following the expiration or earlier termination hereof, each party shall maintain in confidence all information of the other party that is disclosed by the other party and identified as, or acknowledged to be, confidential at the time of disclosure (the “Confidential Information”), and shall not use, disclose or grant the use of the Confidential Information except on a need-to-know basis to those directors, officers, affiliates, employees, permitted licensees, permitted assignees and agents, consultants, collaborators, clinical investigators or contractors, to the extent such disclosure is reasonably necessary in connection with performing its obligations or exercising its rights under this Agreement. Each party shall use at least the same degree of care with the other party’s confidential information as they use to protect their own confidential information. Woltshire may disclose the terms of this Agreement to WERNER and the technology transfer designee from each of the WERNER -affiliated research institions (all under appropriate confidentiality obligations). To the extent that disclosure is authorized by this Agreement, prior to disclosure, each party hereto shall obtain agreement of any such person or entity to hold in confidence and not make use of the Confidential Information for any purpose other than those permitted by this Agreement, except that Woltshire may acknowledge the existence of this Agreement and the extent of the grant in Article 3 to third parties and provide aggregated financial information in standard reports, provided that such financial information is aggregated in a manner that would not allow discovery of any financial information specific to Lopro. Lopro hereby grants permission for Woltshire to include Lopro’s name and a link to Lopro’s website in Woltshire’s annual reports and on Woltshire’s websites that showcase technology transfer related stories. Each party shall notify the other promptly upon discovery of any unauthorized use or disclosure of the other party’s Confidential Information.

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8.2    Permitted Disclosures. The confidentiality obligations contained in Section 8.1 shall not apply to the extent that (a) any receiving party (the “Recipient”) is required (i) to disclose information by law, regulation or order of a governmental agency or a court of competent jurisdiction, or (ii) to disclose information to any governmental agency for purposes of obtaining approval to test or market a product, provided in either case that the Recipient shall provide written notice thereof to the other party and sufficient opportunity to object to any such disclosure or to request confidential treatment thereof; or (b) the Recipient can demonstrate that (i) the disclosed information was public knowledge at the time of such disclosure to the Recipient, or thereafter became public knowledge, other than as a result of actions of the Recipient in violation hereof; (ii) the disclosed information was rightfully known by the Recipient (as shown by its written records) prior to the date of disclosure to the Recipient by the other party hereunder; (iii) the disclosed information was disclosed to the Recipient on an unrestricted basis from a source unrelated to any party to this Agreement and not under a duty of confidentiality to the other party; or (iv) the disclosed information was independently developed by the Recipient without use of the Confidential Information disclosed by the other party. Notwithstanding any other provision of this Agreement, Lopro may disclose Confidential Information of Woltshire, or the terms of this Agreement, to any Third Party with whom Lopro has, or is proposing to enter into, a business relationship, as long as such Third Party has entered into a confidentiality agreement with Lopro.

8.3    Remedies. The parties each acknowledge and agree that a breach of this Section 8 may cause irreparable harm to the non-breaching party for which the award of money damages may be inadequate. The parties therefore agree that in the event of any breach of this Section 8, the non-breaching party will be entitled to seek injunctive relief in addition to seeking any other remedy provided in this Agreement or available at law.

8.4    Terms of this Agreement. Except as otherwise provided in Section 8.2, Woltshire and Lopro shall not disclose any terms or conditions of this Agreement to any Third Party without the prior consent of the other party. Notwithstanding the foregoing, prior to execution of this Agreement, Lopro and Woltshire have agreed upon the substance of information that can be used to describe the terms of this transaction, and Lopro and Woltshire may disclose such information, as modified by mutual agreement from time to time, without the other party’s consent.

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| 9. | PATENTS |

9.1    Patent Prosecution and Maintenance.

(a)    Woltshire shall have the first right, using in-house or outside legal counsel selected by Woltshire, to prepare, file, prosecute, maintain and defend patents and patent applications in the Licensed Patents that are solely owned by Woltshire in its own name in the United States of America and in any other countries in the Territory. Woltshire shall use reasonable efforts to deliver to Lopro reasonably complete drafts of all material submissions to patent authorities relating to the Licensed Patents, including, without limitation, patent applications and amendments, and, to the extent feasible, to give Lopro a reasonable opportunity to comment on such documents prior to their filing. Lopro shall provide any such comments promptly. Woltshire shall consider Lopro’s comments and requests with regard to the preparation, filing, prosecution, maintenance and/or defense of the Licensed Patents in good faith, including filing separate applications (or dividing existing applications) to separate the Field of Use from other fields of use. Woltshire shall also provide Lopro copies of material documents received from such patent authorities relating to the Licensed Patents. If Woltshire notifies Lopro of its proposal to file a patent application that is to be included in the Licensed Patent hereunder in any country in the Territory and Lopro notifies Woltshire in writing within **[\*]** thereafter that it does not agree to such filing, then Woltshire will have the right to file and prosecute such patent application in such country at its own expense, and such patent application and any patent issuing thereon will not be included in the Licensed

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Patents under this Agreement. Woltshire shall take all commercially reasonable steps to cause patents and patent applications within the Licensed Patents to be diligently prosecuted and maintained. If Woltshire decides to abandon or allow to lapse any patent application or any claim of any patent included in the Licensed Patents or not pursue patent protection for any foreign patent. Woltshire shall notify Lopro at least **[\*]** before such decision would be effective, and Lopro shall have the right to file, prosecute, and maintain, as applicable, such patent or patent application at Lopro’s expense, provided that Lopro may thereafter abandon or allow to lapse any or all patents or patent applications for which it is responsible.

(b)    With respect to any Licensed Patents that are jointly owned by the parties, Lopro shall be responsible for and shall control, at its sole cost, the preparation, filing, prosecution, maintenance, defense and extension of such Licensed Patents. Lopro shall use reasonable efforts to deliver to Woltshire reasonably complete drafts of all material submissions to patent authorities relating to the Licensed Patents, including, without limitation, patent applications and amendments, and, to the extent feasible, to give Woltshire a reasonable opportunity to comment on such documents prior to their filing. Woltshire shall provide any such comments promptly. Lopro shall consider Woltshire’s comments and requests with regard to the preparation, filing, prosecution, maintenance and/or defense of the Licensed Patents in good faith. Lopro shall also promptly provide Woltshire copies of material documents received from such patent authorities relating to the Licensed Patents. If Lopro decides to abandon or allow to lapse any jointly owned patent application or any claim of any jointly owned patent included in the Licensed Patents or not pursue patent protection for any foreign patent, Lopro shall notify Woltshire at least **[\*]** before such decision would be effective, and Woltshire shall have the right to file, prosecute, and maintain, as applicable, such patent or patent application at Woltshire’s expense, provided that Woltshire may thereafter abandon or allow to lapse any or all such patents or patent applications for which it is responsible.

9.2    Enforcement of Patent Rights. Each party will promptly notify the other if it believes a third party infringes a Licensed Patent or if a Third Party files a declaratory judgment action with respect to any Licensed Patent. The parties agree to use reasonable efforts to settle with the Third Party without litigation. If reasonable efforts are unsuccessful and Lopro (or its sublicensee, as applicable):

(a)    provides written evidence of the infringement to Woltshire, and

(b)    is diligently developing, offering for sale, or selling Licensed Product,

then during the term of this Agreement, Lopro shall have the first right to institute and prosecute a suit or defend any declaratory judgment action with respect to Exclusive Licensed Patents in the Territory and only in the Field of Use, so long as it conforms with the requirements of this Section. If Lopro decides to institute suit, it will notify Woltshire in writing. Lopro will diligently pursue the suit and Lopro will bear the entire cost of the litigation, including expenses and counsel fees incurred by Woltshire. Lopro will keep Woltshire reasonably apprised of all developments in the suit and will make a good faith effort to incorporate Woltshire’s input on any substantive submissions or positions taken in the litigation regarding the scope, validity and enforceability of the Licensed Patent. Lopro will not initiate, prosecute, settle or otherwise compromise any such suit in a manner that adversely affects Woltshire’s interests without Woltshire’s prior written consent. Woltshire may be named as a party only if:

(c)    Lopro’s counsel recommend that such action is necessary in their reasonable opinion to achieve standing;

(d)    Woltshire is not the first named party in the action; and

(e)    the pleadings and any public statements about the action state that Lopro is pursuing the action and that Lopro has the right to join Woltshire as a party.

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Lopro shall reimburse Woltshire for all reasonable legal fees and costs incurred by Woltshire in connection with any action described in this Section 9.2. With respect to any damages, profits or awards of whatever nature recovered from any such action other than for willful infringement, after reimbursement of reasonable legal costs and expense related to such enforcement, the balance of any recovery shall be distributed as follows: **[\*]**. Recovery for willful infringement will be **[\*]**. For clarity, if any recovery comes in the form of a sublicense, then all sections related to sublicenses under this Agreement will apply to such sublicense, including, but not limited to, revenue sharing and earned royalty payments. Lopro shall not settle any suits or actions in any manner relating to the Licensed Patents that is detrimental to Woltshire or to the scope or validity of Licensed Patents, without obtaining the prior written consent of Woltshire, which consent shall not be unreasonably withheld or delayed. If Lopro does not tile suit against, or otherwise take any action to stop, a substantial infringer of any Licensed Patent in the Field of Use within **[\*]** of a written request by Woltshire to do so, then Woltshire may, at its sole discretion and expense, enforce any patent licensed hereunder on behalf of itself and Lopro (as to which Lopro agrees to be joined as a party plaintiff), and after reimbursement of reasonable legal costs and expenses related to such enforcement, the balance of any recovery shall be distributed as follows: **[\*]**.

9.3    Patent Term Extensions. Lopro shall have the right, on a product by product basis, to select a patent within the Licensed Patents to seek a term extension for or supplementary protection certificate under in accordance with the applicable laws of any country. Each party agrees to execute any documents and to take any additional actions as the other party may reasonably request in connection therewith. Lopro shall consult with Woltshire and consider its views in good faith before applying for a patent term extension or supplementary protection certificate for any Licensed Product.

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| 10. | TERMINATION |

10.1    Expiration. Subject to Sections 10.2 and 10.3 below, this Agreement shall expire on the expiration of Lopro’s obligation to pay royalties to Woltshire under Section 4.5. After expiration of this Agreement (but not earlier termination). Lopro shall have a fully paid-up, non-exclusive license under the Licensed Know-How to conduct research and to develop, make, have made, use, sell, offer for sale and import Licensed Products in the Territory for use in the Field of Use.

10.2    Termination by Lopro. Lopro may terminate this Agreement, in its sole discretion, upon **[\*]** prior written notice to Woltshire.

10.3    Termination for Cause. Except as otherwise provided in Section 13, Woltshire may terminate this Agreement upon or after the breach of any material provision of this Agreement by Lopro if Lopro has not cured such breach within **[\*]** after receipt of written notice thereof by Woltshire; provided, however, if any default is not capable of being cured within such **[\*]** period and Lopro can provide written documentation satisfactory to Woltshire that it is diligently undertaking to cure such default as soon as commercially feasible thereafter under the circumstances, Woltshire shall have no right to terminate this Agreement. Material provisions will include but not be limited to Lopro being delinquent on any report or payment, not diligently developing or commercializing Licensed Product, missing any milestones described in Exhibit C, failure to comply with Sections 3 and 11 or to comply with applicable laws, or providing any false reports, provided that the foregoing notice and cure procedures will still apply to a breach of any of the foregoing material provisions.

10.4    Effect of Expiration or Termination.

(a)    Upon termination pursuant to Section 10.3, if there are then outstanding any valid, written sublicense agreements under which Lopro has granted a sublicense to a Third Party and the sublicensee thereunder is in good standing pursuant to the sublicense agreement, then the sublicensee

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shall have the right to notify Woltshire within **[\*]** of notice of termination of this Agreement that it wishes to enter into a direct license with Woltshire in order to retain its rights to the Licensed IP Rights granted to it under its sublicense agreement. Following receipt of such notice, Woltshire and the sublicensee shall enter into a license agreement the terms of which would be substantially similar to the terms of this Agreement; however, the scope of the direct license, the licensed territory, and the duration of the license grant would be limited to the corresponding terms granted by Lopro to the sublicensee, i.e., the sublicensee shall be granted at least the same scope of rights as it obtained from Lopro under its sublicense agreement, which scope shall not exceed the scope set forth in this Agreement. The financial terms of the direct license agreement, including without limitation the running royalty rate and milestone payments, would be identical to the corresponding financial terms set forth in this Agreement, provided that Woltshire would consider in good faith reducing the non-running royalty financial payments where there are multiple direct licensees or such direct licensee has a reduced scope compared with the Agreement.

(b)    Expiration or termination of this Agreement shall not relieve the parties of any obligation accruing prior to such expiration or termination, including the obligation for Lopro to pay royalties accrued or accruable, any claim of Lopro or Woltshire, accrued or to accrue, because of any breach or default by the other party, and the provisions of Sections 2, 5.7.2, 7.3, 8, 9, 10, 11 and 15 and any other provision that by its nature is intended to survive, shall survive the expiration or termination of this Agreement.

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| 11. | INDEMNIFICATION |

11.1    Indemnification. Lopro shall defend, indemnify and hold harmless Woltshire. Woltshire Health Care and Anna Freud Children’s Hospital at Woltshire and their directors, officers, employees, contractors, representatives, students, volunteers and agents (collectively, “Woltshire Indemnitees”) and WERNER , its directors, officers, employees, contractors, representatives and agents (collectively, “WERNER Indemnitees”; collectively with Woltshire Indemnitees. “Indemnitees”) from all losses, liabilities, damages, claims, judgments and expenses (including attorneys’ fees and costs) incurred as a result of any third party claim, demand, action, suit or proceeding arising out of or related to the exercise of any rights granted Lopro under this Agreement or any breach of this Agreement by Lopro, its Affiliates or a sublicensee, or the negligence or willful misconduct of Lopro, its Affiliates or a sublicensee in the performance of the obligations wider this Agreement, except in each case to the extent such claim is determined with finality by a court of competent jurisdiction to result from the gross negligence or willful misconduct of Woltshire.

11.2    Procedure. Woltshire will reasonably promptly notify Lopro of any liability or action in respect of which Woltshire intends to claim such indemnification, and Lopro shall assume the defense thereof (including settlement negotiations) with counsel selected by Lopro, provided that (1) Lopro must do so in a manner that does not adversely affect Indemnitees’ interests unless otherwise expressly agreed by Indemnitee in writing; (2) it must coordinate with Woltshire in the review of proposed settlement terms and must obtain Indemnitee’s prior written consent to any settlement if such settlement would require any Indemnitee to assume any liability, admit any fault and/or otherwise agree to take or not take any action, such consent not to be unreasonably withheld or delayed, (3) it will select legal counsel with experience in similar actions and which is reasonably acceptable to Woltshire, (4) the defense activities to be taken by Lopro shall not impair the Indemnitees’ reputation or admit or increase any unindemnified liability of the Indemnitees without consent from the affected Indemnitees; and (5) Lopro will be responsible for the costs of such defense, settlement and proceedings. The indemnitees shall have the right to retain separate counsel and participate in the defense of the action or claim at its own expense. The indemnity agreement in this Section 11 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the consent of Lopro, which consent shall not be withheld or delayed unreasonably. The failure to deliver notice to Lopro within a reasonable time after the

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commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve Lopro of any liability to Woltshire under this Section 11 to the extent of the prejudice thereby caused, but the omission to deliver notice to Lopro will not relieve it of any liability that it may have to Woltshire otherwise than under this Section 11. Woltshire under this Section II and the other Indemnitees shall cooperate fully with Lopro and its legal representatives in the investigation and defense of any action, claim or liability covered by this indemnification.

WERNER is an intended third-party beneficiary of this Agreement and has the right to enforce in its own name any provision of this Agreement (i) providing indemnification or similar protection for WERNER , its trustees, officers, employees or agents, or (ii) otherwise expressly naming WERNER other than solely to identify an individual’s institutional affiliation.

11.3    Insurance. During the term of this Agreement. Lopro will maintain Commercial General Liability Insurance with a reputable and financially secure insurance carrier to cover the activities of Lopro and its affiliates and sublicensees. The insurance will provide minimum limits of liability of **[\*]** per occurrence and **[\*]** annual aggregate and will include all Indemnitees as additional insureds. Prior to the time when any Licensed IP Rights are being used by Lopro in human clinical trials or Licensed Products are being sold or distributed by Lopro or an Affiliate or sublicensee, and continuing during the term of this Agreement, Lopro will maintain Comprehensive General Liability Insurance, Clinical Trial Insurance and Product Liability Insurance, with a reputable and financially secure insurance carrier to cover the activities of Lopro and its Affiliates and its sublicensees. The insurance will provide minimum limits of liability of **[\*]** per occurrence and **[\*]** annual aggregate and will include all Indemnitees as additional insureds. Insurance must cover claims incurred, discovered, manifested, or made during or after the expiration of this Agreement and must be placed with carriers with ratings of at least A- as rated by A.M. Best. Within **[\*]** after Woltshire’s request, Lopro will furnish a Certificate of Insurance evidencing primary coverage and additional insured requirements. Lopro will provide to Woltshire **[\*]** prior written notice of cancellation or material change to this insurance coverage. Lopro will advise Woltshire in writing that it maintains excess liability coverage (following form) over primary insurance for at least the minimum limits set forth above. All insurance of Lopro will be primary coverage; insurance of Indemnitees will be excess and noncontributory.

11.4    Limitation of Liability. EXCEPT WITH RESPECT TO INDEMNIFICATION OBLIGATIONS OR EITHER PARTY’S INFRINGEMENT OF THE OTHER PARTY’S INTELLECTUAL PROPERTY, RESPECTIVELY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS) ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER THE OTHER PARTY KNOWS OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. WOLTSHIRE SHALL NOT HAVE ANY RESPONSIBLITIES OR LIABILITIES WHATSOEVER WITH RESPECT TO LICENSED PRODUCTS.

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| 12. | NAMES AND MARKS |

Lopro will not use, and will ensure that its Affiliates and sublicensees will not use, (i) Woltshire’s or WERNER ’s name or other trademarks, (ii) the name or trademarks of any organization related to Woltshire or WERNER , or (iii) the name of any Woltshire or WERNER faculty member, employee, student or volunteer, in each case in relation to any marketing, promotion or publicity regarding this Agreement, which includes, but is not limited to, use in press releases, advertising, marketing materials, other promotional materials, presentations, case studies, reports, websites, application or software interfaces, and other electronic media. Notwithstanding the foregoing, Lopro may include Woltshire’s name in factual statements in legal proceedings (including those required by applicable law or regulation), patent applications and other

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regulatory filings. In addition, Lopro may make a short factual statement that identifies Woltshire as the licensor of the rights granted under this Agreement including in the “About Lopro or other similar section of the Lopro website.

Subject to Section 8.1 of this Agreement, Woltshire will not use, and will ensure that its Affiliates and sublicensees will not use, (i) Lopro’s name or other trademarks, (ii) the name or trademarks of any organization related to Lopro, or (iii) the name of any Lopro employee, in each case in relation to any marketing, promotion or publicity regarding this Agreement, which includes, but is not limited to, use in press releases, advertising, marketing materials, other promotional materials, presentations, case studies, reports, websites, application or software interfaces, and other electronic media.

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| 13. | FORCE MAJEURE |

Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other party, provided, that the affected party promptly notifies the other party of the event or situation causing the failure or delay, keeps the other party informed of the steps being taken to remedy it and exerts all reasonable and diligent efforts to avoid and to promptly remedy the failure or delay.

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| 14. | EXPORT |

Lopro and its affiliates and sublicensees will comply with all applicable United States laws and regulations controlling the export of licensed commodities and technical data relating to this Agreement. (For the purpose of this paragraph, “licensed commodities” means any article, material or supply but does not include information; and “technical data” means tangible or intangible technical information that is subject to U.S. export regulations, including blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions.) These laws and regulations may include, but are not limited to, the Export Administration Regulations (15 CFR 730-774), the International Traffic in Arms Regulations (22 CFR 120-130) and the various economic sanctions regulations administered by the U.S. Department of the Treasury (31 CFR 500-600).

Among other things, these laws and regulations may prohibit or require a license for the export or retransfer of certain commodities and technical data to specified countries, entities and persons. Lopro hereby gives written assurance that it will comply with, and will cause its affiliates and sublicensees to comply with all United States export control laws and regulations, that it understands it may be held responsible for any violation of such laws and regulations by itself or its affiliates or sublicensees, and that it will indemnify, defend and hold Woltshire harmless for the consequences of any such violation.

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| 15. | MARKING |

Before any Licensed Patent issues and to the extent practicable, Lopro will mark Licensed Product (or its packaging or a product website) with the words “Patent Pending.” Otherwise, to the extent practicable. Lopro will mark Licensed Product with the number of any issued Licensed Patent.

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| 16. | MISCELLANEOUS |

16.1    Legal Action. Lopro will provide written notice to Woltshire at least **[\*]** prior to bringing an action seeking to invalidate any Licensed Patent or a declaration of non-infringement. Lopro will include with such written notice an identification of all prior art it believes invalidates any claim of the Licensed Patent.

16.2    Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by one of the parties hereto to the other party shall be in writing, delivered by any lawful means to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor and (except as otherwise provided in this Agreement) shall be effective upon receipt by the addressee.

If to Woltshire:

All general notices to Woltshire are e-mailed or mailed to:

[\*]

All payments to Woltshire are mailed to:

[\*]

All progress reports to Woltshire are e-mailed or mailed to:

[\*]

if to Lopro:

[\*]

16.3    Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof.

16.4    Assignment. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that Lopro may, without such consent, assign this Agreement and its rights and obligations hereunder (i) to any Affiliate or (ii) in connection with the transfer or sale of all or substantially all of its business to which this Agreement relates, or in the event of its merger, consolidation, change in control or similar transaction and provided. Any permitted assignee shall assume in writing all obligations of its assignor under this Agreement.

16.5    Waivers and Amendments. No change, modification, extension, termination or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the parties hereto.

16.6    Entire Agreement. This Agreement embodies the entire agreement between the parties and supersedes any prior representations, understandings and agreements between the parties regarding the subject matter hereof. There are no representations, understandings or agreements, oral or written, between the parties regarding the subject matter hereof that are not fully expressed herein.

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16.7    Exclusive Forum. The state and federal courts having jurisdiction over Woltshire, California, United States of America, provide the exclusive forum for any court action between the parties relating to this Agreement. Lopro submits to the jurisdiction of such courts, and waives any claim that such a court lacks jurisdiction over Lopro or constitutes an inconvenient or improper forum.

16.8    Severability. Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof and without affecting the validity or enforceability of any of the terms of this Agreement in any other jurisdiction.

16.9    Waiver. The waiver by either party hereto of any right hereunder or the failure to perform or of a breach by the other party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other party whether of a similar nature or otherwise.

16.10    Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, with facsimile and pdf signatures binding as if originally executed.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

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| The Board of Trustees of the Woltshire | | |
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| By: |  | */s/ Cathy Carlin* |
| Name: |  | Cathy Carlin |
| Title: |  | Executive Director, Technology Licensing |
|  | | |
| Loprophram, Inc. | | |
|  |  | |
| By: |  | */s/ Yusuke Ino* |
| Name: |  | Yusuke Ino |
| Title: |  | CFO & Head of Corporate Development |

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EXHIBIT A

EXISTING PATENTS

**[\*]**

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EXHIBIT B

RESTRICTED STOCK GRANT AGREEMENT

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EXHIBIT C

Diligence milestones

**[\*]**

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**LicA#37**

EX-10.31

**EXHIBIT 10.31**

**INTELLECTUAL PROPERTY LICENSE AGREEMENT**

This Intellectual Property License Agreement (this “**Agreement**”) dated as of JUNE 24, 2019 the “**Effective Date**”) is made by and between High Flyers Corp., a US corporation with offices at […], British Columbia, V1X 2P7, Canada (the “**LICENSOR**”), and Dreamcorp LLC, a US limited liability company having an address at […], WY 82801 (together with its successors and assigns the “**LICENSEE**”). LICENSOR and LICENSEE are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

WHEREAS certain capitalized terms not otherwise defined below are defined in Exhibit “D” herein;

WHEREAS, LICENSEE plans to be in the business of developing, manufacturing, and selling certain hemp oil containing, and cannabidiol (“**CBD”)**based Liquids to be sold to commercial business-to-business third parties, prohibiting sales to consumers or packaged into final-form consumer goods (the “**Licensee Clients**”) for the purpose of the Licensee Clients incorporating said Liquified with other ingredients to produce CBD-infused products for commercial sale and, to the extent necessary, pursuant to licenses issued by the authorities relevant in each and every geographic location referenced within this Agreement, pursuant to regulations promulgated thereby;

WHEREAS, LICENSOR has been issued a license from its parent company, being the indirect owner of certain intellectual property and technology related to, including but not limited to, the development, testing, and manufacturing process for hemp and/or CBD infused products (the “**Technology**”) and further has been issued the right to sublicense the Technology to parties who wish to utilize the Technology with respect to products that incorporate hemp and/or CBD;which Technology is more specifically described in Exhibit A and detailed batch records and formulation calculation spreadsheets that shall be provided by virtual data room (“**VDR**”) and/or email upon to the execution of this License Agreement, by LICENSOR to LICENSEE;

WHEREAS, LICENSEE wishes to utilize the Technology of LICENSOR (which shall include any Licensor’s Improvements, as defined in Section 3.c), and LICENSOR desires for LICENSEE to utilize the Technology with hemp ingredients containing less than 0.29% THC to create, manufacture and/or sell Liquids (“**Liquified Products**”) to Licensee Clients only who will use such Liquids for the sole purpose, and FOLLOWING PROCESSING INSTRUCTIONS AND GUIDANCE TO BE DEVISED AND PROVIDED BY LICENSEE, of producing CBD-infused products for commercial sale as of the Effective Date as further described in Exhibit B (the **“Licensee Client’s End Products”**), subject to the terms and conditions set forth herein. The Liquified Products shall only be distributed and/or sold by LICENSEE, in compliance with all applicable laws and licensing requirements within every jurisdiction in which LICENSEE is permitted by this Agreement or an addendum to this Agreement to sell or distribute the Liquified Products (the “**Territory**”);

WHEREAS, the Liquified Products and the Licensee Client’s End Products may not be exported from the Territory to any other global location without express written permission granted in advance from the LICENSOR and is subject to entering a separate licensing agreement or by addendum to this Agreement, and always subject to availability among other LICENSOR considerations; and

WHEREAS, the Parties intend and desire for these recitals to be incorporated into the Agreement, and to be bound by any representations or obligations contained therein.

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements of the parties contained in this Agreement, the Parties hereto agree as follows:

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**AGREEMENT**

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| **1.** | **License of Technology:**Subject to the terms and conditions of this Agreement, LICENSOR hereby grants to LICENSEE a semi-exclusive, subject to certain exclusivity provisions, (all as defined in Section 2 below), non-transferable, non-sub-licensable, license to use the Technology to develop, test, make, sell, offer for sale and distribute the Liquified Products during the Term of this Agreement. Such Liquified Products shall only be distributed and/or sold by LICENSEE in compliance with all Federal and Provincial/State, licensing requirements within the Territory. The Liquified Products and the Licensee Client’s End Products may not be exported or sold from the Territory to any other global location without express written permission granted in advance from the LICENSOR, subject to entering a separate licensing agreement or by addendum to this Agreement, and always subject to availability among other LICENSOR considerations. Notwithstanding the first sentence of this paragraph, in the event that a Person acquires all of the issued and outstanding shares of LICENSEE, or all or substantially all of the assets of the LICENSEE, the LICENSEE shall be entitled to transfer all of its rights and obligations relating to this agreement to such Person, and such Person is entitled to all of the rights and benefits of the LICENSEE under this agreement solely with respect to Liquified Products then being sold or produced by the LICENSEE. |

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|  | a) | **Non-transferable:** The license granted by this Section 1 may not be transferred or sublicensed by LICENSEE without LICENSOR’s written consent. |
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|  | b) | **Other Products:** The Parties agree that LICENSEE is not limited to production of the Liquified Products defined herein, but that LICENSEE may develop, create and test new products and negotiate to obtain a license from the LICENSOR for new products subject to license availability from LICENSOR that are derived from or otherwise incorporate the Technology and such new products are only to be distributed and/or sold in the Territory and only after conditions applicable to a new license are met subject to Section 3 below; and that LICENSEE remains free to conduct business that is not related to the Technology. Furthermore, the Parties agree that LICENSEE is not limited to the sale of the Liquified Products or new products within the Territory, but that LICENSEE shall have the right to license the Technology from LICENSOR for use outside of the Territory, to the extent, now or in the future, any worldwide local or state licensing, distribution and retail requirements permit the sale of the Liquified Products or new products outside the Territory and, to the extent the Parties agree to extend the scope of the License Agreement to new territories outside the Territory, as may be agreed upon from time-to-time during the term of the License Agreement (each a “**Subsequent Territory**”). Each said Subsequent Territory shall modify and be included within the scope of the Territory definition hereunder (*e.g.*, if the Parties agree to extend the scope of the License Agreement to Germany as a Subsequent Territory, Germany shall then be treated as a Territory as defined herein and usage fees as defined in Exhibit C hereto shall apply, together with any applicable territory license fees to be negotiated between the Parties for each Subsequent Territory also pursuant to Exhibit C hereto). Additionally, LICENSEE remains free to develop, create and test products that are not related to the Technology. |
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|  | c) | **Active Substances:**Nothing in this Agreement infers applicability of the Technology by LICENSEE for enabling active substance incorporation and potentiation in LICENSEE’s Liquified Products, other than those Liquified Products derived from hemp. LICENSEE is prohibited from developing, manufacturing or selling, whether directly or indirectly, in its Territory, any Liquified Product that will be used in the following types of products: (i) any product that is a pharmaceutical product that has been approved by either Health Canada pursuant to the *Food and Drugs Act and Regulations* (Canada) or the U.S. Food and Drug Administration by way of their Centre for Drug Evaluation and Research; (ii) a fat soluble vitamin product for vitamins A, D, E, and/or K, whether in their natural or synthetic forms, (iii) a Non-Steroidal Anti Inflammatory (NSAID) product which contains acetaminophen, ibuprofen, acetylsalicylic acid, diclofenac, indomethacin, and piroxicam, or substances similar thereto; or (iv) a nicotine or nicotine analog product and any other active substance not specifically named and allowed within this Agreement. Certain cannabinoids are thought to deliver anti-inflammatory benefits which benefits ARE permitted under this Agreement if delivered through the cannabinoids described as the Liquified Products; and are only prohibited if delivered through NSAIDs’ as described in this Section. |

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| **2)** | **Exclusivity.** LICENSEE will have the following rights to produce and sell the Liquified Products for five (5) years in the Territory using the Technology licensed pursuant to this Agreement. |

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|  | a) | **Exclusive Rights In the Territory:**exclusive rights from the Effective Date until the first anniversary of the Effective Date (the “Exclusivity Period”), allowing LICENSEE the exclusive ability to manufacture, for the sale to Licensee Clients only, the product categories defined in Exhibit B as Liquids for Food Products and Liquids for Consumable Liquids to be used with food products and consumable liquids within the Territory, provided that the LICENSEE is not in default of any Usage License Fee or Minimum Fee payments, as defined in Exhibit C. This exclusivity right is subject to the LICENSOR’s rights and license as described under subsection 2d), and an existing license currently in place with respect to the production of Liquids for Food Products and Liquids for Consumable Liquids using the Technology for the sole purpose of producing Licensee Client End Products in the Territory. |
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|  | b) | **Limited Right of First Refusal (“ROFR”) to Extend Exclusivity Period:** LICENSOR agrees that, upon entering into general discussions with a potential third party licensee to produce Liquified Products defined as Liquids for Food Products and Liquids for Consumable Liquids, within the Territory (in each case, the “New Licensee”), prior to the entrance into any definitive license agreement, LICENSOR will offer a ROFR to LICENSEE by way of engaging in good faith negotiations with LICENSEE to determine a mutually agreeable value of consideration payable by LICENSEE to LICENSOR (the “**Exclusivity Compensation**) to extend the Exclusivity Period**for such specific license and Liquified Product categories**for an additional one (1) year period commencing from the completion of the Exclusivity Period. The terms of the ROFR are as follows: |

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|  |  | i) | The ROFR does not extend to any license which the LICENSOR assumes in order to produce the Liquified Products listed in Exhibit “B”; |
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|  |  | ii) | As at the date of this agreement, LICENSOR has the right to issue five (5) additional licenses to New Licensees in the Territory with respect to each of the following Liquified Product Categories, as more specifically described in Exhibit B: (i) Liquids for Capsules, Pills, Tablets and Melts; and (ii) Liquids for Topical Skin Products (collectively the “**Unlicensed Products**”); |
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|  |  | iii) | Upon execution by all parties of this agreement, LICENSOR has the right to issue four (4) additional licenses to New Licensees in the Territory with respect to Liquids for Food Products; |

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|  |  | iv) | Upon execution by all parties of this agreement, LICENSOR has the right to issue three (3) additional licenses to New Licensees in the Territory with respect to Liquids for Consumable Liquids; |
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|  |  | v) | There shall not be any ROFR with respect to the Unlicensed Products; |
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|  |  | vi) | For further clarity, (A) pursuant to subsections iii) and iv), the LICENSOR has the right to issue an aggregate seven (7) additional licenses whereby a ROFR will be granted to the LICENSEE (the “ROFR Licenses”) and accordingly, the LICENSEE shall be given an opportunity to negotiate Exclusivity Compensation for each of the ROFR Licenses; (B) and each such license by LICENSOR to New Licensees shall prohibit further sublicenses or similar grants of rights by the New Licensee; |
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|  |  | vii) | The ROFR shall be extended to the LICENSEE for a period of thirty (30) calendar days after LICENSOR notifies LICENSEE of the potential ROFR License, during which the parties shall negotiate in good faith the Exclusivity Compensation. Should the parties fail to agree on the Exclusivity Compensation within such thirty (30) day period, despite their good faith efforts, the LICENSOR shall be free to enter a definitive license with the New Licensee. |
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|  |  | viii) | If the Exclusivity Compensation is agreed upon by the parties, the LICENSOR shall agree to refrain from issuing one (1) ROFR License of the outstanding and available ROFR Licenses, in the applicable Liquified Product category, for a period of one year from the date of payment of the Exclusivity Compensation (the “ROFR Exclusive Period”). Upon completion of the ROFR Exclusive Period for any ROFR License, the LICENSOR shall be free to issue such ROFR License to a New Licensee unless the LICENSEE negotiates another mutually agreeable Exclusivity Compensation with the LICENSOR in order to extend the ROFR Exclusive Period for such specific ROFR License for a further one (1) year term. |

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|  | c) | Semi-exclusive rights from: (i) the Effective Date of this Agreement for Liquified Products that are defined as Liquids for Capsules, Pills, Tablets and Melts and Liquids for Topical Skin Products in Exhibit B; and (ii) from the later of the completion of the Exclusivity Period or any respective ROFR Exclusive Period for Liquified Products that are defined as Liquids for Food Products or Liquids for Consumable Liquids, as applicable, allowing LICENSEE the semi-exclusive ability to continue to manufacture the Liquified Products in the Territory for the balance of the term of this Agreement as per Section 4. Semi-Exclusive under this Agreement means that LICENSOR will not permit more than five (5) additional entities to license the Technology for any Liquified Products (the “Additional Licenses”). LICENSOR warrants and represents that one of the Additional Licenses shall remain exclusively for the purpose of the LICENSOR exercising its rights pursuant to section 2 d) below. |
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|  | d) | **LICENSOR’s Products:** Other than the restrictions associated with the Exclusivity Period, any ROFR Exclusive Period and the semi-exclusive rights, LICENSOR shall not be prohibited from licensing or similar arrangements with respect to the use of the Technology in Liquified Products. LICENSOR is expressly permitted to utilize its Technology on any basis it chooses, at any time, for producing and commercializing its own products. Additionally, LICENSOR shall also have the right to produce Liquified Products within the Territory and outside of the Territory for use by third parties to produce parallel end products as noted in Schedule B. In any case where the LICENSOR is producing Liquified Products for the benefit of a third party purchaser, such production will constitute one of the aggregate six (6) licenses available pursuant to the semi-exclusive rights. |

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|  | e) | **Severance Fee:** LICENSEE may elect to end sales of the Liquified Products at its sole discretion with the payment of a severance fee (“**Severance Fee”)** as set forth in Exhibit C. If LICENSEE elects to end sales of the Liquified Products, then any other licensing provision benefits for the LICENSEE with respect to the Liquified Products also end at that time. Notwithstanding the foregoing, for a period of 6 months after such election is made, LICENSEE shall be permitted to sell Liquified Products using the Technology in an attempt to sell all finished goods inventories pertaining to the Technology. |
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|  | f) | **Use of Brands by Licensee Clients:**The LICENSEE is prohibited from using the LICENSOR’s trademarks on the Liquified Products, and Licensee’s Clients may not use Licensor’s trademarks on the Licensee Client’s End Products unless a trademark license agreement has been entered into with the LICENSOR. The LICENSEE is encouraged to inform the Licensee Clients of the benefits of the goodwill and reputation associated with the LICENSOR’s brands and recommend such Licensee Clients to enter into a trademark license agreement with the LICENSOR for the use of its ImmiTech and Powered by High Flyers Bioscience word trademarks and the associated pinwheel & leaf design trademark and access to its clinical trial data (a “**Trademark License**” applicable to Licensee Clients). LICENSOR shall compensate LICENSEE with an amount equal to [\*\*]1% of the trademark license fee for each Trademark License entered into by a Licensee Client. |

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| **3)** | **Rights and Obligations Related to the Technology:**Except as expressly provided in this section or elsewhere in this Agreement, neither Party will be deemed by this Agreement to have been granted any license or other rights to the other Party’s products, information or other intellectual property rights, either expressly or by implication, estoppel or otherwise. |

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|  | a) | **LICENSOR Intellectual Property:** LICENSOR, via its license from its parent company, retains its full, absolute, and complete rights to all processes covered or described in all of the issued patents and patent applications filed prior to the date of this Agreement as listed in the attached Exhibit A, and any future continuations, continuations in part or divisional applications filed thereto, including but not limited to the US Provisional patent applications, US Utility patent application, and the International patent application, that comprise the Technology (“**Licensor IP**”), unless LICENSOR or its parent company allows these applications to abandon or lapse, or otherwise fails to protect the Technology. Except as expressly provided for in Section 2, nothing in this Agreement or in the conduct of the Parties shall be interpreted as preventing LICENSOR from granting to any other person a license for use of the Technology or from using the Technology in any manner whatsoever. |
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|  | b) | **LICENSEE Intellectual Property**: Any intellectual property resulting solely from LICENSEE’s work, know-how, or development that does *not* include nor rely upon the Technology, Licensor IP or jointly owned intellectual property, as described in this Agreement, shall be owned by LICENSEE (“**Licensee IP**”). |

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1 Certain information has been redacted: The omitted information reflects the payable percentage of the trademark license fee

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|  | c) | **Improvements**: |

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|  |  | I) | LICENSOR Improvements: The entire right and title to the Technology, whether or not patentable, and any patent applications or patents based thereon, which directly relate to and are not severable from Licensor IP and which are improvements thereto by LICENSOR or any Related Entity of the LICENSOR, and such associated employees or others acting for LICENSOR’s or LICENSOR’s Related Entity’s behalf shall be owned solely by LICENSOR or such Related Entity of LICENSOR as designed by LICENSOR (in any such case the “Licensor Improvements”). |
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|  |  | ii) | LICENSEE Improvements: Rights and title to improvements whether or not patentable, and any patent applications or patents based thereon, which directly relate to and are not severable from Licensor IP and which are improvements thereto by LICENSEE, its employees or a Related Entity, as defined by this Agreement, shall be owned by the LICENSOR (“Licensee Improvements”). In respect to such Licensee Improvements, LICENSOR grants LICENSEE a license to use the underlying intellectual property supporting any such improvement for so long as this Agreement remains in effect (including any renewal terms) and LICENSOR agrees to negotiate in good faith, terms of a license renewal after the end of the Term of this Agreement and any renewal terms per Section 4.a). If LICENSEE develops any Licensee Improvements, LICENSEE will promptly provide LICENSOR with written notice of such Licensee Improvements to validate LICENSEE’S claim to Licensee Improvements. Following receipt of notice of such Licensee Improvements, LICENSOR shall have the exclusive option during the Term of this Agreement (and any renewal terms) to purchase or license from LICENSEE the Licensee Improvements for LICENSOR or Related Entity of LICENSOR’s use upon mutually agreeable terms and conditions that the parties shall negotiate in good faith. |
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|  |  | iii) | Joint Improvements: Rights and title to the Technology, whether or not patentable, and any patent applications or patents based thereon, which directly relate to and are not severable from Licensor IP and which are improvements thereto by both LICENSOR AND LICENSEE shall be jointly owned intellectual property by LICENSOR AND LICENSEE. |
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|  |  | iv) | Improvements; Assignment. LICENSEE and LICENSOR hereby represent that all employees and other persons acting on its behalf in performing its obligations under this Agreement shall be obligated under a binding written agreement to assign, or as it shall direct, all Joint Improvements that include or rely on the Technology conceived or reduced to practice by such employees or other persons acting on its behalf in accordance with this Agreement to the benefit of LICENSOR and LICENSEE. |
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|  |  | v) | Improvements; Confidential Information. All Improvements shall constitute Confidential Information of the applicable party owning such Improvements and shall be subject to the confidentiality provisions set forth in this Agreement. |

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|  | d) | **Inventions; Reporting**: |

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|  | i) | Upon making any invention that does *not* include or rely upon the Technology neither the LICENSOR nor the LICENSEE (in either such case the “Inventor”) will have any obligation to share such information of the invention with the other Party or inform the other Party of said invention, and the Inventor retains unrestricted rights and ability to use, assign, license, seek patent and other forms of intellectual property protection related to said invention. For the avoidance of doubt, any such new invention, development, technology, and/or intellectual property belongs solely to the Inventor. |

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|  | e) | **Jointly Owned Intellectual Property**: If any patent applications are filed seeking to protect any Joint Improvements (“**Jointly Owned IP**”), each Party shall be named as joint inventors. |

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|  | I) | Prosecution and Maintenance of Jointly Owned Patents. The Parties shall cooperate to cause the filing of one or more patent applications covering any such Jointly Owned IP. The Parties will mutually agree upon which of them shall be responsible for filing, prosecution and maintenance of Jointly Owned IP. The expenses of such filing, prosecution and maintenance shall be equally shared by the Parties unless one of the Parties assigns all of its rights to the other Party. Both Parties agree to assist the other Party in enforcing its rights in the Jointly Owned IP. The costs of any such assistance or cooperation will be borne by the requesting party. |
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|  | ii) | Jointly Owned IP Rights. LICENSOR grants to LICENSEE an exclusive, non-sub-licensable, fully-paid, royalty-free, perpetual license to any Jointly Owned IP. Further, LICENSEE grants to LICENSOR an exclusive, non-sub-licensable, fully-paid, royalty-free, perpetual license to any Jointly Owned IP. |

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|  | f) | **No Challenge.** LICENSEE expressly acknowledges and agrees that all rights in and to the Technology shall remain vested in LICENSOR, and LICENSEE shall not assert any rights to the Technology except as otherwise provided in this Section 3. |
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|  | g) | **Notice Requirements.**To the extent required by applicable rules and regulations LICENSEE agrees that it will include such patent notices and other proprietary notices on all Liquified Products or related materials that contain any Technology as may be reasonably required by regulators in order to give appropriate notice of all intellectual property rights therein or pertaining thereto. |
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|  | h) | **Quality Control.** |

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|  | **i)** | LICENSEE agrees to maintain and preserve the quality of the Technology, and to use the Technology in good faith and in a manner consistent with the uses approved herein. |
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|  | **ii)** | LICENSEE shall (a) ensure that all Liquified Products and related materials under the Technology are developed, tested, promoted, manufactured and distributed in a professional manner in compliance with all generally accepted industry standards, and (b) comply in all material respects with any and all laws, rules and regulations that are applicable to the development, testing, promotion, manufacture and distribution of the Liquified Products and such related materials. |

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|  | i) | **Prosecution and Maintenance.** LICENSOR, directly or indirectly, shall be solely responsible for, and have control of, preparing, filing, prosecuting, obtaining, and maintaining the Technology (including Provisional Patent Applications and, if any, issued Patents). LICENSOR shall take such actions as it shall deem to be appropriate in its discretion in connection therewith and shall pay all costs and expenses incurred by it in connection with the foregoing activities. |
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|  | j) | **Infringement.** If LICENSEE learns of any activity by a third party that might constitute an infringement of LICENSOR’s rights in any of the Technology, or if any third party asserts that LICENSEE’s use of the Technology constitutes unauthorized use or infringement, LICENSEE shall so notify LICENSOR. |
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|  | k) | **Enforcement.** |

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|  | **i)** | LICENSOR has the right, directly or indirectly, but not the obligation, to enforce its rights against any third-party infringement and to defend LICENSEE’s right to use the Technology. If LICENSOR prosecutes any alleged infringement of the Technology, or defends LICENSEE’s right to use the Technology, LICENSOR shall control such litigation and shall bear the expense of such actions. LICENSEE shall make all reasonable efforts to assist LICENSOR therewith, including joining such action as a party plaintiff or providing such evidence and expert assistance as LICENSEE may have within its control, with all costs for such cooperation to be borne by LICENSOR. LICENSOR shall retain the award of any damages in this case. If LICENSOR chooses to not enforce against an alleged infringement or fails to diligently enforce such alleged infringement at any time, LICENSEE may itself enforce LICENSOR’s rights (and its own rights as a Licensee) in the Technology, with all costs to be borne by LICENSEE. LICENSEE shall retain the award of any damages in this case. |
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|  | **ii)** | LICENSOR has the right of examination of LICENSEE financial statements, production records, shipping and warehouse slips and statements if and as required to substantiate reported production and sales levels used to determine royalty levels. Any information provided to LICENSEE under this section is provided under strictest confidentiality and is subject to the confidentiality clauses of this Agreement. |

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| **4)** | **Term and Termination.** |

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|  | a) | Term and Renewal. This Agreement shall take effect upon signing by both Parties and shall remain in effect for the shorter of either five (5) years; or, such circumstances as described in Section 4.b). At any time after the fourth anniversary, this Agreement may be renewed by LICENSEE for an additional five (5) years on terms to be negotiated in good faith based on market conditions at the time of renewal by the Parties. |
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|  | b) | Termination. This Agreement and the licenses granted hereunder may be terminated prior to the expiration of the initial term or any renewal term of this Agreement as follows: |

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|  | **i)** | This Agreement may be terminated by LICENSOR by written notice to LICENSEE upon the occurrence of any of the following: (i) failure of LICENSEE to pay any license fees for more than sixty (60) days after they become due; (ii) LICENSEE’s violation of Section 7 c); (iii) LICENSEE’s violation of the provisions of Sections 8 and 10 or LICENSEE’s material breach of any other term of this Agreement, which breach is not cured within sixty (60) days after written notice of such breach from LICENSOR; (iv) failure of LICENSEE to maintain all required licenses and governmental authorizations required for the conduct of its business or to comply in all material respects with applicable laws; or (v) LICENSEE ceases operations, makes a general assignment for the benefit of creditors, or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding. |
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|  | **ii)** | This Agreement may be terminated by LICENSEE (i) for cause, by written notice to LICENSOR in the event of material breach by LICENSOR of its obligations or representations and warranties under this Agreement, which breach is not cured within sixty (60) days after written notice of such breach from LICENSEE; or (ii) without cause upon payment of the Severance Fee as noted in Exhibit C. |

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|  | c) | Effect of Termination. Except as provided for in Section 5, LICENSEE’s payment obligations shall extinguish if this Agreement is terminated. If the Agreement expires without any renewal thereof, then LICENSEE must immediately cease and desist all utilization of the Technology for any purpose whatsoever including to manufacture, distribute or sell Liquified Products, except that it may continue to distribute and sell Liquified Products until all finished goods and raw materials inventory that pertain to the Technology have been sold and shall maintain its obligations to pay LICENSOR any related License Fees (as defined in section 5) associated with such sales. In any event, upon the natural future expiration of all pending and issued patents, as applicable, related to the Technology described herein the License Agreement shall expire and LICENSEE shall have no further payment obligations to LICENSOR. |
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|  | d) | Survivability**.**This agreement in its entirety survives and remains in force if either Party is acquired by a third party. In the event that either Party negotiates any such sale or acquisition, then this Agreement shall be transferred as part of any such sale or acquisition agreement, and this Agreement shall remain binding upon the third party that is the purchaser or acquirer. |
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|  | e) | Change of Control. In the event that Licensee is purchased as to 50.1% or more (a “**Change of Control**”) by any entity, this Agreement remains valid only in relation to those Licensee Client End Products that were in commercial production at the time of Change of Control. This Agreement grants no rights to any third party to utilize the benefits of the Technology for any products other than the Licensee Client End Products described within. |

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| **5)** | **Compensation and Payment.** |

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|  | a) | In consideration for the license granted to LICENSEE under this Agreement, LICENSEE shall pay LICENSOR certain license fees as set forth in Exhibit C (collectively, the “**License Fee**”). The License Fee for a period shall be paid by LICENSEE to LICENSOR, in U.S. funds, by cheque or wire transfer of immediately available funds pursuant to the bank account identified by LICENSOR in advance of such payment. If LICENSEE materially breaches this Agreement, LICENSEE shall remain responsible for any License Fee payments due through the end of the calendar quarter during which such breach occurs. LICENSEE’s failure to pay any portion of the applicable License Fee or any reimbursable expenses when due will be a material breach of this Agreement by LICENSEE. If any payment due to LICENSOR under this Agreement is not paid within thirty (30) days following such Party’s written demand therefore, then such payment shall bear interest at the rate of one and one-half percent (1.5%) per month from the date such payment was originally due. |

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| **6)** | **Obligations.** |

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|  | a) | Obligations of LICENSEE. |

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|  | **i)** | LICENSEE shall be solely responsible for all costs of producing the Liquified Products, including raw materials and labor. LICENSEE acknowledges and agrees that it is solely responsible as applicable for (i) procurement of hemp extraction machinery, hemp, hemp oils, and other raw materials as required; (ii) compliance with all applicable laws relating to production and sale of hemp products; and (iii) procurement and maintenance of all required licensing and permits and/or operating authorities, including proper zoning of production and distribution facilities. |

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|  | b) | Obligations of LICENSOR. |

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|  | **i)** | Upon execution of this Agreement, LICENSOR shall make the Technology and any additional documents or materials not yet provided as described in Section 1 otherwise necessary to effectuate the license of the Technology contemplated herein available for LICENSEE. |
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|  | **ii)** | Upon request by LICENSEE, LICENSOR shall provide LICENSEE with onsite or remote support in connection with LICENSEE's use of the Technology (including Licensor Improvements) during the term of this Agreement, with reasonable travel expenses paid for by LICENSEE. |

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| **7)** | **Non-Solicitation / Non-Circumvention.** |

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|  | a) | Non-Solicitation of LICENSOR. The LICENSOR agrees that during the term of this Agreement and for a period ending six (6) months thereafter, neither the LICENSOR nor a Related Entity of LICENSOR will, directly or indirectly, solicit, accept business or leads from, call on or contact or accept calls or contact from, any employees, customers, suppliers, agents or independent contractors who are currently engaged by LICENSEE or become engaged by LICENSEE or alternatively, are engaging LICENSEE to produce Licensee Client End Products during the term of this Agreement (the “LICENSEE Contacts”), for the purpose of taking away business, employees, customers or potential customers, or any suppliers or other vendors from LICENSEE. Upon signing this Agreement LICENSEE shall provide LICENSOR with a list of its current LICENSEE Contacts (the “Licensee Contact List”) and shall provide LICENSOR with updated versions of the Licensee Contact List when new LICENSEE Contacts are added during the term of the Agreement. |
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|  | b) | Non-Circumvention of LICENSOR. The LICENSOR acknowledges that the LICENSEE will be incurring substantial costs, directly and indirectly with respect to creating a new division centered around the Licensee Client End Products. In consideration of the LICENSEE doing so, until such time as this transaction is terminated, neither the LICENSOR nor a Related Entity of the LICENSOR shall solicit, invite, induce, initiate or encourage licensing relationships with respect to the Technology being used in connection with Liquified Products with those persons listed on the Licensee Contact List, and any updated versions thereof during the term of this Agreement and for a period of six (6) months thereafter. |
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|  | c) | Non-Solicitation of LICENSEE. The LICENSEE agrees that during the term of this Agreement and for a period ending twelve (12) months thereafter, neither the LICENSEE nor a Related Entity of LICENSEE will, directly or indirectly conduct any sales or commercial business with, solicit, accept business or leads from, call on or contact or accept calls or contact from, any employees, leads, prospects, customers, suppliers, agents or independent contractors who are currently engaged by LICENSOR or become engaged or known to or by LICENSOR or alternatively, are engaging LICENSOR to license the Technology or produce products using the Technology during the term of this Agreement (the “**LICENSOR Contacts**”), for the purpose of taking away business, employees, customers or potential customers, or any suppliers or other vendors from LICENSOR. Upon signing this Agreement LICENSOR shall provide LICENSEE with a list of its current extensive LICENSOR Contacts (the “**Licensor Contact List**”) and shall provide LICENSEE with updated versions of the Licensor Contact List when new LICENSOR Contacts are added during the term of the Agreement. Any violation by LICENSEE of this provision will constitute a breach of the Agreement and this Agreement shall be immediately terminated upon written notice by LICENSOR to LICENSEE of such breach. |
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|  | d) | Non-Circumvention of LICENSEE. The LICENSEE acknowledges that the LICENSOR has spent years developing the Technology and marketing the benefits of the Technology to various corporations, individuals and others engaged in the food, beverage, pharmaceutical, nicotine and topical industries. In consideration of the LICENSOR’s extensive development of its Technology and its brands LICENSEE agrees that until such time as this transaction is terminated, neither the LICENSEE nor a Related Entity of the LICENSEE shall solicit, invite, induce, initiate or encourage relationships with respect to the production of products that utilize the Technology with those persons listed on the Licensor Contact List, and any updated versions thereof during the term of this Agreement and for a period of six (6) months thereafter. |

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| **8)** | **Representations and Warranties.** |

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|  | a) | Representations and Warranties of LICENSEE. LICENSEE represents and warrants to LICENSOR as follows: |

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|  | i. | LICENSEE is a company duly organized and in good standing under the laws of the United States; |
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|  | ii. | the execution, delivery and performance of this Agreement by LICENSEE has been duly authorized by all necessary action on the part of LICENSEE’s directors, managers and/or members and does not violate, conflict with, or require the consent or approval of any third party pursuant to any contract or legally binding obligation to which LICENSEE is subject; |
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|  | iii. | this Agreement constitutes the valid and binding obligation of LICENSEE enforceable against LICENSEE in accordance with its terms; |
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|  | iv. | LICENSEE is knowledgeable of the applicable laws and regulations of the Territory pertaining to the research, manufacture and distribution of the End Products, the use of hemp and CBD in the Liquified Products and the use of the Technology and confirms that the LICENSEE is in compliance with such laws and regulations; and |
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|  | v. | before LICENSEE begins to distribute and sell the Liquified Products which use the Technology, LICENSEE will possess all required licenses, permits or operating authorities necessary for its operations and the manufacture and sale of the Liquified Products as hemp and/or CBD products and will be in compliance with all applicable laws and regulations. |

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|  | b) | Representations and Warranties of LICENSOR. LICENSOR represents and warrants to LICENSEE as follows: |

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|  | i. | LICENSOR is a corporation duly organized and in good standing under the laws of the United States at the time of entering this Agreement; |
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|  | ii. | the execution, delivery and performance of this Agreement by LICENSOR has been duly authorized by all necessary action on the part of LICENSOR’s directors and officers and does not violate, conflict with, or require the consent or approval of any third party pursuant to any state or local law or regulation applicable to LICENSOR or any contract or legally binding obligation to which LICENSOR is subject; |
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|  | iii. | this Agreement constitutes the valid and binding obligation of LICENSOR enforceable against LICENSOR in accordance with its terms; and |
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|  | iv. | the Technology and Licensed Patents do not infringe any third-party rights. |

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| **9)** | **Reliance.**Each Party acknowledges that the other is relying on the representations and warranties of such Party in the execution and delivery of this Agreement. |
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| **10)** | **Confidentiality.**In addition to the Confidentiality Agreement previously entered into by the Parties, at all times during the term of this Agreement (including any renewal term) and thereafter, each Party undertakes not to use or disclose and to otherwise keep confidential, any trade secrets or proprietary information, including, but not limited to the Technology and other intellectual property of the other Party (in each instance, the “**Confidential Information**”) except to the extent required to perform each Party’s respective obligations under this Agreement. Without limitation of the foregoing, each Party will hold the other Party’s Confidential Information in confidence and will (a) exercise the same degree of care, but no less than a reasonable degree of care, to prevent its disclosure as such Party would take to safeguard its own confidential or proprietary information, and (b) limit disclosure of the Confidential Information, including any notes, extracts, analyses or materials that would disclose the Confidential Information, solely to those of its employees who need to know the information for purposes of performing the respective Party’s obligations under this Agreement and who agree to keep such information confidential. Upon termination of this Agreement, each Party shall immediately return all Confidential Information to the other Party and further the LICENSOR shall have the right to conduct an on-site audit of the LICENSEE within three (3) business days of termination to ensure compliance with the terms of this Agreement, at LICENSOR’S expense. |

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|  | a) | Limitations. This section does not apply to any information that: (a) is already lawfully in the receiving Party's possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving Party; (c) is disclosed to the receiving Party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving Party as a matter of law (provided that the receiving Party will use all reasonable efforts to provide the disclosing Party with prior notice of such disclosure and to obtain a protective order therefor, with all costs to be borne by the disclosing Party); (e) is disclosed by the receiving Party with the disclosing Party's approval; or (f) is independently developed by the receiving Party without any use of confidential information. In all cases, the receiving Party will use all reasonable efforts to give the disclosing Party ten (10) days' prior written notice of any disclosure of information under this Agreement. The Parties will maintain the confidentiality of all confidential and proprietary information learned pursuant to this Agreement for a period of ten (10) years from the date of termination of this Agreement. |
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|  | b) | Saving Provision. The Parties agree and stipulate that the agreements contained in this Section are fair and reasonable in light of all of the facts and circumstances of their relationship; however, the Parties are aware that in certain circumstances courts have refused to enforce certain agreements. Therefore, in furtherance of and not in derogation of the provisions of the preceding paragraph the parties agree that in the event a court should decline to enforce the provisions of the preceding paragraph, that paragraph shall be deemed to be modified to restrict non-enforcing Party’s rights under this Agreement to the maximum extent, in both time and geography, which the court shall find enforceable. |

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| **11)** | **Injunctive Relief.**The Parties agree any breach of this Agreement by LICENSEE shall cause LICENSOR immeasurable and irreparable harm and LICENSOR shall be entitled to seek immediate injunctive relief from any court of competent jurisdiction, in addition to any other remedies that LICENSOR may have at law or in equity.The Parties further agree any breach of this Agreement by LICENSOR shall cause LICENSEE immeasurable and irreparable harm and LICENSEE shall be entitled to seek immediate injunctive relief from any court of competent jurisdiction, in addition to any other remedies that LICENSEE may have at law or in equity. |

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| **12)** | **Indemnification.** |

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|  | a) | LICENSEE agrees to indemnify LICENSOR and hold LICENSOR harmless from and against any and all liabilities, losses and expenses incurred as a direct result of a third-party claim arising from (i) LICENSEE’s unauthorized use of the Technology; (ii) LICENSEE’s failure to comply with applicable laws or to maintain all required licenses and governmental authorizations; (iii) any breach of LICENSEE’s representations and warranties set forth herein; and (iv) any liability to third parties as a result of LICENSEE’s production, distribution and/or sale of Liquified Products, except as to any liability arising out of the proper use of the Technology. |
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|  | b) | LICENSOR agrees to indemnify LICENSEE and hold LICENSEE harmless from and against any and all liabilities, losses and expenses incurred as a direct result of a third-party claim arising from (i) any breach of LICENSOR’s representations and warranties set forth herein; and (ii) any claims of infringement raised by third parties as to the Technology or Licensed Patents. |
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|  | c) | If a Party seeks indemnification (the “**Indemnitee**”), it shall give written notice to the other Party (the “**Indemnitor**”) promptly after the Indemnitee becomes aware of the facts giving rise to such claim for indemnification (an “**Indemnified Claim**”), and in any event within 30 days, specifying in reasonable detail the factual basis of the Indemnified Claim and stating the amount of the damages (or if not known, a good faith estimate of the amount of damages). |
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|  | d) | In the event of receipt of notice of a third party claim (the “**Third Party Claim**”) arising out of the use of the LICENSOR’s Technology, the Indemnitor shall have the right to control and defend such Third Party Claim, in such manner as it may reasonably deem appropriate. Should the Indemnitor decline to control and defend the Third Party Claim, the Indemnitee shall have the right to control and defend the Third Party Claim in such manner as it may deem appropriate. The controlling party shall select counsel, contractors, experts and consultants of recognized standing and competence reasonably acceptable to the other party, shall take reasonable steps necessary in the investigation, defense or settlement thereof, and shall diligently and promptly pursue the resolution thereof. All parties shall cooperate fully with the party conducting the defense of any Third Party Claim. |
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|  | e) | The Party controlling the defense of any Third Party Claim shall be authorized to consent to a settlement of, or the entry of any judgment arising from, any Third Party Claims subject to the following provisions. If the Indemnitor is controlling the litigation, Indemnitee must consent to any such settlement, such consent not to be unreasonably withheld. Indemnitee’s consent will be deemed unreasonably withheld unless the settlement would encumber any of its assets or contains any restriction or condition that would apply to the Indemnitee or to the conduct of its business. If the Indemnitee is controlling the litigation, it may not enter into a settlement or consent to an entry of judgment with respect to any Third Party Claim without the express written consent of the Indemnitor, not to be unreasonably withheld. |
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|  | f) | Indemnitor shall be responsible for paying any damages or settlement arising out of a Third Party Claim. However, in the event Indemnitee pays such damages or settlement, Indemnitor shall reimburse Indemnitee within thirty (30) days of Indemnitee making such a payment. |

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| **13)** | **Limitation of Liability.**NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY. THE FOREGOING SHALL NOT LIMIT LICENSEE’S LIABILITY FOR UNAUTHORIZED USE BY LICENSEE OF LICENSOR’S TECHNOLOGY NOR SHALL IT LIMIT LICENSOR’S LIABILITY FOR A BREACH OF ITS NON-SOLICITATION AND NON-CIRCUMVENTION OBLIGATIONS TO LICENSEE |
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| **14)** | **No Warranties. OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN,**LICENSOR MAKES NO EXPRESS WARRANTIES OF MERCHANTABILITY OR FITNESS OR EFFICACY FOR A PARTICULAR PURPOSE OF THE TECHNOLOGY AND/OR ANY LIQUIFIED PRODUCTS PRODUCED FROM SAID TECHNOLOGY AND SHALL NOT BE HELD LIABLE FOR PROFITABILITY OF TECHNOLOGY AND/OR LIQUIFIED PRODUCTS OR HELD LIABLE FOR ANY SUCH MATTER UNDER ANY OTHER THEORY OF LIABILITY. |
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| **15)** | **Insurance.** For the period of time required to cover its obligations hereunder, each Party will maintain third party provided insurance in types and amounts customary for the type of business it conducts, and in any event reasonably adequate to cover any liabilities arising out of its obligations hereunder. Further, LICENSEE will maintain product liability insurance reasonably adequate to cover any liabilities arising out of the sale and distribution of Liquified Products. Upon a Party’s request, the other Party will provide to the requesting Party a certificate of insurance showing that such insurance is in place, which certificate shall demonstrate the amounts, exclusions and deductibles of such insurance coverage. Each Party shall notify the other Party in writing no less than thirty (30) days prior to the cancellation, termination or modification of the insurance coverage(s) described in the notifying Party’s insurance certificate(s). Nothing in this Section shall in any way be construed to limit the liability of a Party under this Agreement. |

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| **16)** | **Compliance with Laws.**In connection with this Agreement, each Party agrees to comply with all applicable laws, statutes and ordinances of any state, city, provincial, county or local governmental authority and each regulatory body with jurisdiction over such Party or its activities under this Agreement. |
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| **17)** | **Conformance with Regulations.** The Parties acknowledge and agree that this Agreement, and the licensing of the Technology, is neither intended to convey any ownership interest in LICENSEE to LICENSOR nor grant LICENSOR any control over LICENSEE. In the event that any government body indicates otherwise with regards to this Agreement or any portion thereof, then the Parties shall promptly negotiate in good faith to modify this Agreement in order to conform to any guidance proffered by that authority. |
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| **18)** | **RESERVED**. |
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| **19)** | **Relationship of Parties.** The legal relationship of the Parties is exclusively that of licensor and licensee and no employer-employee, principal-agent, partnership, franchise, agency, joint venture or other legal relationship is created by this Agreement. Neither Party shall have the authority to enter into any contracts on behalf of the other Party. |
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| **20)** | **Successors; Assignment; Binding Agreement.** Except as otherwise provided in this Agreement, neither Party may assign or transfer its rights or delegate its obligations under this Agreement without the other Party’s prior written consent, provided that in the event that a person acquires all of the issued and outstanding shares of a Party, or all or substantially all of the assets of a Party, such Party shall be entitled to transfer all of its rights and obligations relating to this Agreement to such person, and such person is entitled to all of the rights and benefits of such Party under this Agreement solely with respect to the Liquified Products then being sold or produced by such Party. Subject to the foregoing, this Agreement inures to the benefit of, and shall be binding upon, the permitted successors and assigns of the parties to this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their respective successors and permitted assigns. |
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| **21)** | **Modifications and Waivers.**This Agreement may be amended only by a written agreement signed by both Parties. With regard to any power, remedy or right provided in this Agreement, no waiver or extension of time shall be effective unless expressly contained in a writing signed by the waiving Party, no alteration, modification or impairment shall be implied by reason of any previous waiver, extension of time, delay or omission in exercise or other indulgence, and waiver by any Party of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself. |

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| **22)** | **Notice.** Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective when received, and shall be sufficient if given in writing, hand-delivered, sent by facsimile with confirmation of receipt, sent by First Class Mail, return receipt requested (for all types of correspondence), postage prepaid, or sent by email, or sent by overnight courier service and addressed as set forth below, or as amended by either Party, respectively, from time to time: |

If to LICENSEE:

Dreamcorp LLC

[…] WY 82801

Attn: Anne Otto

Email:

Fax:

If to LICENSOR:

High Flyers Corp.

[…]Attn: […]

No objection may be made to the manner of delivery of any notice or other communication in writing actually received by a Party.

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| **23)** | **Entire Agreement.**This Agreement, including the attached exhibits, constitutes the entire agreement of the Parties hereto relating to the subject matter hereof and there are no written or oral terms or representations made by either Party other than those contained herein. |
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| **24)** | **Publicity.** Without the prior written consent of the other Party, neither Party shall disclose the terms and conditions of this Agreement, except disclosure may be made as is reasonably necessary to the disclosing Party's bankers, attorneys, or accountants or except as may be required by law. The LICENSOR agrees not to use the LICENSEE’s corporate name or product names, in any form, in any press release or other publication, without permission from the LICENSEE, except as provided below. The Parties understand and agree that LICENSOR may be compelled by stock exchanges, securities commission regulators or other government authorities to publicly disclose the signing of said License Agreement naming both Parties. If LICENSOR is compelled by stock exchanges, securities commission regulators or other government authorities to publicly disclose the signing of said License Agreement, LICENSOR will share its planned announcement with LICENSEE beforehand for LICENSEE’s review and approval, not to be unreasonably withheld or delayed, and it will also ensure that no compromise of the LICENSEE’s existing secret processes or intellectual property, nor of LICENSEE`S personal or private information occurs through this announcement. |
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| **25)** | **Expenses.** Each Party to this Agreement shall bear all of its own expenses in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby, including without limitation all fees and expenses of its agents, representatives, counsel and accountants. |
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| **26)** | **Governing Law; Jurisdiction.**This Agreement will be governed by, and construed in accordance with the substantive laws of the British Columbia, Canada without giving effect to any choice or conflict of law provision, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent shall have been granted, the parties irrevocably attorn to the jurisdiction of the courts of the State of New York, USA to resolve any disputes arising hereunder. |

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| **27)** | **Dispute Resolution.** |

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|  | a) | Mandatory Procedures. The Parties agree that any dispute arising out of or relating to this Agreement shall be resolved solely by means of the procedures set forth in this Section and that such procedures constitute legally binding obligations that are an essential provision of this Agreement. If either Party fails to observe the procedures of this Section, as may be modified by their written agreement, the other Party may bring an action for specific performance of these procedures in any court in the Province of British Columbia. |
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|  | b) | Equitable Remedies. Although the procedures specified in this Section are the sole and exclusive procedures for the resolution of disputes arising out of or relating to this Agreement, either Party may seek a preliminary injunction or other provisional equitable relief if, in its reasonable judgment, such action is necessary to avoid irreparable harm to itself or to preserve its rights under this Agreement. |
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|  | c) | Dispute Resolution Procedures. |

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|  | i) | Mediation. In the event any dispute arising out of or relating to this Agreement remains unresolved within sixty (60) days from the date the affected party informed the other party of such dispute, either party may initiate mediation upon written notice to the other party (“**Notice Date**”), the parties shall be obligated to engage in a mediation proceeding under the then current Center for Public Resources (“**CPR**”) Model Procedure for Mediation of Business Disputes (www.cpradr.org), except that specific provisions of this Article shall override inconsistent provisions of the CPR Model Procedure. The mediator will be selected from the CPR Panels of Neutrals. If the parties cannot agree upon the selection of a mediator within fifteen (15) business days after the Notice Date, then upon the request of either party, the CPR shall appoint the mediator. The parties shall attempt to resolve the dispute through mediation until the first of the following occurs: (i) the parties reach a written settlement, (ii) the mediator notifies the parties in writing that they have reached an impasse, (iii) the parties agree in writing that they have reached an impasse, or (iv) the parties have not reached a settlement within sixty (60) days after the Notice Date. |
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|  | ii) | Failure to Mediate. If the Parties fail to resolve the dispute through mediation, each Party shall have the right to pursue any other remedies legally available to resolve the dispute, including by way of arbitration or a suit. |

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|  | d) | Performance to Continue. Each Party shall continue to perform its undisputed obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement; provided, however, that a Party may suspend performance of its undisputed obligations during any period in which the other Party fails or refuses to perform its undisputed obligations. Nothing in this Section is intended to relieve LICENSEE from its obligation to make undisputed payments pursuant to Section 5 of this Agreement. |

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| **28)** | **Attorneys’ Fees.** In the event of any dispute between the parties arising out of this Agreement, the prevailing Party shall be entitled, in addition to any other rights and remedies it may have, to recover its reasonable attorneys’ fees and costs. |
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| **29)** | **No Interpretation Against Drafter.** Each Party participated in the negotiation and drafting of this Agreement, assisted by such legal and tax counsel as it desired, and contributed to its revisions. Any ambiguities with respect to any provision of this Agreement will be construed fairly as to all Parties and not in favor of or against any Party. All pronouns and any variation thereof will be construed to refer to such gender and number as the identity of the subject may require. The terms “include” and “including” indicate examples of a predicate word or clause and not a limitation on that word or clause. |

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| **30)** | **Headings.** The headings of Sections are provided for convenience only and will not affect the construction or interpretation of this Agreement. |
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| **31)** | **Force Majeure.**Neither Party shall be liable for any delay or failure to perform its obligations in this Agreement if such delay or failure to perform is due to any cause or condition reasonably beyond that Party’s control, including, but not limited to, acts of God, war, government intervention, riot, embargoes, acts of civil or military authorities, earthquakes, fire, flood, accident, strikes, inability to secure transportation, facilities, fuel, energy, labor or materials. |
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| **32)** | **Survival.** In addition to LICENSEE’s obligation to pay LICENSOR all amounts due hereunder, the Parties obligations under this Agreement shall survive expiration or termination of the Agreement only as expressly provided herein |
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| **33)** | **Invalidity.**The invalidity or unenforceability of any term or terms of this Agreement shall not invalidate, make unenforceable or otherwise affect any other term of this Agreement which shall remain in full force and effect. |
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| **34)** | **Severability.**If any terms or provisions of this Agreement shall be found to be illegal or unenforceable, notwithstanding, this Agreement shall remain in full force and effect and such terms or provisions shall be deemed stricken. |
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| **35)** | **Further Assurances.**Upon a Party’s reasonable request, the other Party shall, at requester’s sole cost and expense, execute and deliver all further documents and instruments, and take all further acts, as are reasonably necessary to give full effect to this Agreement. |
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| **36)** | **Counterparts.**The Parties may execute this Agreement in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. |

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**IN WITNESS WHEREOF**, the parties have executed this Agreement intending to be legally bound as of the date set forth above.

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| **“LICENSOR”**  **HIGH FLYERS CORP.** | |  | **“LICENSEE”**  **DREAMCORP LLC** | |  |
|  | |  |  | |  |
| By: | *“Carl Ogan”* |  | By: | “*Anne Otto*” |  |
|  | Carl Ogan, President |  |  | Anne Otto, Managing Member |  |
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| By: | “*Lena Banks*” |  |  |  |  |
|  | Lena Banks, CEO |  |  |  |  |

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**EXHIBIT A**

**TECHNOLOGY**

The Technology consists of:

(1) the following patent applications, patents granted, and PCT International Patent Applications;

(2) all technical know-how, clinical trial summary data and trade secrets in regard to such named patents, including the use, manufacture or formulation thereof, that is owned or controlled by LICENSOR as of the Effective Date of this Agreement, as well as any future continuations, continuations in part or divisional applications filed pursuant to the patent applications. (the “**Licensed Patents**”):

**In the USA:**

U.S. Patent No[…] issued October […], 2016.

U.S. Patent No. […] issued November […], 2017

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**International Patent Cooperation Treaty Filings:**

PCT International Patent Application No. PCT/US15/[…]

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**In Australia**

Australian Patent No. […] granted June […] 2017.

**Multiple National Filings**:

Canada, The European Union, China, Japan, Mexico, and India

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**EXHIBIT B**

**LIQUIFIED PRODUCT CATEGORIES**

**Note: For sale to Licensee Clients only to be re-formulated into consumer products. Sales by**

**LICENSEE of Liquified Products in consumer packaging or without additional formulation is**

**prohibited.**

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| **Product Line Name** | **Licensee Client End Products Description –** |
| Liquids for Food  Products | Any hemp-based Liquified containing CBD sold to third-party commercial clients for the sole purpose of producing a non-pharmaceutical product that is generally recognized as food and is infused with hemp oil/isolate or equivalent containing less than 0.29% THC. |
| Liquids for  Consumable Liquids | Any hemp-based Liquified containing CBD that is developed using the Technology, which is sold to third-party commercial clients for the sole purpose of said clients producing and selling to consumers non-pharmaceutical ready-to-drink consumable liquids containing less than 0.29% THC content for human consumption by way of ingestion. |
| Liquids for Capsules,  Pills, Tablets and Melts | Any hemp-based Liquified containing CBD sold to third-party commercial clients for the sole purpose of producing non-pharmaceutical products recognized as tablets, pills, capsules, gel-caps and other similar formulations that are infused with hemp oil/isolate or equivalent containing less than 0.29% THC that utilizes the Technology and primarily not made with sugar and/or other sweeteners, that are generally recognized as vitamins, supplements, medicines, sublingual or rapidly dissolving mouth-melts. EXCLUDED is any form of solid tablet or loose Liquified form factor meant to dissolve in a food product, liquid or beverage for purposes of seasoning, flavouring or infusing another product. |
| Liquids for Topical Skin Products | Any non-pharmaceutical cream, oil, salve or similar consumer product designed to be delivered to and through human skin that is infused with hemp oil/isolate or equivalent containing less than 0.29% THC, sold to commercial clients |

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**EXHIBIT C**

**LICENSE FEE**

Upon execution of this Agreement, LICENSEE shall pay to LICENSOR the License Fee as set forth below. The License Fee shall be paid in accordance with Section 5 of this Agreement.

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| (a) | **Acceptance Fee.** LICENSEE agrees to pay to LICENSOR an acceptance fee of [\*\*]2 upon executing and delivering this Agreement to LICENSOR. |
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| (b) | **Usage License Fee.** For all Liquified Products sold in the Territory, a fee equal to [\*\*]3 of the gross sales of the Liquified Products sold in the entire Territory (the “**Usage License Fee**”) shall be paid by LICENSEE. The Usage License Fee shall accrue on the first quarter commencing on June 1, 2019 and ending on August 31, 2019 with a preliminary report of revenue due net 15 days after the end of the quarter and such quarterly payment due and payable net 30 days after the quarter. |
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| (c) | **Severance Fee, if applicable.** As provided for in Section 2. e), LICENSEE may elect to end sales of Liquified Products at its sole discretion by paying a severance fee (“**Severance Fee”)** immediately then due which is the total of the Minimum Fee payments (as defined under subsection (e) of this Exhibit) due in the six (6) months immediately following written notice of Termination. Should Termination be effected in this manner prior to the commencement of the Minimum Fee Payments the LICENSEE shall instead pay a Severance Fee based on the total Usage License Fees paid during the six (6) months prior to the Termination. If LICENSEE elects to end sales of any Liquified Products, then all licensing provision benefits with the Liquified Products also end immediately. |
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| (d) | **Audit Rights.** Upon at least thirty (30) days’ written notice, LICENSOR shall have the right, through an independent, certified accounting firm, to examine such records and books of account of LICENSEE as are necessary to verify the accuracy of the Usage License Fee and other payments of LICENSEE under this Agreement. Such right may be exercised only once during any twelve (12) month period. Such examination may be performed during normal business hours at LICENSEE’S major place of business or at such other place as may be agreed upon by the LICENSOR and LICENSEE. The accounting firm may make abstracts or copies of such books of account solely for its use in performing the examination. LICENSOR will require, prior to any such examination, such accounting firm to agree in writing that such firm will maintain all information, abstracts, and copies acquired during such examination in strict confidence and will not make any use of such material other than to confirm to LICENSOR the accuracy of LICENSEE payments hereunder. If an inspection of LICENSEE’S records by the accountant of LICENSOR shows that LICENSEE has paid more than required under this Agreement, any excess amounts will, at LICENSEE’S option, be promptly refunded or credited against future Usage License Fees. If an inspection of LICENSEE’S records by the accountant of LICENSOR shows that LICENSEE shows an under-reporting or underpayment by LICENSEE of any amount to LICENSOR, by more than one percent (1%) and less than five percent (5%) for any twelve (12) month period, any excess amounts will, at LICENSOR’S option, be promptly paid or debited against future Usage License Fees. However, if an inspection of LICENSEE’S records shows an under-reporting or underpayment by LICENSEE of any amount to LICENSOR, by more than five percent (5%) for any twelve (12) month period, then LICENSEE will reimburse LICENSOR for the reasonable cost of the inspection as well as pay to LICENSOR any amount found due within thirty (30) days of receipt of the results of such inspection. |

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2 Certain information has been redacted: the omitted text sets forth the acceptance fee.

3 Certain information has been redacted: the omitted text sets forth the Usage License Fee percentage.

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| (e) | **Minimum Performance:** Regarding Usage License Fees accounted for beginning September 1, 2019, LICENSEE agrees to a minimum sales performance clause. LICENSEE shall pay a minimum fee (the “**Minimum Fee**”) to LICENSOR quarterly in arrears and net 30 days, even if LICENSOR has not caused to be manufactured sufficient Liquified Products that quarter to justify the Usage License Fee. This Minimum Fee is non-refundable. If the Usage License Fee totals more than this Minimum Fee in any given quarter, then this Minimum Fee is waived for that quarter and only the Usage License Fee shall be payable. The Minimum Fee payable is as follows: |

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| --- | --- | --- | --- | --- |
| **Quarterly Period** |  | **Minimum Fee** | |  |
|  |  |  | |  |
| Quarter Ended February 29, 2020 |  | $ | US62,500 |  |
| Quarter Ended May 31, 2020 |  | $ | US62,500 |  |
| Quarter Ended August 31, 2020 |  | $ | US62,500 |  |
| Quarter Ended November 30, 2020 |  | $ | US62,500 |  |
| Quarter Ended February 28, 2021 |  | $ | US125,000 |  |
| Quarter Ended May 31, 2021 |  | $ | US125,000 |  |
| Quarter Ended August 31, 2021 |  | $ | US125,000 |  |
| Quarter Ended November 30, 2021 |  | $ | US125,000 |  |
| All Subsequent Quarters |  | $ | US250,000 |  |

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**EXHIBIT D**

**CERTAIN DEFINITIONS**

“**Universal**” means the LICENSEE and any parent, any Subsidiary, or any of its Related Entities;

“**Person**” means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any governmental authority or any incorporated or unincorporated entity or association of any nature;

“**Related Entity**” means, with respect to a body corporate: (i) a Subsidiary of the body corporate, including a Subsidiary of a Subsidiary of the body corporate; or (ii) a Person that controls, directly or indirectly, the body corporate; or (iii) a Person that is controlled by the same Person that controls such body corporate;

“**Subsidiary**” means a corporation that is controlled directly or indirectly by another corporation

**“Territory”**means Canada and the United States of America

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**LicA#38**

AMENDED AND RESTATED SERVICES AND LICENSING AGREEMENT

Exhibit 10.11

AMENDED AND RESTATED SERVICES AND LICENSING AGREEMENT

This AMENDED AND RESTATED SERVICES AND LICENSING AGREEMENT is entered into as of December 1, 2018 (the “Effective Date”), by and between Mipo Interactive LLC, a California limited liability company (“Mipo”) and Bingo, Inc. (“BS”). Each of Mipo and BS may be referred to individually as a “Party” and collectively as the “Parties”. BS and Mipo are parties to that certain Services and Licensing Agreement dated as of November 30, 2018 (the “Original Agreement”). The Parties hereby agree that as of the Effective Date, the Original Agreement shall be amended and restated in its entirety as set forth herein (the “Amended Agreement”, and together with Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E, the “Agreement”). In the event of a contradiction between the terms of the Original Agreement and this Agreement, the terms of this Agreement will control.

WHEREAS, BS desires to offer an online social gaming product under the GGI Brand (as defined below);

WHEREAS, Mipo desires to provide BS with an online social gaming product by customizing its and/or its licensors’ proprietary platform, content, and game engines for social media, web and mobile platforms; and

WHEREAS, BS agrees and acknowledges that the Monte Crawlo (as defined below) is not a gambling product, but a social gaming product, and Mipo will not be providing a gambling product pursuant to this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein and good and valuable consideration the receipt and sufficiency of which is hereby agreed to and acknowledged, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS; INTERPRETATION

1.1 Definitions. The following words and terms shall have the following meanings when used herein and such definitions shall apply to both the singular and plural forms of any such words and terms:

“Adjusted Revenue” means Revenue less any revenue sharing retained by any Storefront directly related to the Monte Crawlo.

“Affiliate” means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, the term “control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by reason of management authority, by contract, or otherwise. For purposes of this Agreement, no Party shall be deemed an Affiliate of the other Party.

“Agreement” shall have the meaning set forth in the preamble to this Agreement.

“Android Bundle” means the application of the Monte Crawlo for use on the Android smartphone and tablet Game Platform.

“Applicable Laws” means all federal, state, and local laws, statutes, regulations, rules, executive orders, supervisory requirements, export requirements, directives, circulars, opinions, decrees, treaties, interpretive letters, guidance or other official releases of or by any Governmental Entity, any authority, department, or agency thereof, or any regulatory or self-regulatory organization applicable to the Parties’ rights and obligations hereunder in all relevant jurisdictions.

“Branded Games” means those games set forth on Exhibit A (as may be updated by Mipo from time to time) that, upon mutual agreement of the Parties, have been customized to feature the GGI Brand.

“Business Day” means a day (excluding Saturdays and Sundays) on which banks in Los Angeles, California are generally open for normal banking business.

“Confidential Information” shall have the meaning set forth in Section 11.1 of this Agreement.

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“Credits” means, collectively, the Play Credits, Tournament Credits, Experience Credits and Reward Credits.

“BS” shall have the meaning set forth in the preamble to this Agreement.

“Customer Data” means customer user data, including Personal Information, collected or created by, or provided to, Mipo in connection with the Monte Crawlo or otherwise under this Agreement. The term “Customer Data” expressly includes all anonymized data, all analytics data, and all metadata related to Monte Crawlo Players.

“DAU” shall have the meaning set forth in Section 2.2(d)(v) of this Agreement.

“Deployment Fee” shall have the meaning set forth in Section 5.1(a) of this Agreement.

“Deliverables” means the deliverables set forth in Exhibit A of this Agreement, and such other deliverables as mutually agreed to by the Parties.

“Disclosing Party” shall have the meaning set forth in Section 11.1 of this Agreement.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“Experience Credits” shall have the meaning set forth in Section 2.3(i)(i) of this Agreement.

“Force Majeure Event” shall have the meaning set forth in Section 14.1 of this Agreement.

“Game Platforms” means iOS or Android based tablet and mobile devices, a downloadable client application, and stand-alone websites with customization of the Lobby.

“Games” means the Stock Games and Branded Games provided by Mipo to BS in accordance with this Agreement, as set forth on Exhibit A.

“Gaming Authority” means, collectively, those international, federal, state, local, foreign and other governmental, regulatory and administrative authorities, agencies, commissions, boards, bodies and officials responsible for or involved in the regulation of gaming or gaming activities or the ownership of an interest in any Person that conducts gaming in any applicable jurisdiction.

“Go Live Date” means, as applicable, the date that the Monte Crawlo is live and available for play by Monte Crawlo Players on any applicable Game Platform in accordance with this Agreement.

“Governmental Entity” means any federal, state, local, or foreign government or any provincial, departmental or other political subdivision thereof, or any entity, body or authority having or asserting executive, legislative, judicial, regulatory, administrative or other governmental functions or any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing, including any Gaming Authority.

“Hosting Costs” means during any period (i) the total server costs for hosting the Monte Crawlo on a cloud or other platform and bandwidth usage costs during such period multiplied by (ii) a percentage determined by dividing the total number of Monte Crawlo Players that logged onto the Monte Crawlo during such period by the total number of Third Party Players plus the total number of Monte Crawlo players that logged onto a Monte Crawlo utilizing the Mipo Platform during such period.

“Indemnified Party” shall have the meaning set forth in Section 8.3 of this Agreement.

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“Indemnifying Party” shall have the meaning set forth in Section 8.3 of this Agreement.

“Industry Practice” means, in relation to any activity or requirement relevant to this Agreement, the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of activity or requirement under the same or similar circumstances and conditions.

“Intellectual Property Rights” means patents, copyrights (including rights in computer software), design rights, trade-marks, service marks, certification marks, trade dress, database rights, moral rights, know-how, trade secrets, domain names, URLs, trade names, together with any registrations or applications to register the same (and any licenses in connection with any of the same) and including the right to apply for registration of any such rights, whether or not registered or capable of registration, in each case for their full term, and whether subsisting in any specific country or countries or any other part of the world and together with any renewals, continuations or extensions.

“iOS Bundle” means the application of the Monte Crawlo for use on the iOS smartphone and tablet Game Platform.

“JAMS” shall have the meaning set forth in Section 17.1 of this Agreement.

“Launch Jurisdiction” shall have the meaning set forth in Section 2.2(a) of this Agreement.

“Lobby” shall have the meaning set forth in Section 2.5(a) of this Agreement.

“MAU” shall have the meaning set forth in Section 2.2(d)(v) of this Agreement.

“Monthly Financial Calculations” shall have the meaning set forth in Section 5.7(b) of this Agreement.

“Mipo” shall have the meaning set forth in the preamble to this Agreement.

“Mipo Platform” means the Intellectual Property Rights in relation to Mipo’s proprietary online social game technology platform and infrastructure, which allows Monte Crawlos and games to be offered on Game Platforms, including all engineering designs and technology for both the front-end and the back-end.

“Mipo Standard Tournaments” shall have the meaning set forth in Section 2.3(a)(i) of this Agreement.

“Party” and “Parties” shall have the meaning set forth in the preamble to this Agreement.

“PCI DSS” shall have the meaning set forth in Section 7.1 of this Agreement.

“Person” means any individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization, Governmental Entity.

“Personal Information” means information that may be used to identify an individual, including name, address, phone number, email address, driver’s license number, social security number, financial information (such as bank account numbers and credit card numbers and associated passwords or PINs), geographic location information, behavioral information, and any other information which may be used to identify an individual, collected through the Monte Crawlo.

“Play Credits” shall have the meaning set forth in Section 2.3(i)(i) of this Agreement.

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“Privacy Policy” shall have the meaning set forth in Section 7.5 of this Agreement.

“Promotion” shall have the meaning set forth in Section 2.3(e) of this Agreement.

“Receiving Party” shall have the meaning set forth in Section 11.1 of this Agreement.

“Records” shall have the meaning set forth in Section 5.8(a) of this Agreement.

“Revenue Split” shall have the meaning set forth in Section 5.5(a)(iii) of this Agreement.

“Revenue” means the total gross revenue generated from the Monte Crawlo, including any sale of Play Credits from any Storefront (i.e., Facebook Credits, iTunes, GooglePlay, Amazon for in-app purchases, and any other storefront, social networks, platforms or portal other purchases) and any gross revenue generated from a Monte Crawlo Player’s action in exchange for Play Credits or any other virtual item. Revenue does not include any monies generated from BS’s Subscription Gaming Product (as defined below).

“Reward Credits” shall have the meaning set forth in Section 2.3(i)(i) of this Agreement.

“Shared Liquidity” means the integration of Monte Crawlo Players and Third Party Players on the Mipo Platform in a manner that provides such Monte Crawlo Players and Third Party Players that ability to play Games and participate in Tournaments on a common network.

“Monte Crawlo” means the Mipo Platform branded with the GGI Brand, the Games and the Deliverables.

“Monte Crawlo Player” means an individual that enters into the standard Terms of Service agreement to play or engage in the Monte Crawlo.

“Software Development Agreement” means the Software Development Agreement entered into by the Parties dated September 16, 2008, along with amendments related thereto, pertaining to BS’s Subscription Gaming Product (as defined below).

“Specifications” shall have the meaning set forth in Section 3.4 of this Agreement.

“Stock Games” means the slots games and other games as set forth on Exhibit A (as may be updated by Mipo from time to time), none which will be customized or branded with the GGI Brand.

“Storefront” means any of the iOS or Google app stores, Facebook or any other online storefronts.

“Subscription Gaming Product” means BS’s ClubGGI subscription/sweepstakes product as governed by the Software Development Agreement.

“Term” shall have the meaning set forth in Section 10.1 of this Agreement.

“Terms of Service” shall have the meaning set forth in Section 7.5 of this Agreement.

“Third Party” means a Person that is not a Party to this Agreement or affiliated to a Party to this Agreement, including an Affiliate of a Party.

“Third Party Expenses” shall mean any of the following expenses actually due and owing to a Third Party: (i) any fees in respect to a license from a Third Party for, or the provision of, certain games and/or features that are licensed and included in Monte Crawlo, (ii) any refunds paid to Monte Crawlo Players, (iii) any payment processing, charge-backs and associated costs, and (iv) any financial processing costs and fees (including credit card processing fees). Third Party Expenses do not include (x) any revenue share retained by a Storefront, which are deducted in determining Adjusted Revenue or (y) any costs or fees associated with marketing the Monte Crawlo, Promotions, Hosting Costs, Verification Costs or any other costs related to the operation of the Monte Crawlo, which shall be the responsibility of BS.

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“Third Party Games” means Games provided by Third Parties.

“Third Party Players” means players of Monte Crawlo gaming products (other than the Monte Crawlo Players) utilizing the Mipo Platform.

“Tournament Credits” shall have the meaning set forth in Section 2.3(i)(i) of this Agreement.

“Tribe” shall have the meaning set forth in Section 16.1 of this Agreement.

“Verification Checks” means the checks carried out by Mipo via Third Parties in order to attempt to verify the age, identity (i.e., know-your-customer) and location (including geo-locating) of potential Monte Crawlo Players in accordance with Applicable Law.

“Verification Costs” means all Third Party costs and fees associated with Verification Checks.

“GGI Brand” shall have the meaning set forth in Section 6.2(b) of this Agreement.

“GGI Brand Standards” means the brand standards set forth on Exhibit C of this Agreement.

“GGI Group” means the group of companies which directly control the use of the GLOBAL GAMES INTERNATIONAL (GGI) brand (i.e., BS, GGI Enterprises, Inc., […] Media Limited, GGI Distribution Worldwide Limited, GGI Studios Worldwide Limited, GGI Distribution USA, Inc., and GGI Studios USA, Inc.)

“GGI Tournaments” shall have the meaning set forth in Section 2.3(a)(ii)of this Agreement.

1.2 Rules of Interpretation. In this Agreement, except to the extent otherwise provided or the context otherwise requires: (a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated; (b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement; (c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without being limited to”; (d) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein; (f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms; (g) any reference to “days” means “calendar days” unless otherwise specified; (h) if a notice is to be given on a specified day, unless otherwise specifically provided herein, it must be given prior to 5:00 p.m., Los Angeles, California time; (i) references to a Person are also to its successors and permitted assigns; (j) the use of “or” is not intended to be exclusive unless expressly indicated otherwise; (k) any reference to “$” and “dollars” is to the lawful money of the United States of America; and (l) unless otherwise expressly provided herein, any agreement, instrument, statute, rule or regulation defined or referred to herein or in any agreement or instrument defined or referred to herein means such agreement, instrument, statute, rule or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, rules and regulations) by succession of comparable successor statutes, rules and regulations.

1.3 The schedules and recitals form an integral part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules and recitals.

ARTICLE 2

OBLIGATIONS OF MIPO

2.1 Provision and Maintenance of Platform and Infrastructure. Mipo shall provide to BS the Mipo Platform such that the Monte Crawlo can be offered on the Game Platforms. Mipo shall be responsible for timely securing Third Party platform and services relationships with respect to such Game Platforms to host the Monte Crawlo, and shall be the owner of all app store accounts, including, without limitation, payment accounts, associated therewith. For purposes of clarity, this is not applicable to BS’s Subscription Gaming Product. Furthermore, Mipo shall manage all aspects of such Third Party platform relationships, including the Facebook, Apple, and Google relationships, and any relationships related to an open-web offering. To the extent any Third Party platform provider requires Mipo to provide certain information or items, or take, or refrain from taking certain actions, BS shall assist with such requests and requirements as reasonably requested, and Mipo shall not be responsible for its failure to meet its obligations under this Section 2.1 in the event that such failure is caused by BS’s failure to provide such assistance or approval. BS acknowledges and agrees that Mipo may include the language “powered by Mipo Interactive” or a similar acknowledgement on the Monte Crawlo; provided that such language does not unreasonably interfere with the branding of the Monte Crawlo.

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2.2 Launch and Operation of Monte Crawlo.

(a) Mipo shall provide the necessary technical expertise to launch and operate the Monte Crawlo. The Monte Crawlo will run worldwide (the “Launch Jurisdiction”), but shall specifically exclude any state or other jurisdiction therein that has specifically determined online social games similar to the Monte Crawlo are illegal. BS shall be responsible for liability in connection with marketing of the Monte Crawlo around the World, and shall ensure compliance with all Applicable Laws (wherein it may obtain a legal opinion from reputable counsel). Mipo may elect, in its sole and absolute discretion, to not offer the Monte Crawlo (or any aspect thereof) in any jurisdiction in the event that it determines (a) that the offering of the Monte Crawlo (or any aspect thereof) would violate Applicable Laws or (b) operation in the jurisdiction will not be financially viable for Mipo. The Parties agree that the Monte Crawlo will not be offered in the state of Washington. In no event shall BS have any liability associated with the functionality of the Games, unless such activity was the result of a BS request or customization. To the extent that Mipo is required by BS to change the Monte Crawlo, integrate any third party software or change its services (e.g. language support) to operate in any jurisdiction, BS shall pay Mipo the fees defined in Section 5.2(b), unless otherwise agreed by the Parties in writing.

(b) Unless otherwise agreed to by the Parties in writing, the Monte Crawlo, and any support or other services to be provided by Mipo hereunder, shall be offered in the English language only.

(c) Mipo shall be solely responsible for administering and monitoring the Monte Crawlo, and, subject to any delay caused by an act or omission of BS, Mipo shall use commercially reasonable efforts to cause the Go Live Date to occur on a date to be mutually agreed by the Parties. The Parties estimate Phase I of the launch to occur on or around November 2018, Phase II on or around March 2019, and Phase III on or around May 2019 (“Go Live Timelines”); and the Parties agree that a failure to meet such Go Live Timelines shall not result in a breach by Mipo, but may trigger a termination right by BS under Section 10.2(f).

(d) During the Term, Mipo shall be responsible for the operation of the Monte Crawlo, and the provision of the Mipo Platform, and any software necessary to operate it. This shall include, but is not to be limited to, the following:

(i) Technical Operations. Mipo shall be responsible for the technical operation of the Monte Crawlo, including 24X7 fully managed infrastructure support, including security, hardware and software upgrades, monitoring, backups, data archiving, bug fixes and future network-wide product upgrades across all available platforms.

(ii) Game and Tournament Management. Mipo shall be responsible for Game management, including oversight and scheduling of Games and tournaments.

(iii) Support. Mipo shall provide customer support services via email and self-service customer knowledgebase, as further described on Exhibit B;

(iv) Reporting. Mipo shall provide Customer Data to BS on an ongoing basis, in a format digestible for BS. Mipo shall provide BS with daily and monthly Customer Data reports containing at least the following information: new users, monthly active users (“MAU”), daily active users (“DAU”), DAU/MAU ratio, number of sessions, average session time, revenue, average revenue per daily active user, average revenue per paying user, total Play Credits wagered, total win, total loss, and hands played. In addition, Mipo shall provide BS access to its data warehouse through the use of Mipo’s available API’s to permit BS to generate custom reports and to export Customer Data, if desired. Mipo shall provide to BS the financial reports described in Section 5.7.

(v) Risk Management. Mipo shall be responsible for risk management and managing consumer fraud, including enforcing the Terms of Service and Privacy Policy, any official rules, and other similar online agreements.

(vi) Third Party Game Content. In the event Mipo incorporates Third Party Games or other content into the Monte Crawlo, Mipo shall be responsible for managing the relationship with such Third Party and payment of any associated fees, which such fees shall be allocated in accordance with Section 5.5. In the event BS desires to incorporate Third Party Games or other content into the Monte Crawlo, BS shall submit a request to Mipo, which request may be approved or denied in Mipo’s sole and absolute discretion. In the event Mipo approves BS’s request, BS shall be solely responsible for: (i) all licensing fees and other costs related to such Third Party Games or content and (ii) Mipo’s fees and costs to integrate and deploy such Third Party Games or content, which shall be billed in accordance with the rates set forth in Section 5.2(b). In the event any supplier of Third Party Games or other content objects to the inclusion of its content in the Monte Crawlo, Mipo may exclude, or promptly remove, such Third Party Games or other content from the Monte Crawlo.

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(e) BS acknowledges that Mipo may, in its sole discretion, use Shared Liquidity and include Third Party Players in leaderboards and game statistics across the Mipo Platform.

2.3 Features and Tools. Mipo shall develop the user interface design of the Monte Crawlo on all Game Platforms. Mipo shall provide product management for the Monte Crawlo. As of the Go Live Date under any Game Platform, the Monte Crawlo shall include each of the following:

(a) Tournaments.

(i) Mipo will facilitate and administer the offering of Mipo standard tournaments and special offers through the Monte Crawlo (collectively, the “Mipo Standard Tournaments”). BS shall provide Mipo with notice of its desire to offer a Mipo Standard Tournament at least thirty (30) days prior to the desired tournament date.

(ii) In the event BS desires to offer a tournament (other than the Mipo Standard Tournaments) or another special offer (a “GGI Tournament”), BS shall notify Mipo at least thirty (30) days prior to the desired tournament date and the Parties shall work in good faith to offer and set forth the relevant details for such GGI Tournament, including any sponsorship of the GGI Tournament. BS shall be responsible for liability pertaining to the offering of such GGI Tournament that extends above and beyond the typical Mipo Tournament and for ensuring compliance with all Applicable Laws (wherein it may obtain a legal opinion from reputable counsel). Mipo may elect, in its sole and absolute discretion, to not offer such GGI Tournament if Mipo believes offering such GGI Tournament would violate Applicable Law.

(iii) Mipo shall (a) be responsible for tournament management, including the tournament scheduling and structure, and (b) shall consult with BS (and modify if requested by BS) regarding the specific aspects of any tournament, including admittance and any Promotions in connection therewith.

(b) Progression Levels. The Monte Crawlo shall include progression levels, which may be achieved by acquiring Experience Credits. When a new progression level is achieved, the Monte Crawlo Player may receive Play Credits, new features, or other benefits.

(c) Leaderboard and Statistics. The Monte Crawlo shall include tournament leaderboards and game statistics, as well as Monte Crawlo world records, which pursuant to Section 2.2(e) may include Third Party Players.

(d) Advertising. Advertising may be incorporated into the Monte Crawlo in accordance with Article 4.

(e) Promotions. Mipo shall consult with BS regarding, and obtain the consent of BS prior to offering, any promotional items (any such promotional item, a “Promotion”) awarded to winners of Mipo Standard Tournaments in which the Monte Crawlo Players participate. BS may request a Promotion be included in a GGI Tournament. Except as set forth below, BS shall be responsible for procuring and delivering all Promotions (whether for Mipo Standard Tournaments or GGI Tournaments), including, without limitation, all delivery costs and sales or use taxes associated with all Promotions. No Monte Crawlo Player shall receive a Promotion unless such Monte Crawlo Player meets the eligibility requirements set forth in the official rules. For tournaments utilizing Shared Liquidity, BS and other participating network partners shall share the costs of Promotions based upon their pro rata share of participating players, or as otherwise agreed to by all participating parties.

(f) Achievement Badges. Mipo currently offers 61 badges that may be awarded to Monte Crawlo Players for accomplishing certain activities, for example: achieving $1 million in Play Credits, having twenty (20) friends in a Game, playing seven (7) consecutive Games, or hitting 1000 spins in slot Games. Upon BS’s reasonable request, Mipo will use commercially reasonable efforts to develop additional badges specifically for Monte Crawlo Players.

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(g) Player Notifications. The Monte Crawlo shall include the following formats for communicating with Monte Crawlo Players:

(i) Notifications that occur when a Monte Crawlo Players logs into the Monte Crawlo.

(ii) Notifications that occur when a Monte Crawlo Player achieves something in a Game or to provide a Promotion.

(iii) Player invoked notifications that are integrated into Facebook.

(h) Avatars. The Monte Crawlo shall permit Monte Crawlo Players to select an avatar to represent them in the Monte Crawlo. Upon BS’s reasonable request, Mipo will use commercially reasonable efforts to develop additional avatars specifically for the Monte Crawlo.

(i) Credits and Virtual Goods.

(i) Mipo shall manage the provision and administration of the Credits to Monte Crawlo Players. There shall initially be four types of credits acquired by Monte Crawlo Players and used to participate in the Monte Crawlo: (i) play chips, which are used to play the Games (“Play Credits”); (ii) tournament chips, which are used to participate in tournaments (“Tournament Credits”); (iii) experience credits, which are used to receive additional in-game virtual benefits (“Experience Credits”); and (iv) credits that are used to track a Monte Crawlo Player’s loyalty to the Monte Crawlo (“Reward Credits”).

(ii) The Play Credits shall be awarded on a free-to-play and a purchase model, including automatic, periodic free Play Credit awards, earning Play Credits by completing required actions, and purchasing Play Credits. The specific terms of awarding Play Credits and the cost of Play Credits shall be determined by Mipo; provided, however, that such terms must at all times comply with Applicable Law, Storefront policies, Game Platforms and any network rules established by Mipo. Furthermore, Mipo may elect to offer a reasonable amount of coupon codes to give discounts on Play Credits; provided such coupon codes comply with Applicable Laws, Storefront policies, Game Platforms and any network rules established by Mipo.

(iii) Tournament Credits are used exclusively for play in a particular tournament and expire immediately at the end of such tournament. The Tournament Credits shall be awarded for free, at the commencement of the tournament and shall expire after the conclusion of the tournament. Tournament Credits shall be used solely to determine the winner of the tournament and the ranking of Monte Crawlo Players participating in the tournament and for no other purpose. The specific terms relating to Tournament Credits shall be determined by Mipo; provided, however, that in connection with any GGI Tournament, Mipo will consult with BS regarding such Tournament Credits.

(iv) Experience Credits are awarded on all Games. Experience Credits cannot be purchased. Experience Credits help Monte Crawlo Players progress in the Monte Crawlo and unlock certain benefits, including game features and advancement to new levels.

(v) Reward Credits are awarded based on the player taking certain actions within the Monte Crawlo including frequency and duration of play. Rewards Credits are not awarded based upon the outcome of any Games. BS shall be solely responsible for: (1) awarding any Promotions in exchange for Reward Credits, (2) ensuring the Reward Credits program, and any Promotions awarded thereunder, complies with Applicable Laws, (3) procurement and fulfillment of any such Promotions, (4) accurately describing any such Promotions, (5) imagery used in connection with any such Promotions, (6) managing inventory levels for any such Promotions, (7) honoring such Promotions, and (8) all costs associated with such Promotions. Furthermore, BS shall be responsible for any taxes or assessments associated with any such Promotions, excluding taxes winners may be required to pay. Prior to awarding any Promotion in exchange for Reward Credits, BS shall certify to Mipo in writing that the exchange rate for Reward Credits to Promotions is correct. BS shall be responsible for liability associated with the offering of Reward Credits in association with Promotions (including, Promotions that have real-world value) and shall ensure compliance with all Applicable Laws (wherein it may obtain a legal opinion from reputable counsel). Mipo may elect, in its sole and absolute discretion, to not offer Reward Credits if Mipo believes offering Reward Credits would violate Applicable Law. In no event shall Mipo have any responsibility for any fraud, malfunction or error related to, or bear any financial liability associated with any Promotion offered in connection with Rewards Credits.

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(vi) Credits cannot be transferred, redeemed, or sold by Monte Crawlo Players, for real money, goods or any other item of monetary value. No prizes shall be awarded to the winners of any Games on the Monte Crawlo; provided, additional Play Credits may be awarded to winners of Games and Experience Credits may be awarded to winners of Games or tournaments on the Monte Crawlo.

(vii) Monte Crawlo Players may exchange Play Credits to purchase (for themselves or others) virtual goods to display at the table. Mipo currently offers virtual goods. Upon BS’s reasonable request, Mipo will use commercially reasonable efforts to develop additional virtual goods specifically for Monte Crawlo Players.

(j) Viral Mechanics. Monte Crawlo Players that have connected their Facebook accounts may share their experience of the Monte Crawlo and interact with others in the following ways:

(i) inviting friends,

(ii) sharing the fact that a new level has been achieved,

(iii) gifting Play Credits to friends,

(iv) sharing the fact that such Monte Crawlo Player has been awarded an achievement badge, and

(v) sharing the fact that a new machine has been unlocked.

(k) Loyalty Program Integration. During the Term, if requested by BS, Mipo shall work with BS to integrate the Monte Crawlo with the GGI “Reward Program” loyalty system, reporting system and email system, such that a Monte Crawlo Player shall receive certain benefits when playing in the Monte Crawlo pursuant to a development plan and timeline reasonably agreed to by the Parties; BS will be responsible for any and all costs, including all Third Party costs in connection with or related to the integration of such Reward Program.

2.4 Games.

(a) Mipo shall provide the Games as mutually agreed to by the Parties from time to time.

(b) Mipo shall provide to BS for inclusion in the Monte Crawlo all games it develops, obtains rights to, or integrates into the Mipo Platform on a reasonable timeline, consistent with Mipo’s development and deployment timeline, provided that such game can be offered in the Monte Crawlo in compliance with Applicable Laws. Notwithstanding the foregoing, Mipo shall not be obligated to provide BS with any games it publishes or obtains rights to if: (i) any Third Party will not permit the game to be used in BS’s Monte Crawlo; or (ii) the game was developed for a Platform on which BS does not currently, and does not desire in the future, to host the Monte Crawlo; or (iii) Mipo has provided another customer with the exclusive right to offer the game.

(c) Unless a Third Party will not permit such update or upgrade to be used in the Monte Crawlo, Mipo shall provide BS with updates and upgrades to all Games and elements included in the Monte Crawlo on a reasonably timeline, consistent with Mipo’s development and deployment timeline, as the same are made available to any of Mipo’s other customers, or used by Mipo in its proprietary Monte Crawlo offering.

(d) Mipo shall be solely responsible for all quality assurance testing of the Monte Crawlo, and all Games, on all Game Platforms prior to any Go Live Date.

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2.5 Custom Development.

(a) In consideration of the Deployment Fees, Mipo shall develop and brand with a single GGI Brand (i.e., ClubGGI) (i) the Branded Games and (ii) an online main “lobby”, which allows users to navigate through a menu of available Games for play (the “Lobby”). The Monte Crawlo and Mipo’s obligations under this Agreement with respect to developing and branding the Monte Crawlo, the Lobby and each Branded Game shall be to brand each of the foregoing with the same single GGI Brand, which is set forth on Exhibit D.

(b) In the event BS desires custom development services, the Parties shall mutually agree in writing the scope and timeline of such custom development, which custom development, including, without limitation, costs incurred by Mipo directly related to the provisioning of the Mipo Platform specifically for such customizations, and costs for testing and certifying any custom product, service, feature of functionality requested by BS, will be billed to BS in accordance with Section 5.2(b) unless otherwise agreed by the Parties in writing. The Parties shall mutually agree on a case-by-case basis in good faith in writing as to which Party shall own the Intellectual Property Rights in and to any custom developments, except for any pre-existing Intellectual Property Rights owned by BS, which may be incorporated therein. For clarity, any disaster recovery or business continuity services, if requested by BS above and beyond those offered via Amazon Cloud (or other such hosting service), shall be considered custom development services, and the offering of such services by Mipo shall be subject to the foregoing procedures set forth in this Section 2.5(b).

2.6 Infrastructure. Subject to BS’s obligation to pay all Hosting Costs, Mipo is responsible for setup of the Monte Crawlo solely in a cloud-based environment.

2.7 Subcontractors. Notwithstanding anything to the contrary in this Agreement, Mipo shall be entitled to use Third Party contractors or subcontractors to perform or assist with its obligations hereunder with respect to the Monte Crawlo.

2.8 Free Accounts. Mipo shall provide BS with free staff accounts to perform necessary tests on the Monte Crawlo.

ARTICLE 3

OBLIGATIONS OF BS

3.1 Marketing. BS shall be responsible for all marketing initiatives for the Monte Crawlo, including advertising, player acquisition, retention and reactivation.

3.2 Compliance with Laws. BS shall consult with Mipo regarding compliance with all Applicable Laws in connection with the marketing of the Monte Crawlo in jurisdictions in which the Monte Crawlo is offered. The Parties agree that Mipo shall not be liable to BS for failure to comply with the Applicable Laws in jurisdictions outside North America in which the Monte Crawlo is offered, unless such violation is the result of Mipo failing to follow any written instruction from BS regarding the same.

3.3 Websites and Domain Names. BS will facilitate and ensure access to the websites and domains to be used for the Monte Crawlo, whether such websites or domains are owned by BS, its Affiliate, or a Third Party.

3.4 Assistance. BS acknowledges that Mipo’s ability to provide the services contemplated hereunder and any custom development undertaken pursuant to Section 2.5(b), and meet any timing expectations contained herein, is directly dependent upon BS providing reasonable input and cooperation when requested by Mipo. BS acknowledges and accepts that if BS cannot, or does not, do so, Mipo will not be responsible to fulfill its obligations to BS under this Agreement (or will be excused from timing expectations, as appropriate). Without limiting the generality of the foregoing, from time to time during the Term, Mipo shall provide to BS specifications for deliverables related to the Monte Crawlo (the “Specifications”). Upon Mipo’s completion of any Specifications, BS shall have the opportunity to evaluate the Specifications to ensure they materially comply with the terms and conditions hereof. If BS reasonably determines that the Specifications do not materially comply with the terms and conditions of this Agreement, it will notify Mipo of any such material noncompliance, and Mipo will use commercially reasonable efforts to correct such material noncompliance. In the event that BS does not notify Mipo of any nonconformities within five (5) Business Days after receiving the Specifications, the Specifications will be deemed approved.

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3.5 Financial Services. BS shall be responsible for financial services management in connection with the operation of the Monte Crawlo, including processing payments and reconciliation of financial transactions through the Apple and Google app stores. These financial services shall include, upon offering the Monte Crawlo on the open web, arranging for payment processing for each credit and debit card and other payment methods offered from time to time.

ARTICLE 4

ADVERTISING

4.1 BS shall determine, in consultation with Mipo: (i) whether any Third Party advertising, sponsorship or messaging appears in the Monte Crawlo, and (ii) the extent of any Third Party advertising, sponsorship or messaging in the Monte Crawlo; provided, however, that BS has the right to cause Mipo to insert sponsorship in the Branded Game of poker, where technically feasible; provided any costs of which shall be considered Custom Development. No Third Party advertising, sponsorship or messaging may appear in the Monte Crawlo without BS’s written consent. Notwithstanding the foregoing, BS acknowledges that certain advertising may be restricted by certain Game Platforms or Storefronts.

4.2 All advertising, sponsorship and messaging shall be located within the Monte Crawlo and presented in specific, non-intrusive times and/or methods throughout Game play as determined by the Parties. If desired, these ad units may be used to promote the BS’s affiliated brands. Advertising may be presented in web and mobile ad units. If BS desires to incorporate advertising in different formats, such a request would constitute a custom development request and would be handled in accordance with Section 2.5(b), unless otherwise agreed by the Parties.

4.3 For the avoidance of doubt, amounts paid by a Person to advertise, sponsor or message on the Monte Crawlo shall not be deemed Revenue hereunder, and shall be retained by BS, unless otherwise agreed by the Parties in writing.

ARTICLE 5

FEES AND PAYMENTS

5.1 One-Time Fees and Payments.

(a) Deployment Fees.

(i) In consideration of Mipo’s services associated development of the Android Bundle, iOS Bundle, downloadable client and open-web offering, including customization of the Lobby and the Branded Games as contemplated by this Agreement for the launch of the Monte Crawlo, Mipo will waive its usual development fee.

(ii) Deployment on any other Game Platforms and the development fees associated therewith shall be negotiated by the Parties on a case-by-case basis.

5.2 Mipo Reimbursed Expenses.

(a) Any and all travel and lodging expenses incurred by Mipo and pre-approved by BS in writing in connection with the performance of this Agreement, including with training or custom developments, shall be billed to and reimbursed by BS at cost; provided, however, that Mipo shall provide up to 7 hours of training at no charge for the deployment of the launch of each of Phases I, II and III hereunder. Mipo shall invoice BS on a monthly basis for reimbursement of such expenses, and BS may offset such amounts against BS’s share of the Revenue Split.

(b) Custom development undertaken by Mipo pursuant to Section 2.5(b) or otherwise agreed by the Parties and any associated or additional training as mutually agreed by the Parties, shall in each case be charged at a rate of $150 per hour during the first twelve (12) months of the Term. Thereafter, the hourly rate shall increase by five percent (5%) for each subsequent twelve (12) month period to reflect cost of living adjustments. Mipo shall invoice BS on a monthly basis for such services, and BS may offset such amounts against BS’s share of the Revenue Split.

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5.3 Costs. Other than costs associated with development of the Mipo Platform (other than in relation to customization as provided in Section 5.2(b)), management of financial services and Storefronts (provided the costs payable to such Third Parties is paid in accordance with Section 5.5) and customer support as further described herein, BS is responsible for any and all costs associated with offering the Monte Crawlo to Monte Crawlo Players, including fees associated with marketing, Promotions, Verification Costs, Hosting Costs, and disaster recovery and business continuity custom ordered by BS above and beyond the Amazon Cloud (or other such hosting site). However, all amounts paid to Storefronts and the Third Party Expenses that reduce Revenue shall be paid in accordance with Section 5.5. Mipo shall invoice BS on a monthly basis for the Hosting Costs and Verification Costs, and BS may offset the Hosting Costs and Verification Costs against BS’s share of the Revenue Split.

5.4 Monthly Fee.

(a) Mipo will waive its usual monthly minimum fee.

5.5 Revenue.

(a) From and after the Go Live Date for the first Game Platform, within twenty (20) days after receipt of an invoice by BS from Mipo for the Third Party Expenses (as detailed in Section 5.5(a)(ii) below) for the immediately preceding calendar month, BS shall cause all the Adjusted Revenue received by BS in the immediately preceding month to be distributed as follows:

(i) First, to the extent applicable, payment of any taxes (other than income or similar taxes on the Revenue Split) related to the Monte Crawlo due and owing;

(ii) Second, to pay Mipo for any Third Party for any Third Party Expenses due and owing (Mipo shall invoice BS on a monthly basis for reimbursement of such Third Party Expenses);

(iii) Last (and following all the deductions set forth in subsections (i) and (ii) above), 25% to Mipo and 75% to BS (such amount payable to each Party, its “Revenue Split”). Payment instructions shall be provided by Mipo.

(b) Notwithstanding the foregoing, to the extent that there is no Revenue Split due to Mipo during any month, then BS shall reimburse Mipo for any balance outstanding of the amounts due and owing pursuant to Section 5.2 and Section 5.3 for such month within thirty (30) days of receipt of an invoice from Mipo.

(c) No Avoidance. BS hereby agrees to take no actions the purpose of which is to avoid paying the Revenue Split to Mipo due under this Agreement, and Mipo hereby agrees to not take any actions the purpose of which is to invoice BS expenses that are under Mipo’s control improperly. Mipo shall not share in revenues associated with the Subscription Gaming Product.

5.6 Late Payments. Should either Party fail to pay any amounts due and owing under this Agreement, the other Party shall, without prejudice to its other rights and remedies under this Agreement, be entitled (but not obliged) to charge interest on the overdue amount, from the due date up to the date of actual payment, at the rate of ten percent (10%) on the amount due and owing.

5.7 Financial Reporting.

(a) Each Party will maintain complete and accurate financial records in accordance with Industry Practices and generally accepted accounting principles, consistently applied.

(b) On the twentieth (20th) day of each calendar month following the Go Live Date for the first Game Platform, BS will provide to Mipo a report in a format satisfactory to Mipo detailing: all Revenues, Adjusted Revenue, and Third Party Expenses from the immediately preceding month, and any other allowable deductions under this Agreement (the “Monthly Financial Calculations”).

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(c) In the event of any dispute regarding the Monthly Financial Calculations, BS shall, to the extent there is sufficient Adjusted Revenue, fund all undisputed amounts pursuant to Section 5.5 without delay and neither Party shall be deemed to have waived any claim or demand with regard to the amount in dispute.

5.8 Audit.

(a) Each Party shall keep at its respective principal place of business during the Term, and for at least three (3) years after the expiration or earlier termination of this Agreement, separate, complete and accurate books of account and records together with all relevant supporting documentation which relate to or affect this Agreement, including without limitation, source documents relating to deductions (“Records”).

(b) Without prejudice to any other right of audit or access granted to the Parties pursuant to this Agreement, each Party shall ensure that the other Party and its representatives have reasonable access to each Party’s principal place of business to inspect and/or audit the Records (with the right to make copies and take excerpts) to verify that each Party is correctly, in accordance with the terms of this Agreement, calculating the Monthly Financial Calculations.

(c) No later than seven (7) Business Days prior to undertaking an inspection and/or audit of the Records pursuant to this Section 5.8(c), either Party may provide the other Party with a list of specific Records (and/or categories of Records) that the Party conducting the audit (the “Auditing Party”) wishes to inspect and/or audit and the other Party shall ensure that it makes available to the Auditing such Records (and/or categories of Records) on the date of such inspection and/or audit. If a Party fails to make available to the Auditing Party such Records (and/or categories of Records) on the date of such inspection and/or audit, the Party shall reimburse the Auditing Party for its costs (including professional fees and expenses) incurred in conducting the inspection and/or audit and producing any audit report.

(d) Any inspection and/or audit under this Section 5.8(d) shall be carried out upon reasonable notice during normal business hours during the Term and up to three (3) years after the expiration or earlier termination of this Agreement, but in no event shall there be more than one such inspection and/or audit of a Party in a single calendar year, provided, if such inspection and/or audit reveals an reveals an underpayment or overpayment of five percent (5%) or more, then the other Party can conduct up to three (3) such inspections and/or audits of Mipo in a single calendar year.

(e) If an inspection and/or audit reveals an incorrect calculation of amounts to be funded pursuant to Article 5, or any other sums payable under this Agreement, the owing Party shall promptly make an appropriate correcting payment or credit of any monies due to the applicable Party; provided, that if such calculation reveals an underpayment or overpayment of five percent (5%) or more, the owing Party shall reimburse the other Party for its reasonable Third Party costs (including professional fees and expenses) incurred in conducting the inspection and/or audit and producing any audit report (including professional fees and expenses). In the event the audit reveals that the payments to a Party for any year are in excess of the amount due, then, such excess amount would be deducted from future payments due to that Party. To the extent that any such overpayment is discovered after this Agreement has terminated, this obligation shall survive termination or expiration of this Agreement for any reason.

(f) Any inspection and/or audit, or failure to audit, shall not in any way release a Party from its obligations under this Agreement.

(g) Subject to Section 5.8(e), the Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Section 5.8(g), and any such information obtained shall be considered Confidential Information.

5.9 Taxes. The Parties shall cooperate in good faith to effectuate the terms of this Agreement in a tax efficient manner. The Parties believe that the payments due to each of them under this Agreement are not subject to withholding under any federal, state or local sales tax, charge, duty, levy, or value added tax. In the event that either Party becomes aware of any withholding obligation, the Parties shall reasonably cooperate to reduce such withholding obligation (tax or otherwise), to the extent legally feasible. If any amounts are required to be withheld under this Agreement, the Party with such withholding obligation shall be solely responsible for funding such withholding obligation, and such obligation shall not reduce any other amounts due and payable under this Agreement. Except as provided in Section 5.5(a)(i), each Party will be solely liable for any tax, charge or levy imposed by the relevant authority in respect of the receipt of any sum due and payable to such Party under this Agreement.

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ARTICLE 6

INTELLECTUAL PROPERTY

6.1 Mipo Intellectual Property.

(a) As between the Parties, Mipo as publisher and developer of the Monte Crawlo, the Mipo Platform, and all Games and Intellectual Property Rights contained therein, is and shall remain the sole and exclusive owner of all Intellectual Property Rights in and to the Monte Crawlo, the Mipo Platform, the Games and the Deliverables.

(b) Mipo hereby grants to BS a revocable, non-exclusive, royalty-free license in the Launch Jurisdiction, during the Term, to use such of Mipo’s and its licensors’ Intellectual Property Rights only to the extent necessary for BS to receive the benefit of Mipo’s services under this Agreement.

6.2 BS Intellectual Property.

(a) As between the Parties, BS is and shall remain the sole and exclusive owner of all Intellectual Property Rights owned by BS prior to the Effective Date of this Agreement (including without limitation, the Subscription Gaming Product as outlined in the existing Software Development Agreement), and all Intellectual Property Rights created or acquired by BS after the Effective Date of this Agreement, including without limitation, any GGI look-and feel-elements, but specifically excluding any derivation works of the Mipo Intellectual Property to the extent they do not incorporate any Intellectual Property Rights of BS.

(b) BS hereby grants to Mipo a revocable, non-exclusive, royalty-free license in the Launch Jurisdiction, and any other territory where the Monte Crawlo is offered, during the Term, to use that certain trademark and aspects of its branding as set forth on Exhibit D hereto (the “GGI Brand”) as necessary for Mipo to perform its obligations under this Agreement. All use of the GGI Brand shall be in accordance with the GGI Brand Standards and shall inure to BS’s benefit. Mipo shall not be granted the right to sublicense the GGI Brand for use by third parties (e.g., offer a third party the right to use the Branded Games on its own platform(s)).

ARTICLE 7

CUSTOMER DATA AND END USER AGREEMENTS

7.1 Mipo shall collect and maintain, for BS’s benefit, the Customer Data. Mipo’s collection, access, use, storage, disposal and disclosure of all Personal Information will comply with Applicable Laws. Mipo shall at all times remain (and cause any payments subcontractors to remain) in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements (including any revisions or updates thereto). In the event that Mipo discovers or receives notice of unauthorized access, acquisition, disclosure or use of Personal Information, then Mipo shall give prompt notice to BS, with full particulars, and reasonably cooperate in the investigation of any such incident.

7.2 As between the Parties, except as expressly set forth herein, BS shall own all right, title and interest in and to the Personal Information, and Mipo shall only use the Personal Information as necessary to provide the services contemplated hereunder. Both Parties shall own Customer Data that does not constitute Personal Information and shall have the right to use such Customer Data in any manner whatsoever consistent with Applicable Laws. Furthermore, nothing contained herein shall prevent Mipo from collecting, using and sharing aggregated data or data that does not identify an individual, or from collecting, using or sharing such data outside of its performance of this Agreement.

7.3 At any time during the Term hereof, at BS’s written request, or upon the termination or expiration of this Agreement for any reason, Mipo within a reasonable time shall, and shall instruct all of its employees and contractors to, return or destroy (at BS’s sole option) all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such employees and contractors and certify in writing to BS that such Personal Information has been returned or disposed of securely. Mipo shall comply with all reasonable directions provided by BS with respect to the use and disposal of Personal Information. Nothing contained in this Section 7.3 shall obligate Mipo to return or destroy (or cease use of) aggregated data or data that does not identify an individual.

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7.4 BS may provide Mipo with access to User Data so that Mipo can provide the Services. “User Data” means and any and all information provided to Mipo by or at the direction of BS, or collected by Mipo in the course of Mipo’s performance under this Agreement that can be used to identify or authenticate a living individual’s identity (including, without limitation, names, addresses, telephone numbers, email addresses, IP addresses traceable to an individual, financial/payment information, and other personal identifiers). User Data does not include information that has been anonymized or aggregated in a manner that makes it impossible to identify or authenticate a living individual’s identity. Unless it receives BS’s prior written consent, Mipo: (i) shall not access or use User Data other than as necessary to perform its obligations under this Agreement; and (ii) shall not give any third party access to User Data other than as expressly permitted pursuant to the terms of this Agreement or otherwise approved of by BS in writing. In addition, BS and any authorized third party shall: (1) keep and maintain all User Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure; and (2) install and maintain safeguards reasonably designed to protect User Data from unauthorized access, destruction, use, modification or disclosure that are no less rigorous than accepted industry practices. Mipo represents and warrants that its collection, access, use, storage, disposal and disclosure of User Data does and will comply with all applicable federal, state, and foreign privacy and data protection laws (“Data Protection Laws”), including but not limited to EU 2016/679 General Data Protection Regulation (“GDPR”). Mipo shall permit BS to examine Mipo’s records from time to time by an independent third party auditor to ensure Mipo’s compliance with its obligations under this Agreement. BS may only request one inspection per calendar year, shall work with Mipo to schedule any inspection at a time and date convenient to Mipo, and shall pay all costs associated with any inspection. Mipo shall reasonably assist BS in responding to requests to individuals exercising their rights under the GDPR in relation to the User Data processed by Mipo. Mipo shall promptly inform BS whenever it knows or reasonably believes a security breach has occurred that involves or potentially involves User Data and, at Mipo’s sole cost and expense, investigate and remediate any such occurrence as required by applicable law. Upon expiration or termination of this Agreement, at BS’s option, Mipo shall (i) promptly return all copies of User Data to BS (in a format reasonably acceptable to BS); or (ii) destroy all copies of User Data and deliver to BS a signed written certification from an officer of BS stating that all User Data has been so destroyed.

7.5 Mipo shall, at its sole cost and expense, implement and enforce terms of service for the Monte Crawlo, which terms of service shall have been pre-approved by BS in writing, and shall comply with all Applicable Laws (the “Terms of Service”). Mipo shall post or link to a privacy policy on all Game Platforms from which the Monte Crawlo can be accessed, and include access to such privacy policy in all applications, which privacy policy shall have been pre-approved by BS in writing, and shall comply with all Applicable Laws (the “Privacy Policy”). The Terms of Service and the Privacy Policy shall be entered into by and among BS, Mipo and the Monte Crawlo Player. The Parties shall ensure that the Terms of Service and Privacy Policy are updated on a regular basis to ensure each remains compliant with Applicable Laws.

ARTICLE 8

INDEMNIFICATION

8.1 Indemnification by Mipo. Mipo shall indemnify, defend and hold harmless BS and its Affiliates, and each of their respective directors, officers, managers, employees, members, shareholders and agents and all of their respective successors and permitted assigns in respect of all claims, losses, liabilities, damages, fines, penalties, fees, expenses and costs including reasonable professional legal fees, incurred or suffered as a result of a Third Party claim (“Losses” and “Claims,” respectively) against BS, or any of them arising out of: (i) any claim that a Deliverable provided by Mipo to BS, the Monte Crawlo, the Games, or any other element of the Monte Crawlo (except for (a) the Intellectual Property Rights owned by BS or the GGI Brand and (b) Third Party Games or other content requested by BS to be added to the Monte Crawlo pursuant to Section 2.2(d)(vii)) when used in accordance with this Agreement, infringe or violate any Third Party’s Intellectual Property Rights; and (ii) Mipo’s material breach of this Agreement, including any of its representations or warranties.

8.2 Indemnification by BS. BS agrees to indemnify, defend and hold harmless Mipo, its Affiliates, and each of their respective directors, officers, managers, employees, members, shareholders and agents and all of their respective successors and permitted assigns in respect of all Losses for all Claims against Mipo, or any of them arising out of: (i) any claim that the Intellectual Property Rights of BS or the GGI Brand when used in accordance with this Agreement infringe or violate any Third Party’s Intellectual Property Rights; (ii) Reward Credits and any Promotion offered in connection therewith; and (iii) BS’s material breach of this Agreement, including any of its representations or warranties.

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8.3 Procedure. If any Third Party shall notify BS or Mipo (the Party so notified, the “Indemnified Party”) with respect to any matter which may give rise to a claim for indemnification against the other Party (the “Indemnifying Party”) under this Article 8, then the Indemnified Party shall promptly notify the Indemnifying Party thereof in writing; provided, however, that failure to notify any the Indemnifying Party shall not relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party is materially prejudiced by such failure. The Indemnified Party will reasonably cooperate with Indemnifying Party with the defense and/or settlement thereof, which defense and/or settlement shall be controlled by Indemnifying Party, provided that, if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts, Indemnified Party in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require Indemnified Party’s written consent (not to be unreasonably withheld or delayed) and Indemnified Party may have its own counsel in attendance (at its sole expense) at all proceedings and substantive negotiations relating to such claim.

8.4 In the event that any Claim adjudicated to a final judgment relates to the use of any component of the Indemnifying Party’s Intellectual Property by the Indemnified Party in a manner that is in accordance with the license granted within the terms of this Agreement, the Indemnifying Party may, at its option, either: (i) substitute a fully equivalent non-infringing unit of the Intellectual Property; or (ii) modify or replace the infringing Intellectual Property with assets that are functionally equivalent; or (iii) obtain, at the Indemnifying Party’s expense, the right to continue use of such Intellectual Property. For the avoidance of doubt, this Section 8.4 shall not apply to the use of the GGI Brand nor the Intellectual Property rights contained therein.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

9.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that with respect of itself:

(a) it is a corporation or company duly incorporated under the laws of the jurisdiction in which it is formed or incorporated;

(b) it has full right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, including the right, power, legal capacity and authority necessary to grant the licenses granted herein;

(c) it has the requisite power and authority to execute, deliver and perform its respective obligations under this Agreement, including, if necessary, approval of the board of directors of such Party or its parent organization, and this Agreement is executed by its duly authorized representative;

(d) this Agreement is the valid and binding obligation of such Party, enforceable against it in accordance with its terms, except insofar as enforceability may be affected by bankruptcy laws or by principles governing the availability of equitable remedies.

(e) the execution, delivery and performance of this Agreement by such Party does not and will not (i) conflict with or violate any provision of such Party’s or any of its Affiliate’s organizational documents, (ii) result in any violation of or breach or default under or loss of rights under any contract or agreement that such Party or any of its Affiliates is a party or by which they are bound, or (iii) violate, conflict with or result in a default, right to accelerate or loss of rights under any order, judgment or decree to which such Party or any of its Affiliates is a party or by which such Person is bound or affected;

(f) to its knowledge, there is no action, arbitration, audit, claim, demand, proceeding, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal or whether public or private) at law or in equity now pending or threatened by or against or affecting it which would substantially impair its right to carry on its business as contemplated herein or to enter into or perform its obligations under this Agreement, or which adversely affects its financial condition or operations; and

(g) it has not and will not enter into any other agreement or arrangement which conflicts with its ability to perform its obligations under this Agreement to such extent that this Agreement will be materially adversely impacted.

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ARTICLE 10

TERM AND TERMINATION

10.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect for the duration of the term of the Software Development Agreement (the “Term”). The Parties may mutually agree to extend the Term in writing.

10.2 Termination by Either Party. Notwithstanding the foregoing, either Party may terminate this Agreement immediately upon notice on the occurrence of any of the following events:

(a) on or after the occurrence of a material breach of this Agreement by the other Party, provided that if the breach is capable of remedy, the breach is not remedied within thirty (30) days of receipt of notice in writing specifying the breach and requiring it to be remedied, provided, further, if such cure cannot reasonably be accomplished within such thirty (30) day period and the breaching Party in good faith commenced such cure within such thirty (30) day period, the cure period shall be extended to a time period in which such cure could reasonably be accomplished using diligent efforts;

(b) in accordance with Section 13.1;

(c) immediately if the other Party ceases to do business in the ordinary course, becomes insolvent, or files for bankruptcy;

(d) immediately if the offering of the Monte Crawlo violates any Applicable Law and such violation is material and continuing; and

(e) immediately in the event that a Party reasonably determines that an association with the other Party or any of its respective Affiliates or associates, is likely to cause or otherwise result in a violation of any applicable gaming laws regarding prohibited relationships with entities engaged in gaming activities, or if such Party’s compliance committee or similar internal governing body determines, in good faith and in its sole discretion, that the other Party or its officers, directors, employees, agents, designees or representatives engaged in or is about to be engaged in any activity or activities, or was engaged in or is involved in any activities or relationship, which (i) could or does jeopardize such Party’s gaming licenses or those of any Affiliates, or if any such gaming license is threatened to be denied, curtailed, suspended or revoked or (ii) could or does jeopardize such Party’s access to providing a real money gaming service in any jurisdiction; and

(f) if the Go Live Timelines for any phase have extended longer than six (6) months beyond the initial target date, and notice by BS has been given to Mipo, and within thirty (30) days of receipt of such notice, the respective phase launch has still not taken place, BS may elect to terminate this Agreement.

10.3 Effect of Termination. Following termination, the Parties shall cooperate in order to ensure a smooth transition and subsequent publishing of the Monte Crawlo, with minimal disruption to the user experience.

Subject to Applicable Laws, Customer Data shall be transferred promptly to BS in a usable format in order to allow BS to integrate such data into backend systems it designates.

10.4 Survival: In addition to paying any amounts due and owing prior to termination or expiration of this Agreement, the following provisions shall survive any expiration or termination of this Agreement: Article 1, Section 5.8, Article 6, Section 7.2, Article 8, Sections 10.3, Section 10.4, Article 11, Article 16, Article 17, and Article 18.

ARTICLE 11

CONFIDENTIALITY

11.1 Each Party acknowledges and agrees that the terms of this Agreement and all information, data, materials, or technology communicated to such Party (the “Receiving Party”) by the other Party (the “Disclosing Party”) that is marked as “Confidential” or “Proprietary” or that, under the circumstances taken as a whole, would be reasonably be deemed to be confidential (“Confidential Information”) was and shall be received in confidence. For the avoidance of doubt, the terms of this Agreement (including the fee and revenue share information hereunder) and the Monte Crawlo provided by Mipo to BS (except with respect to the GGI Brand contained therein) shall constitute Confidential Information of Mipo. Each Party shall keep in confidence and use efforts that are similar to those used to protect its own confidential information (and, in any event, no less than reasonable efforts) to prevent the unauthorized duplication, use, access and disclosure of Confidential Information of the Disclosing Party. Each Receiving Party may disclose the Disclosing Party’s Confidential Information: (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of providing the services hereunder; and (b) as may be required by Applicable Laws, a court of competent jurisdiction or any Governmental Entity (including any Gaming Authority), provided that the Receiving Party will provide advance notice to the Disclosing Party of such required disclosure, cooperate with the Disclosing Party, at the Disclosing Party’s expense, in seeking a protective order or similar treatment for such Confidential Information, and disclose only such Confidential Information as is required. Each Receiving Party will limit access to Confidential Information of the Disclosing Party to only those of its employees, agents and contractors having a need-to-know in connection with this Agreement. Each Receiving Party will advise its employees, agents and contractors to whom disclosure of Confidential Information is made of the obligations hereunder to protect the Confidential Information and such employees, agents and contractors shall be subject to obligations of confidentiality like those herein. The Disclosing Party’s Confidential Information is and shall remain the sole and exclusive property of the Disclosing Party, notwithstanding any disclosure made to the Receiving Party during the Term. For the purposes of this Agreement, “Confidential Information” shall include all Personal Information.

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11.2 Except to the extent otherwise required by Applicable Law or professional standards, the Parties’ obligations under this Section 11.2 do not apply to information that: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party; (ii) was known to the Receiving Party or had been possessed by the Receiving Party without breach of any obligations of confidentiality prior to receipt from the Disclosing Party; (iii) is disclosed to the Receiving Party by a Third Party not under obligation of confidentiality to the Disclosing Party or otherwise lawfully becomes known by the Receiving Party; or (iv) is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party.

11.3 Each Receiving Party shall, within a reasonable time upon expiration or termination of this Agreement or otherwise upon demand, at the Disclosing Party’s option, either return to the Disclosing Party or destroy and certify in writing to the Disclosing Party the destruction of any and all documents (the term “document”, as used in this Section, shall include any writing, instrument, agreement, letter, memorandum, chart, graph, blueprint, photograph, financial statement or data, telex, faBSmile, cable, tape, disk or other electronic, digital, magnetic, laser or other recording or image in whatever form or medium), papers and materials and notes thereon in the Receiving Party’s possession, including copies or reproductions thereof, to the extent they contain Confidential Information; provided, that, each Receiving Party may retain a copy of the Disclosing Party’s Confidential Information (subject to the obligations of confidentiality herein) to the extent required to comply with Applicable Laws, for internal audit purposes and to establish or protect such Party’s rights under this Agreement and further provided that documents which contain the Receiving Party’s internal content shall not be returned to the Disclosing Party, but rather destroyed and so certified.

ARTICLE 12

GGI BRAND EXCLUSIVITY

12.1 During the Term, BS shall not be permitted to, and shall ensure that no members of the GGI Group:

(a) operates itself or licenses from any third party, any competing Monte Crawlo product, that is made available on or through the ClubGGI website or software platform or application, other than the Monte Crawlo and the existing Subscription Gaming Product under the Software Development Agreement, that utilizes the GGI Brand (i.e., ClubGGI); or

(b) licenses to any third party the right to use the GGI Brand (i.e., ClubGGI) in connection with any competing Monte Crawlo product other than Monte Crawlo, excluding any marketing efforts with respect to the ClubGGI brand (e.g., marketing of the ClubGGI brand on Zynga).

12.2 Reservation of Rights. Nothing in this Agreement shall limit BS or its Affiliates from operating or entering into third party license agreements with respect to Monte Crawlo games that are branded with other GGI brands (e.g., GLOBAL GAMES INTERNATIONAL, GGI, GGI Alpha8). Further, Mipo hereby acknowledges and agrees that (A) the GGI Brand has or potentially may have, many uses; (B) the license granted to Mipo is a limited field-of-use license and Mipo may use the GGI Brand only for such limited use as outlined in this Agreement and for no other use; and (C) BS reserves and retains all other rights to the GGI Brand not expressly licensed to Mipo hereunder.

12.3 Except as otherwise set forth herein, neither Party shall be prevented from performing services, or entering into relationships with any other Person, subject to each Party’s confidentiality obligations set forth in Article 11.

ARTICLE 13

PRIVILEGED LICENSE; DUE DILIGENCE

13.1 BS (a) acknowledges that Mipo or its Affiliates hold one or more licenses under Applicable Laws related to real money gambling and (b) agrees that it shall (and shall cause its Affiliates and employees to) cooperate in good faith with Mipo or its Affiliates, from time to time, as requested on a confidential basis, to provide a reasonable amount of information necessary to enable Mipo and its Affiliates to respond to any requests for information in connection with preservation of any gaming licenses and compliance with any gaming regulations applicable to Mipo and any of its Affiliates and the internal compliance policies of Mipo and its Affiliates relating thereto (including information required in connection with any reasonable, necessary background checks or other reasonable investigations regarding credit standing, character and personal qualifications). If BS believes compliance with this section becomes materially burdensome and unreasonable, BS shall notify Mipo and the Parties will work together in good faith to address BS’s concerns; provided, if accommodations cannot be made and BS’s compliance remains materially burdensome and unreasonable, BS may elect to terminate this Agreement.

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ARTICLE 14

FORCE MAJEURE

14.1 Neither Party shall be liable for any default or delay in the performance of its obligations if and to the extent such default or delay is caused by any of the following: an act of God, fire, casualty, flood, war, terrorist act, failure of public utilities, widespread labor or civic unrest (except for a Mipo labor specific dispute), assertion or requirement of any governmental authority, epidemic, or destruction of production facilities, or other circumstances beyond the reasonable control of the Party (each, a “Force Majeure Event”). A Party wishing to claim the benefit of this Article 14 must: (a) promptly give notice to the other Party specifying the Force Majeure and giving a good faith estimate of the duration of the Force Majeure Event; (b) use reasonable efforts to overcome the effect of the Force Majeure as soon as possible; and (c) promptly notify the other Party when the Force Majeure has ceased or been overcome. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended for the period of such Force Majeure Event.

ARTICLE 15

INSURANCE

15.1 Mipo will obtain and maintain at its own expense, insurance of the type and in the amounts that are commercially reasonable during the Term, as determined by Mipo in its reasonable discretion as set forth on Exhibit E.

ARTICLE 16

SOVEREIGN IMMUNITY

16.1 The Mipo Band of Mission Indians, a federally recognized Indian Tribe (the “Tribe”), is the majority shareholder in Mipo. It is understood and agreed that any suit, action, proceeding and/or legal process of any type whatsoever arising out of this contract against Mipo will be expressly limited to Mipo, and the recovery of any monetary damages upon any settlement, arbitration, decision or judgment resulting therefrom shall be limited solely to recovery against the assets of Mipo. The Tribe itself is not subject to jurisdiction of state or federal court, and does not waive its sovereign immunity in any respect, nor under any circumstances is there a waiver of any immunity of any elected or appointed officer, official, member, manager, employee or agent of the Tribe. Accordingly, in the event of any dispute, whether in the context of any arbitration or alternative dispute resolution or court proceeding between Mipo and BS, Mipo will not assert application of any tribal laws, any requirements of following tribal court procedures, or sovereign immunity as to Mipo.

ARTICLE 17

GOVERNING LAW AND DISPUTE RESOLUTION

17.1 This Agreement shall be governed by the laws of the State of California, without regard to that state’s conflict of law analysis. Resolution of all disputes between the Parties shall be handled as follows: The Parties shall first endeavor to immediately meet and confer in good faith in order to resolve any dispute, claim or other controversy arising in connection with this Agreement, including without limitation any dispute regarding the interpretation or enforcement of the Agreement. In the event the Parties are unable to resolve any dispute arising out of this Agreement between themselves within fourteen (14) days, then the Parties agree that the dispute will be submitted to mediation. The mediation will be conducted by the San Diego Offices of Judicial Arbitration & Mediation Services (“JAMS”). The complaining Party shall contact JAMS to schedule a mediation conference within thirty (30) days. The Parties are to select a mediator who is a retired judge from the JAMS panel. If they are unable to agree, JAMS shall provide a list of three available retired judge mediators and each Party may strike one. The remaining one will serve as the mediator; provided, however, if both Parties strike the same name, JAMS shall promptly select one of the two remaining names to serve as the mediator. As soon as the mediation is completed, if the matter is not resolved, either Party may initiate binding arbitration also to be conducted at the San Diego office of JAMS. The Parties agree that, if required, enforcement of any arbitration award, as well as any action to compel arbitration, may be brought in federal court in the United States District Court for the Southern District of California. This arbitration agreement applies only to these Parties with respect to this Agreement, and does not apply to any other claims or to any third party claims whatsoever.

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17.2 Each Party acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of Article 6, Article 11, Article 12, or Article 16 of this Agreement is not performed in accordance with its specific terms or otherwise is breached. Accordingly, each Party agrees that, in addition to any other relief which may be available, the other Parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of Article 6, Article 11, Article 12, or Article 16 of this Agreement to enforce specifically this Agreement and the terms and provisions hereof (without the posting of bond or other security) in addition to any other remedy to which it may be entitled, at law or in equity.

17.3 Limitation. The Parties acknowledge that any dispute arising under this Agreement will be limited to the Persons that are Parties to this Agreement and, except to the extent reasonably necessary in connection with an action to seek injunctive relief resulting from actions by such Person that result in a breach of this Agreement, no Party shall (a) commence any lawsuit, arbitration or otherwise seek to impose any liability whatsoever against any Person in its capacity as an officer, director, shareholder, member, employee or agent of a Party or (b) permit any Person claiming through such Party to assert a claim or impose any liability against any Person in its capacity as an officer, director, shareholder, member, employee or agent of a Party as to any matter or thing arising out of or relating to this Agreement or any alleged breach or default by Party hereto or thereto.

17.4 Limitation of Damages. Notwithstanding any other provision of this Agreement to the contrary, other than in connection with fraud or willful misconduct, no Party shall be liable to any other Party for losses with respect to mental or emotional distress, exemplary, consequential, incidental, special damages, lost profits, diminution in value, damage to reputation or the like, including lost profits, even if such Party has been advised of the possibility of such damages.

ARTICLE 18

MISCELLANEOUS

18.1 Entire Agreement, Amendment, Waiver. This Agreement amends, restates, replaces and supersedes the Original Agreement in its entirety. This Agreement along with its attachments, exhibits, and schedules, constitute the entire agreement between the Parties concerning the subject matter hereof, and supersedes any prior or contemporaneous understandings, agreements or representations. The Parties acknowledge and agree that this Agreement does not impact the Software Development Agreement, which is still in existence as of the Effective Date. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by both Parties. The failure of either Party to enforce any of the provisions in this Agreement shall not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

18.2 Assignment. Neither Party may assign this Agreement except with the prior written authorization of the other Party; provided, however, such consent shall not be required in the event such assignment is in connection with the sale of all or substantially all of its assets of the other Party or a merger, acquisition, transfer of the majority of a Party’s stock, corporate reorganization, or consolidation, in which case notice shall be provided to the other Party within thirty (30) days after such assignment. Any attempt to assign any of the rights, duties, or obligations set forth in this Agreement without such consent shall be void.

18.3 Headings. The headings in this Agreement have been inserted for convenience only, and are not to affect the interpretation of this Agreement

18.4 Further Assurances. The Parties shall with reasonable diligence do all things and provide all reasonable assurances as may be required to complete the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments requested by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

18.5 Severability. In the event that any part of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining portions of this Agreement shall be valid and enforceable.

18.6 Notices. Unless otherwise specified in this Agreement, all notices, demands, elections, requests or other communications that any Party may desire or be required to give hereunder must be in writing and must be given (a) by hand delivery, (b) by a recognized overnight courier service providing confirmation of delivery overnight courier, or (c) by Portable Document Format (PDF), to the addresses set forth below or at such other address as the Parties may specify by notice given to the other Parties in accordance with this Section 18.6. A notice sent by overnight courier shall be deemed given on the next Business Day after the day said notice is delivered to the overnight courier. A notice sent by hand delivery or by PDF shall be deemed given on the day sent (provided such PDF document is electronically confirmed received and is followed by delivery pursuant to (a) or (b) above).

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If to Mipo:

Mipo Interactive, Inc.

Attn: Max Morson

With a copy to: XYZ LLP

[…] CO 80202

Attn: […]

Email:

If to BS:

Bingo Inc.

Attn: Legal Dept.

[…]CA 92614

18.7 Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its own costs and expenses incurred in connection with the preparation, execution and performance of this Agreement, including all fees and expenses of agents, representatives, financial advisors, legal counsel and accountants.

18.8 Joint Preparation of Agreement. The Parties and their respective counsel have participated jointly in the negotiation and drafting of this Agreement. Each of the Parties acknowledges that it is sophisticated in business matters of the type contemplated hereby and has been advised by experienced counsel and, to the extent it has deemed necessary, other advisers in connection with the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

18.9 Treatment. The Parties acknowledge and agree that nothing in this Agreement shall be deemed to create a partnership, joint venture or other association or a trust among the Parties. The BS or any of its Affiliates, directors, officers, managers, employees, members, shareholders and agents, on the one hand, and the Mipo or any of its Affiliates, directors, officers, managers, employees, members, shareholders and agents, on the other hand, agree that they will not in any manner assert or admit that this Agreement or any of the transactions or relationships contemplated hereby create a partnership, joint venture, agency or other association or a trust among the Parties. The Parties shall not, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. Nothing contained in this Agreement shall be construed as creating any fiduciary relationship of any nature between the Parties. Except pursuant to the authority expressly granted herein or as otherwise agreed in writing between the Parties, no Party shall have any authority to act for another Party or to assume any obligation or responsibility on behalf of the other Parties.

18.10 Press Releases. The content and timing of any press releases or announcements shall be subject to the Parties’ mutual approval, not to be unreasonably withheld, conditioned or delayed.

18.11 Counterparts; FaBSmile: This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until the Parties named below have duly executed or caused to be duly executed a counterpart of this Agreement. A signature on a copy of this Agreement received by a Party by faBSmile or email is binding upon the other Parties as an original.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the Effective Date set forth above and have signed:

Mipo Interactive, LLC Bingo, Inc.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Stephane Spoolbjerg

Title: CEO By: \_\_Ralp Ketz\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Title: CEO

[Signature page to Services and Licensing Agreement]

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| --- | --- | --- |
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**LicA#39**

EX-10.26

**Exhibit 10.26**

**TRADEMARK LICENSING AGREEMENT**

**BETWEEN THE UNDERSIGNED PARTIES:**

**FRERES JOUEUX**, public company with share capital of €173,051,921.43, registered in the Trade and Companies Register of XXX under No. 55400000, having its registered office at YYYY SAINT ETIENNE

Represented for these presents by Mr Jaques Ombre, duly authorised for this purpose,

Hereinafter referred to as “**FJ**” or the “**Licensor**”,

ON ONE HAND

And,

**ARGENT**, public company with share capital of €5,162,154, registered in the Trade and Companies Register of Bordeaux under No. 00000, having its registered office at ZZZZ Bordeaux

Represented for these presents by Mr Sophie Delavier, duly authorised for this purpose,

Hereinafter referred to as “**ARGENT**” or the “**Licensee**”,

ON THE OTHER HAND,

Hereinafter referred to individually as the “**Party**” and jointly as the “**Parties**”.

**IT BEING SET FORTH BEFOREHAND THAT:**

FJ holds the French trademark NORSKOELD No. 00000 filed on 5 June 2012 for classes 8, 9, 11, 14, 20, 21, 24, 26, 27, 34, as attached to these presents.

In connection with its online sales activity, ARGENT wants to sell, under the NORSKOELD trademark.

The Parties thus came together to define the terms and conditions under which FJ accepts to grant ARGENT a license for the NORSKOELD trademark.

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**THE FOLLOWING WAS AGREED:**

**ARTICLE 1 — PURPOSE**

The present agreement and its appendices (hereinafter referred to as the “Agreement”) has the purpose of defining the terms and conditions under which FJ grants, on a non-exclusive, personal and irrevocable basis, to ARGENT, which accepts, a license for the NORSKOELD trademark (hereinafter referred to as the “Trademark”), for which the certificate of registration is attached in **Annex 1**.

**ARTICLE 2 — SCOPE OF THE RIGHTS GRANTED**

2.1       The license to the Trademark is granted to ARGENT in order to manufacture, distribute, market, promote and sell:

·                  the products designated in the Certificate of Registration attached in Annex 1 only (hereinafter referred to as the “Products”),

·                  within the territory of France (hereinafter “the Territory”).

This license includes in particular:

· the reproduction,

· the use, and,

· the affixing of the Trademark,

on the Products and on any other medium, especially promotional medium.

2.2       At the request of ARGENT, FJ will register any additional “NORSKOELD” trademark (in order to extend the number of classes and/or the Territory and subject to availability concerning the classes/territories requested) and will grant Argent a license for the trademarks and/or extensions considered, under the same conditions as the present license. Any additional granting will be formalised by amendment to the present Agreement.

**ARTICLE 3 - OPERATION**

3.1.    ARGENT undertakes to utilise the Trademark concerning the Products effectively, honestly, continuously and seriously.

3.2.    ARGENT undertakes to use the Trademark consistently with the positioning of the Licensor, concerning the quality and the product line level and concerning the target customers. ARGENT nevertheless remains free concerning its sales policy (advertising, distribution, selling price, etc.) of the Products.

3.3.   ARGENT undertakes to comply, in all of its provisions, with the graphics standards of the Trademark attached in Appendix 2. Without the Licensor’s prior written consent, ARGENT shall refrain from adapting or modifying the Trademark or attaching any other term or representation thereto.

3.4.    FJ grants ARGENT full freedom in the choice of the manufacturer(s), as well as in the form of distribution, marketing and selling of the Products to the consumers or professionals.

**ARTICLE 4 - OWNERSHIP**

4.1.    ARGENT acknowledges that the present Agreement does not entail any transfer of ownership of the Trademark for its benefit.

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4.2.    ARGENT shall refrain from carrying out any protection of the Trademark in particular for products or services not targeted in its certificate of registration and/or for other territories, and/or any derived breakdown of the Trademark.

4.3.    FJ undertakes to carry out at its own expense, all formalities necessary for maintaining the protection of the Trademark within the Territory.

**ARTICLE 5 - PROTECTION**

5.1.    FJ undertakes to insure at its own expense the follow-up and protection of the trademark.

5.2       The Parties also undertakes to keep each other informed of all violations of the Trademark that they may become aware of.

5.3.    As soon as an infringement of the Trademark has been disclosed to the Licensor, the Parties will cooperate concerning the scope, the legitimacy and the harmful consequences of the acts in order to take all measures useful to have them stopped.

5.3. [sic] Unless otherwise agreed in writing beforehand by the Licensor, the Licensor will be solely authorised to take any measure useful for stopping the said infringement, if it deems this necessary. ARGENT will nevertheless provide its full assistance, at its own expense, to the Licensor in this connection.

**ARTICLE 6 — GUARANTEE / LIABILITY**

FJ guarantees CDISOUNT:

· that the Trademark is not currently the subject of any litigation, complaint or contestation of any kind and on any basis whatsoever,

· against any decision, complaint, claim or objection on the part of third parties against ARGENT concerning the Trademark.

**ARTICLE 7 — ROYALTY**

Since the Trademark has not been utilised by the Licensor at on the date of signing of these presents, FJ accepts to grant ARGENT the rights referred to in the Agreement free of charge for a period of 2 years.

At the end of the said period, the Parties undertake to discuss in good faith any royalty to be paid by ARGENT to FJ.

The Parties agree that the following will be taken into account in any definition of a royalty, in particular the investments made by ARGENT to develop the Trademark.

Failing an agreement between the Parties, 3 months after having started the said discussions, the amount of the royalty will be set according to expert.

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**ARTICLE 8 - DURATION - CANCELLATION**

8.1.    The Agreement takes effect retroactively as of 1 March 2014 for a period of 10 years, subsequently renewable by tacit renewal for successive periods of the same duration.

8.2.    Each Party will have the right to terminate the Agreement by registered letter with acknowledgement of receipt sent no later than 2 years before the expiration of the Agreement or its renewals.

8.3       It is expressly agreed between the Parties that the Agreement will be terminated by rights, without notice or formality, if the CASINO Group fully pulls out of the share capital of ARGENT.

8.4.    The Agreement may also be terminated by rights in case of non-fulfilment by one of the Parties of any of its obligations stipulated in these presents, namely one (1) month after formal notice sent to the Defaulting Party by registered letter with acknowledgement of receipt and having remained completely or partially ineffective during this period, namely without prejudice to the other right of the non-defaulting Party.

8.4.    At the termination of the Agreement for any reason whatsoever, ARGENT undertakes to cease any utilisation of the Trademark, in any form and on any basis whatsoever, and to return to the Licensor, at its first request, all of the documents or media in its possession showing the Trademark.

8.5.    With the exception of a termination due to ARGENT’s fault, under the conditions stipulated in Article 8.5 above, ARGENT will have a period of 12 months after the date of termination of the Agreement to sell of its stocks of Products bearing the Trademark.

**ARTICLE 9 — MISCELLANEOUS**

9.1.    Any modification of the Agreement will be effective only by the signing of a written amendment which will take effect only after it is signed by both Parties, stating their explicit intention to amend the Agreement.

9.2. The invalidity of all or a portion of a clause of the Agreement will not affect the validity and the existence of the other clauses of the Agreement.

9.3.    The fact of not utilising at a given time any of the clauses of the Agreement does not entail a waiving of the said clause for the future.

9.4.    The Agreement constitutes the entirety of the Parties’ agreements concerning its purpose and replaces any other prior written or oral agreement between the Parties.

**ARTICLE 10 — DISPUTE**

10.1. The Agreement is governed by French law.

10.2. Any contestation concerning its validity, its interpretation or its execution will be subject to the exclusive competence of the Courts of Paris.

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**ARTICLE 11 — FORMALITIES**

ARGENT will carry out at its own expense, the necessary formalities with all competent authorities, in particular for the registration of the Agreement with the INPI [French National Institute of Industrial Property]. The present Agreement is drafted in two originals, one for each Party

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| --- | --- |
|  |  |
| Signature for FJ: | Signature for ARGENT: |
|  |  |
| Jaques Ombre | Sophie Delavier |
|  |  |
| Done on 16 May 2014 |  |

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**APPENDIX 1**

**CERTIFICATE OF REGISTRATION OF THE TRADEMARK**

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**REPUBLIC OF FRANCE**

**INPI [FRENCH NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY]**

**for commerce or service**

**CERTIFICATE OF REGISTRATION**

The General Director of the National Institute of Industrial Property certifies that the trademark reproduced on the reverse has been registered.

The registration takes effect as of the date of filing of the application for a period of ten years renewable indefinitely.

This registration will be published in Official Bulletin of Industrial Property.

**No. 12/39 Vol. II of 28 September 2012**

The General Director of the

National Institute of Industrial Property

[signature]

Yves LAPIERRE

**Registered office:**—PARIS Cedex

National public institution founded by Law No. 51-000of 19 April 1951

[Seal]

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|  | CABINET [law firm] Piere Cassis |
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|  | LYON |

***National No.:*12 3 0000**

***Filing of:*5 JUNE 2012**

*to:* PARIS

Freres Joueux, Public Company, 1

SAINT ETIENNE.

SIREN [French companies directory] No.:

**Representative or recipient of the correspondence:**

Cabinet [law firm] Pierre Cassis, LYON

NORSKOELD

**Class No. 8:**Manual tools and instruments driven manually: cutlery, forks and spoons; bladed weapons; razors. Equipment for slaughter of butchery animals; hand tools actuated manually for gardening; shears (handheld instruments);

**Class No. 9:**The following types of equipment and instruments: scientific (other than for medical use), nautical, geodesic, photographic, cinematographic, optical, for weighing, measuring, signalling, verification (inspection), for emergency (rescue) and for teaching; equipment and instruments for the conducting, distribution, transformation, accumulation, adjustment or control of electric current; equipment for recording, transmission, reproduction or processing of sound or images; media for magnetic recording, audio or video disks, floppy disks; compact disks, DVDs and other digital recording media; automatic distributors and mechanisms for prepayment devices; cash-registers, calculators, equipment for data processing and computers; extinguishers. Gaming software; software (recorded programmes); computer peripherals; electric batteries, detetctors, electric wires, electric switches; diving outfits, suits, gloves or masks; protective clothing for accidents, radiation and fire; personal anti-accident protection mechanisms; eyeglasses, eyeglasses-related items; eyeglass cases; non-medical diagnostic equipment; member cards or microprocessor cards, rescue covers;

**Class No. 11:**Equipment for lighting, heating, steam production, cooking, refrigeration, drying, ventilation, water distribution and bathroom installations. Air-conditioning equipment or installations; freezers; vehicle lighting equipment; vehicle heating or air-conditioning installations; equipment and machines for air or water purification; sterilisers;

**Class No. 14:**Jewellery, precious stones, watches and clocks, and chronometers; precious metals and their alloys. Coins: objects of art made of precious metals; jewel boxes; boxes made of precious metals; cases, bracelets,

Chains, springs or bezels of watches, whimsical key-chains; statues or figurines (statuettes) made of precious metals; cases or boxes for watches/clocks; medals;

**Class No. 20**: Furniture, mirrors, frames. Objects of art made of wood, wax, plaster, cork, reed, rush, wicker, horn, bone, ivory, whale, scale, amber, whale, mother-of-pearl, meerschaum, surrogates of all of these materials or made of plastic; zippers for clothes, chests of drawers; cushions; shelves; plastic packaging recipients; armchairs; seats; bedding (with the exception of bed linen); mattresses; funeral urns, dressers, basketwork. Wooden or plastic boxes;

**Class No. 21:**Non-electrical utensils and recipients for household or kitchen; combs and sponges; brushes (with the exception of brush fibres); materials for brushes; hand-activated cleaning instruments; steel-wool; raw or partially worked glass (with the exception of construction glass); porcelain, earthenware. Bottles; objects of art made of porcelain, terra cotta or glass; toiletry utensils or necessary items; trashcans; glasses (recipients); dishes, apartment aquariums;

**Class No. 24:**Fabrics, bed and table covers. Fabrics for textile use; elastic fabrics; velour; bedclothes, linen, tablecloths not made of paper, bathroom linen with the exception of clothing);

**Class No. 26:**Lace and embroidery, ribbons and laces; buttons, hooks and eyelets, pins and needles; artificial flowers, notions items (with the exception of thread); postiches beards, hair or moustaches; trimmings; wigs; attachments or closings for clothing; hair decorating items;

**Class No. 27:**Rugs, doormats, mats, linoleum and other floor coverings [with the exception of tiles and paints); wall hangings not made of textiles. Carpets; wallpaper, exercise mats; motor vehicle mats; sod;

**Class No. 34:**Tobacco, smokers’ items; matches. Cigars; cigarettes; rolling paper; pipes; lighters; cigar boxes or cases, cigarette boxes or cases, smokers’ ashtrays.

**Classes of products or services: 8, 9, 11, 14, 20, 21, 24, 26, 27, 34**

**ANNEX 2**

**GRAPHICS STANDARDS OF THE TRADEMARK**

*-This Document is confidential- It is formally prohibited to disclose it to third parties -*

*Initialled [initials]*

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**1.1. Logo**

The logo is a visual expression of Norskoeld identity. It focuses on the recognition and brand impact.

The logo is made of two elements whose relative size and location must not be altered for any reason: the logotype (word “Norskoeld”), and the symbol, which is an abstract representation of the roof of a house.

Keep in mind the basic rules presented in the following pages to maintain its integrity.

[logo] Norskoeld

**LicA#40**

AAC STANDARD PATENT LICENSING AGREEMENT, DATED JUNE 5, 2018, BY AND BETWEEN THE COMPANY AND FORK LICENSING CORPORATION

**Exhibit 10.9**

|  |  |
| --- | --- |
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 PATENT LICENSE AGREEMENT

AN AGREEMENT BETWEEN

LICENSEE

Ecoutez Mobile Inc.

(“Licensee”)

of […], Quebec

H4C 2Z6 Canada

telephone: […]

and

LICENSE ADMINISTRATOR

Fork Licensing Corporation (hereinafter “Fork”)

of […]

, CA 94103-1410 United States of America

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LICENSEE

Each of the persons executing this Agreement represents that he/she is authorized to execute on behalf of, and to therefore bind, the respective Parties below.

Signature: /s/ Murphy Adler

Printed Name: Murphy Adler

Title: C.F.O. Ecoutez Mobile Inc., a Canada corporation

Place […] Quebec Canada

Date June 5, 2018

LICENSE ADMINISTRATOR

Signature: /s/ Audrey McCormick

Printed Name: Audrey McCormick

Title: Director, Legal Fork Licensing Corporation, a Delaware corporation

Place […], CA 94103-1410, U.S.A.

Date June 5, 2018

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AAC PATENT LICENSE AGREEMENT

This AAC Patent License Agreement is entered into by and between Fork Licensing Corporation, as an agent acting on behalf of Licensors, having a principal place of business at […] California, 94103 (hereinafter “Fork”), and the Party identified as Licensee on the title page and signature page of this Agreement.

WHEREAS, the International Organization for Standardization (“ISO”) and the International Electrotechnical Commission (“IEC”) issued standards for the coding of audio information namely ISO/IEC 13818-7:2006 “Information Technology – Generic coding of moving pictures and associated audio information – Part 7: Advanced Audio Coding (AAC), and ISO/IEC 14496-3:2009 “Information Technology—Coding of audio-visual objects—Part 3: Audio”;

WHEREAS, each of the Licensors owns and/or has rights to license Essential AAC Patents and each of the Licensors has gone to considerable effort to develop what it believes represents significant advancements;

WHEREAS, each of the Licensors has appointed Fork with limited authority to act as its agent to license, on behalf of Licensors, all Essential AAC Patents owned and licensable or licensed and sublicensable by each of the Licensors;

WHEREAS, each of the Licensors agrees to make its Essential AAC Patents available on fair, reasonable, nondiscriminatory, and reciprocal terms to entities willing to grant licenses to any essential patents they may own;

WHEREAS, in order to hasten the acceptance and commercial Forkbility of the AAC Standard, each Licensor desires to make its Essential AAC Patents available for license through Fork as agent in this Agreement and by which the Licensors and the Parties can achieve economies of scale, reduce transaction costs, integrate complementary technologies and promote the AAC Standard;

WHEREAS, in response to requests received from Licensees and potential Licensees of previous MPEG-2 AAC and MPEG-4 Audio patent licensing programs, the Licensors wish to offer a license focused on those portions of the MPEG-2 AAC and MPEG-4 Audio standards that are in common practice;

WHEREAS, Fork desires to license, on behalf of the Licensors, Licensors’ Essential AAC Patents to all entities desiring such a license on the terms and conditions herein;

WHEREAS, Licensee desires to obtain a non-exclusive license to Licensors’ Essential AAC Patents to manufacture, have made, Sell, or Otherwise Supply products compliant with the AAC Standard;

NOW THEREFORE, for and in consideration of the payments made and to be made by Licensee hereunder and the other covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is covenanted and agreed by and between the Parties hereto that:

1. Definitions.

1.1. “AAC Standard” means standards defined by the International Organization for Standardization (“ISO”) and the International Electrotechnical Commission (“IEC”) for the coding of audio information, namely ISO/IEC 13818-7:2006 “Information Technology – Generic coding of moving pictures and associated audio information – Part 7: Advanced Audio Coding (AAC), and ISO/IEC 14496-3:2009 “Information Technology—Coding of audio-visual objects—Part 3: Audio”, specifically limited to the following Profiles and Audio Object Types (“AOT”): MPEG-4 AAC Profile (including MPEG-2 AAC LC), MPEG-4 High Efficiency AAC Profile (including MPEG-2 AAC LC in combination with SBR), MPEG-4 High Efficiency AAC v2 Profile, MPEG-4 Low Delay AAC Profile, MPEG-4 Low Delay AAC v2 Profile (ISO/IEC 14496-3:2009/Amd. 3: 2012), MPEG-4 ER AAC Scalable (AOT 20), MPEG-4 ER AAC ELD (AOT 39), the Extended HE-AAC Profile (xHE-AAC, as defined and specified in the MPEG-D Standard, specifically ISO/IEC 23003-3:2012 “Information Technology – MPEG audio technologies – Part 3: Unified Speech and Audio Coding or as additionally described in Appendix A to this Agreement.

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1.2. “Affiliate” means a separate corporation, company, or other entity that now or hereafter, directly or indirectly, controls, is controlled by, or is under common control of or with a party. The term “control” as used in this definition means ownership of more than fifty percent (50%) of the outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) of such corporation, company, or other entity. In jurisdictions where percentage of foreign ownership is restricted to less than or equal to fifty percent (50%), then whatever percentage of ownership represents a controlling interest in that jurisdiction. Such corporation, company or other entity shall be deemed to be an Affiliate only so long as such “control” exists.

1.3. “Agreement” means this AAC Patent License Agreement (also known as the “AAC PLA”).

1.4. “Channel” or “Channels” means an audio channel. As examples: A monaural product utilizes one Channel; a stereo product utilizes two Channels (left and right), a multichannel product utilizes three or more Channels.

1.5. “Effective Date” means the date on which this Agreement is executed by Fork.

1.6. “End User” means any person or entity that purchases or otherwise obtains a decoding and/or encoding device or software for personal or commercial use and not to re-Sell or Otherwise Supply.

1.7. “Essential AAC Patent(s)” means any patent(s) having one or more independent claims that would be necessarily and unavoidably infringed (in the absence of a license) by the practice of the AAC Standard.

1.8. “External Model Number” means the model number designation marked on a Licensed Product and/or the Licensed Product’s packaging or associated marketing materials presented to End Users, and not a model number designation used for a Licensee’s or a Licensee’s suppliers’ internal purposes.

1.9. “Initial Fee” means the non-refundable fee defined in Section 4 (“Payments, Reports & Records”) below.

1.10. “Internal Use Licensed Product” means a Licensed Product made by Licensee or its Affiliates, or made on behalf of Licensee or its Affiliates, that is used by Licensee or its Affiliates, and is not intended for Sale or Otherwise Supply to any unaffiliated third party.

1.11. “License Administrator” means Fork Licensing Corporation (“Fork”), the entity designated by Licensors to administer the terms and act as an independent agent with limited authority to negotiate, receive, accept, execute, enforce, and terminate the AAC PLA on behalf of Licensors.

1.12. “License Fees” means the amounts calculated pursuant to Appendix B of this Agreement and due and payable by Licensee to Fork under this Agreement.

1.13. “Licensed Patents” means any and all Essential AAC Patents that are owned and licensable, or licensed and sublicensable, by the Licensors and their Affiliates in accordance with the terms of this Agreement, now or at any time during the Term, including without limitation those patents listed in Appendix A (which list shall be updated by Fork from time to time). Licensed Patents do not include any patents that, if licensed, would require a payment of fees by a Licensor to any party that is not an Affiliate of such Licensor.

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1.14. “Licensed Product” means (a) a complete (or substantially complete), ready-to-use End User decoding and/or encoding device or software, the making, using, importing, Sale or Otherwise Supplying of which would, in the absence of a license, infringe directly or indirectly a Licensed Patent, or (b) a component decoding and/or encoding device or software, the making, using, importing, Sale, or supplying of which would, in the absence of a license, infringe directly or indirectly a Licensed Patent, that is Sold or Otherwise Supplied directly to an End User. (By way of example only, and without limitation, such components may be in the form of software libraries, DSP code modules, subassemblies or integrated circuits).

Notwithstanding the foregoing, to the extent that Licensee or an Affiliate Sells or Otherwise Supplies components or software, the making, using, importing, Selling, or supplying of which would, in the absence of a license, infringe directly or indirectly a Licensed Patent, for inclusion in Professional Products sold by Licensee’s customer, such components shall be considered Licensed Products, provided that Licensee reports each customer’s name along with the quantity and product name and/or model number of the product(s) incorporating such component or software as part of Licensee’s quarterly reports, and pays the applicable Professional Product License Fees for such component or software as set forth herein.

1.15. “Licensee” means the Party identified as such on the title page and signature page of this Agreement.

1.16. “Licensors” (individually, “Licensor”) means the entities listed in Appendix A (such list is subject to additions and/or deletions by Fork from time to time).

1.17. “Otherwise Supply” or “Otherwise Supplied” means to offer for sale, distribute, dispose, rent, lend, lease, commercialize, exploit, or otherwise transfer without compensation, consideration, or money.

1.18. “Parties” (individually, “Party”) means the entities listed on the cover page that have executed the signature page of this Agreement.

1.19. “Products Subject to Other Licenses” means products that would be Licensed Products but that are licensed to those AAC Essential Patents practiced by such products through another licensing program or other means, whether a pool or a bi-lateral agreement, to the same extent that would otherwise be licensed pursuant to the licenses granted hereunder.

1.20. “Professional Product” means a Licensed Product intended primarily for an End User’s direct revenue-generating use or intended to serve as a main resource to generate revenue for End Users, including monitoring and testing equipment.

1.21. “Quarterly Report” means reports due from Licensee each calendar quarter , in electronic form, paper form, or as otherwise reasonably required by Fork, as further described in Section 4 (“Payments, Reports & Records”) below.

1.22. “Sell” or “Sold” means to sell, directly or through distribution channels, offer for sale, distribute, dispose, rent, lend, lease, commercialize, exploit or otherwise transfer for money or any other form of compensation or consideration.

1.23. “Small Entity” means an organization that, together with its Affiliates, has no more than fifteen (15) employees, and has annual gross revenues of US $1 million or less and has executed the Declaration of Small Entity Status set forth in Appendix C.

1.24. “Term” means the period of time described in Section 6 (“Term and Termination”) below.

1.25. “Trial Period” means an evaluation or testing period provided to End Users for a Licensed Product as further described in Section 4.8 (“Trial Period Rules”).

1.26. “Fork Administration System” means Fork’s proprietary systems, technologies and related databases used by Fork to manage information relating to patent licensing programs and that is protected by intellectual property rights owned solely and exclusively by Fork.

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2. Grant of Licenses.

2.1. License Grant. On the condition that Licensee and all Affiliates remain in compliance with all terms and conditions of this Agreement then, solely during the Term and subject to the terms and conditions hereof, including but not limited to Licensee’s payment of the Initial Fee, Fork hereby grants to Licensee and its Affiliates, pursuant to authority granted by the Licensors, a limited, non-exclusive, non-transferable (subject to Section 9.2 (“Assignment”) below), fee-bearing, worldwide license under the Licensed Patents to make, have made (subject to Section 2.5), use, import, Sell and Otherwise Supply Licensed Products solely for the purpose of encoding or decoding data in accordance with the AAC Standard.

2.2. Scope of License Grant. The patent license granted herein may only be used for the practice of the AAC Standard.

2.3. Limitation of License.

2.3.1. No Other Products. No license is granted hereunder to utilize the inventions claimed in the Licensed Patents in any products other than Licensed Products for which License Fees have been paid.

2.3.2. No Sublicensing. No rights to sublicense are granted or implied hereunder.

2.4. Guaranty by Licensee Regarding its Affiliates.

2.4.1. Licensee unconditionally and irrevocably guarantees performance under this Agreement by all its Affiliates. Such performance includes, without limitation, obligations under Section 4.7 (“Books and Records”), and the obligation to provide a Grantback License (pursuant to Section 2.6) to all Essential AAC Patents that are owned or licensable by Licensee or any and all of its Affiliates, on terms and conditions no less favorable than the terms of this Agreement.

2.4.2. If any of Licensee’s Affiliates breaches or does not perform a duty or obligation pursuant to this Agreement, Licensee shall, as soon as reasonably practicable, cure such breach or perform such duty or obligation, and Licensee agrees that the Licensors and Fork, individually or collectively in their sole discretion, shall have the right to proceed directly against Licensee and/or the Affiliate for such breach or nonperformance. Licensee’s liability shall not be relieved by the insolvency or bankruptcy of any of such Affiliates, and any liability will be reinstated against Licensee if any payment by any of such Affiliates is returned for any reason, including but not limited to the insolvency or bankruptcy of any such Affiliates.

2.5. Limitation of Have-Made Rights.

2.5.1. If any Licensed Products are made for Licensee by a third party, such third party may Sell or Otherwise Supply such Licensed Products to Licensee only; however, at Licensee’s instruction such third party may ship such Licensed Products to Licensee’s authorized distributor or other designated representative to whom Licensee has Sold or Otherwise Supplied such Licensed Products, and to no other person or entity.

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2.5.2. If a third party providing Licensed Products for Licensee pursuant to Section 2.5.1. (a “have-made manufacturer”) makes a claim, raises a counterclaim, or files a suit directly or indirectly against a Licensor and/or any of such Licensor’s Affiliate(s) over a patent alleged, or believed, in such Licensor’s reasonable judgment, to be an Essential AAC Patent, then such Licensor shall have the right to instruct Fork to revoke Licensee’s have-made right for that Licensor’s and its Affiliates’ Essential AAC Patents under this AAC PLA with regard to such have-made manufacturer only. Upon notice to Licensee from Fork of such revocation, such have-made manufacturer shall no longer be entitled to enjoy the benefit of any rights under such Licensor’s and its Affiliates’ Essential AAC Patents with respect to the manufacture of Licensed Products for Licensee or any of Licensee’s Affiliates and all Licensed Products manufactured by such have-made manufacturer thereafter shall be deemed unlicensed products with respect to such Licensor’s and its Affiliates’ Essential AAC Patents.

2.6. Grantback.

2.6.1. If Licensee or any of its Affiliates has the right to license or control the licensing of one or more Essential AAC Patents, Licensee agrees to either (i) become a Licensor in the AAC licensing program, or (ii) license to all Licensors that request a license and all other AAC licensees (having a substantially similar, reciprocal obligation to license Essential AAC Patents), all Essential AAC Patent(s) that are owned or controlled and licensable, or licensed and sublicensable, by Licensee or any of its Affiliates on terms and conditions no less favorable than the terms of this Agreement (“Grantback License”). Such obligation to license does not include patents that, if licensed, would require a payment of license fees by Licensee to any party that is not an Affiliate of Licensee. Each such patent license shall be granted on a non-exclusive basis under fair, reasonable, and non-discriminatory terms and shall include a license grant to such Licensor or AAC licensee, as applicable, and their Affiliate(s) for activity prior to the effective date of the Grantback License. For purposes of this subsection, the Licensors’ per-patent share of License Fees payable under Section 4.3 (“License Fees”) shall be presumed to be a fair and reasonable per-patent royalty rate for each of Licensee’s Essential AAC Patents; the amount of such per-patent share shall be disclosed to the Licensee upon request as necessary to conclude grantback negotiations.

2.6.2. Only with respect to Grantback License negotiations between Licensee and either a Licensor or a Licensor Affiliate that is an AAC licensee, if a license agreement is not executed within twelve (12) months after written request for a license, and Licensee’s proposed license or negotiations are alleged by Licensor and/or its Affiliate to not be fair or reasonable, then in addition to other remedies either party may have, the affected Licensor may provide ninety (90) days’ written notice to Licensee and to Fork, and upon expiration of such notice, withdraw the grant of license to its and its Affiliates’ Essential AAC Patents from the license granted hereunder. Upon expiration of such 90-day period, Fork shall notify Licensee in accordance with this Agreement and provide Licensee with a revised Appendix A to this Agreement, and, with immediate effect from the date of such notice from Fork, the Licensed Patents under this Agreement will cease to include the Essential AAC Patent(s) of such affected Licensor and its Affiliates. Upon execution of a Grantback License agreement between Licensee and the affected Licensor or Licensor Affiliate, any withdrawn patents, unless otherwise licensed by Licensor to Licensee, shall immediately be reinstated, effective from the date such patents were withdrawn

2.6.3. During the 12-month period described above, and for ninety (90) days thereafter, neither Licensor nor Licensee shall commence, or join or assist in, any legal or administrative proceeding in any jurisdiction asserting against the other any claims, or seeking a declaratory judgment, related to either party’s practice of the AAC Standard or challenging the enforceability or validity of any Essential AAC Patents owned, controlled, or sublicensable by the other party, including but not limited to reexamination proceedings.

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2.7. Express License Only. No license is granted herein by implication, estoppel or otherwise, and no implied or express license, authority to infringe, immunity or other waiver from infringement liability shall be deemed to arise or exist as a matter of law or otherwise:

2.7.1. under any patent that is not a Licensed Patent;

2.7.2. to make, use, import, lease, Sell, or Otherwise Supply any products other than Licensed Products;

2.7.3. for any field of use other than to comply with the AAC Standard; or

2.7.4. to any person acquiring from Licensee or its Affiliates any product other than a Licensed Product.

2.8. Statement of Fork’s Intellectual Property Ownership. Fork shall own all right, title and interest, including without limitation all intellectual property rights, in and to the Fork Administration System, Fork trademarks, trade names, trade dress, service marks and the associated names and logos used by Fork from time to time.

3. Publicity and Announcements.

3.1. No rights or licenses of any kind or nature whatsoever are created hereunder to use any of Fork’s, Licensee’s, or the Licensors’ trade names, trademarks or service marks (or any confusingly similar names or marks).

3.2. Licensee shall make no statements that any of its or its Affiliates’ Licensed Products have been approved, tested or certified by Fork or by any of the Licensors.

3.3. Neither Party shall make any public disclosures inconsistent with the rights and obligations created hereunder. The Parties agree that Fork and the Licensors may disclose to third parties the identity of Licensee as a licensee under this Agreement, and Licensee may disclose to third parties its identity as a licensee under this Agreement.

4. Payments, Reports & Records.

4.1. Initial Fee. Within thirty (30) days following the Effective Date, Licensee shall pay to Fork an upfront, one-time initial fee of USD 15,000 or, in the case of a Small Entity, USD 1,000 (the “Initial Fee”). The Initial Fee is an administrative fee for services provided in the United States, paid to Fork. The Initial Fee is non-recoupable and non-refundable, and is not credited against the “License Fees.” The Initial Fee shall be paid in full to Fork regardless of any tax treaties or obligations. Notwithstanding the foregoing, the Initial Fee shall be waived to the extent that Licensee is a licensee under an existing and effective AAC Patent License Agreement administered by Fork applicable to MPEG-2 AAC, MPEG-4 AAC or MPEG-4 HE AAC.

4.1.1. Small Entity Initial Fee. A Licensee that qualifies as a Small Entity shall be eligible for the USD 1,000 Initial Fee after providing Fork with an executed Declaration of Small Entity Status, attached as Appendix C hereto.

4.2. Quarterly Reports. Within thirty (30) days following the end of every calendar quarter following the Effective Date, Licensee shall deliver to Fork in electronic form, paper form, or as otherwise reasonably required by Fork, a written report summarizing the previous quarter’s transactions involving Licensed Products as specified below.

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4.2.1. Quarterly Reports shall include:

4.2.1.1. the quantity and description, including product name and/or External Model Number, of Licensed Products Sold or Otherwise Supplied pursuant to this Agreement by Licensee and/or its Affiliates during the calendar quarter for which the Quarterly Report is due;

4.2.1.2. the quantity and description, including product name and/or model number, of Internal Use Licensed Products;

4.2.1.3. the number of such Licensed Products that are multichannel products (a multichannel product is one which provides three or more Channels);

4.2.1.4. if Licensee or any Affiliate has Sold or Otherwise Supplied Products Subject to Other Licenses, Licensee shall provide evidence reasonably satisfactory to Fork (and subject to confirmation by Licensors) of the licenses, or confirming the existence of ongoing good-faith negotiations toward the execution of such license agreements. This requirement to provide evidence of existing licenses shall apply only once per category of Licensed Product; and

4.2.1.5. such other information and in such form as Fork may reasonably request.

4.2.1.6. If Licensee has elected the Alternative Rate Structure (as described in Appendix B), the information required by this Section 4.2.1 shall be reported separately for each country/region in which R2 Products are Sold or Otherwise Supplied for use by an End User.

4.2.1.7. In the event that Licensee or an Affiliate Otherwise Supplies components or software, the making, using, importing, Selling, or supplying of which would, in the absence of a license, infringe directly or indirectly a Licensed Patent, for inclusion in Professional Products sold by Licensee’s customer, and Licensee elects to have such components or software be Licensed Products hereunder, in addition to the information cited in Section 4.2.1.1 above, Licensee shall report each customer’s name along with the quantity and product name and/or model number of the product(s) incorporating such components or software and shall pay the applicable fees set forth in Section 4.3.3 below.

4.2.2. Quarterly Reports need not include:

4.2.2.1. component decoding and/or encoding devices or software Sold or Otherwise Supplied to an intermediate market prior to being incorporated in a Licensed Product; or

4.2.2.2. Products Subject to Other Licenses, so long as Fork has been provided evidence of a license applicable to such products pursuant to Section 4.2.1.4 above, and all Licensors have confirmed the existence of such licenses or have given their approval for Fork to accept Licensee’s reports excluding such products.

4.2.3. Except as may be required under Section 4.4 (“Taxes”) below or as required by law, Fork shall not disclose Licensee-specific details of Quarterly Reports to Licensors. To the extent that Licensee has provided evidence to Fork of licenses applicable to Products Subject to Other Licenses, Fork shall be permitted to disclose Licensee-specific information to Licensors as needed to fulfill its obligations hereunder.

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4.3. License Fees. Unless Licensee qualifies for the semi-annual payment election set forth in Section 4.3.1, Licensee shall pay to Fork all License Fees due hereunder within fifteen (15) days after its Quarterly Report is due. In accordance with Appendix B (the “Schedule of Fees”), Licensee shall pay to Fork the amounts for each Licensed Product Sold or Otherwise Supplied under this Agreement (except those returned and refunded) within, to, or from a jurisdiction in which any Licensed Patent remains unexpired, and the amounts for each Internal Use Licensed Products used by Licensee or its Affiliates in a jurisdiction in which any Licensed Patent remains unexpired.

4.3.1. If the License Fees due for a calendar quarter total less than US $25,000, Licensee may elect to defer payment of such License Fees until the following quarter, so long as this election is made not more than once every other calendar quarter (payments must be made at least on a semi-annual basis). Such an election does not excuse Licensee’s obligation to provide a Quarterly Report each quarter.

4.3.2. If Licensee Sells or Otherwise Supplies Licensed Products for resale to a customer who also has executed an AAC Patent License Agreement administered by License Administrator (“Other Licensee”), Licensee may agree with such Other Licensee that, as an exception to Section 4.2 and 4.3, the reporting and payment of License Fees for specific Licensed Products will not be made by the Licensee under this Agreement but by the Other Licensee under the Other Licensee’s AAC Patent License Agreement. If Licensee executes such an agreement with an Other Licensee, Licensee remains responsible for the License Fees due for such Licensed Products if the Other Licensee fails to report and pay License Fees that are due. If Licensee and an Other Licensee enter into such an agreement for the reporting and payment of License Fees, both the Licensee and the Other Licensee shall provide Fork with written notice of such agreement prior to initiating reporting and payment under this Section.

4.3.3. In the event that Licensee or an Affiliate has elected to report and pay for certain Professional Products of Licensee’s customers pursuant to Section 4.2.1.7, Licensee shall pay the applicable License Fees for each such Professional Product incorporating Licensee’s components or software.

4.3.4. Licensee shall consolidate all reports and payments required hereunder to include reporting and payment of License Fees due with regard to Licensee and all of its Affiliates.

4.3.5. All fees due by Licensee under this Agreement are non-refundable and non-recoupable.

4.4. Taxes. Except as provided in Section 4.4.1 below, in addition to the Initial Fee and the License Fees set forth in this Agreement and Appendix B, Licensee shall pay any and all fees, duties, charges of any kind, and taxes, including, without limitation, sales, use, excise, value added, withholding and similar taxes, based on payments to be made hereunder in any jurisdiction(s) where such taxes are required, and shall not deduct such amounts from any payments of fees hereunder. Licensee shall pay any such taxes and fees which are necessary to ensure that the net amounts received by Fork on behalf of Licensors after all taxes and fees are paid are equal to the amounts to which Licensors are otherwise entitled under this Agreement as if such taxes and fees did not exist. Upon request by Fork, Licensee shall timely provide to Fork documentation and proof of payment of taxes and fees paid on behalf of Licensors under this Section. If any taxing authority makes a claim against Fork for any taxes owed by Licensee, Licensee shall be obligated to pay all of Fork’s expenses and costs incurred in defending such action by the taxing authority. Fork shall reasonably cooperate and provide such information as may be required by Licensee for any purpose or reason relating to Licensee’s payment of taxes as may be required under this Section (“Taxes”).

4.4.1. Notwithstanding Section 4.4 (“Taxes”), if applicable law and/or tax treaty requires Licensee to withhold any income taxes levied by Licensee’s country of residency or any other jurisdiction(s) on payments to be made pursuant to this Agreement (“Withholding Tax”), Licensee shall timely remit to the appropriate governing authority any Withholding Tax that may be levied upon License Fees paid to Fork for the benefit of Licensors. Licensee shall use Fork’s calculation of Withholding Tax, and shall deduct such Withholding Tax from License Fees.

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4.4.1.1. Licensee shall provide to Fork all relevant documentation and proof of payment of the Withholding Tax to allow Licensor to provide evidence to Licensor’s tax authorities of payment of Withholding Taxes. If Licensee cannot provide such documentation and proof of payment in a timely manner, Licensee shall remit the amount of Withholding Tax to Fork for distribution to affected Licensors.

4.4.1.2. If a Licensor is eligible for a Withholding Tax rate exemption or a reduction pursuant to an applicable tax treaty then in force, Licensee must cause any Withholding Tax that is payable by the Licensor to be avoided or reduced accordingly. Fork shall reasonably cooperate with Licensee for purpose of reducing or eliminating any Withholding Taxes.

4.4.1.3. Fork shall reasonably cooperate with Licensee by furnishing necessary information, completed certificates, forms and other documents required by Licensee for purposes of reducing or eliminating any Withholding Taxes. Licensee shall file all necessary tax forms required in order to apply for the application of rates under tax treaties. Nothing in this Section 4.4.1.3 shall require Licensee to take any action inconsistent with any applicable law or government regulation.

4.4.1.4. If any foreign taxing authority makes a claim against a Licensor or Fork for failure to timely remit all required Withholding Taxes, then Licensee shall be obligated to pay all deficiencies and any interest or penalties associated with such failure owed to such taxing authority.

4.5. Payment Procedure.

4.5.1. Payments to Fork shall be made by wire transfer to the bank and account set forth in the applicable invoice from Fork, or by check drawn upon a nationally-recognized U.S. bank tendered to the address set forth in Section 9.8 (“Notices”) below (or to such other payment addresses or bank account as Fork shall designate in writing).

4.5.2. Fork will credit payments from Licensee against any prior outstanding amounts owed by Licensee under this Agreement (crediting the oldest outstanding amounts first) before applying them to current License Fees or other amounts owed.

4.5.3. Excess payment amounts shall be applied to immediately subsequent payment obligations and not refunded.

4.5.4. Any fees or payments that are made hereunder later than the date on which they are due shall bear interest, compounded monthly at the statutory rate of ten percent (10%) per annum or the highest rate permitted under applicable law, whichever is lower. A payment is considered late if received more than thirty (30) days after becoming due.

4.5.5. Time is of the essence with respect to all payments required hereunder.

4.5.6. Licensee shall pay all amounts due hereunder in United States dollars. All dollar amounts in this Agreement refer to United States dollars unless otherwise indicated. Any conversion to United States dollars shall be at the prevailing rate for bank cable transfers as quoted by the Wall Street Journal for the last day of the applicable quarterly period (or business day thereafter if such last day shall be a Sunday or other non-business day).

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4.5.7. Notwithstanding any requirement for written documents, communication or notice in this Agreement, Quarterly Reports, tax, withholding, financial and payment information and communications may be exchanged by the Parties electronically through the Fork Administration System, ForkSecure, or as otherwise requested by Fork by notice through such systems.

4.6. Fee Applicability.

4.6.1. When Sold or Otherwise Supplied. For the purpose of timing the payment of License Fees, a Licensed Product shall be considered Sold or Otherwise Supplied on the earlier of when delivered or otherwise disposed of or when invoiced; or, for Licensed Products provided on a trial basis, when the applicable Trial Period is exceeded. Licensed Products shipped on a consignment basis shall be considered Sold or Otherwise Supplied when any payment for such shipment is agreed upon between Licensee and its customer.

4.6.2. When First Used. For the purpose of timing the payment of License Fees for Internal Use Licensed Products, a first use shall be considered to be when the Internal Use Licensed Products are first used to achieve their intended purpose. For the avoidance of doubt, the first use of an encoder Internal Use Licensed Product is when Licensee initially uses the encoder to create bit-streams in AAC format. For an encoder Internal Use Licensed Product in software form, Licensee shall report the highest number of simultaneously-running encoder instances that occur in the calendar quarter as the unit number of Licensed Products for that quarter. For subsequent quarters, the highest number of simultaneously-running encoder instances shall be compared to the highest number from previous quarters. If the highest number of instances for the current quarter is greater than the number from previous quarters, Licensee shall report the difference between the two values as the unit number of Internal Use Licensed Products for the current quarter and pay License Fees for such reported products. For the avoidance of doubt, License Fees will only be due for Internal Use Licensed Products in software form if the highest number of simultaneously-running encoder instances for the current reporting quarter is greater than the highest number from previous quarters.

4.6.3. Software Installations. For encoder and decoder Licensed Products in software form, each computer or workstation which has the Licensed Product installed on it, or is capable of using or executing the Licensed Product, shall be considered a separate Licensed Product. By way of example only, if the Licensed Product is installed on a network server, each computer or workstation connected to the network server and capable of executing the Licensed Product shall be considered a separate Licensed Product.

4.6.4. Hosted Services. For Professional Products which are hosted on servers that provide encoding or decoding services (often referred to as “cloud computing” environments), as an alternative to reporting and paying for the total number of encoder/codec or decoder instances as the number of units of Licensed Products Sold or Otherwise Supplied, Licensee may elect to track the average number of simultaneously-running encoder/codec or decoder instances that occur each calendar month, and report the highest monthly average for the applicable quarter as the unit number of professional encoder/codec or decoder Licensed Products for that quarter. The highest monthly average for subsequent quarters shall be compared to the highest monthly average from previous quarters. If the highest monthly average for the current quarter is greater than the highest monthly average from previous quarters, Licensee shall report the difference between the two values as the unit number of professional encoder/codec or decoder Licensed Products for the current quarter and pay License Fees for such reported products. For the avoidance of doubt, License Fees will only be due for professional encoder/codec or decoder Licensed Products if the highest monthly average for the current reporting quarter is greater than the highest monthly average from previous quarters.

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4.6.5. Other Licensee Fee Payment. Licensee shall have no obligation to pay License Fees for a particular Licensed Product on which another licensee under an AAC Patent License Agreement administered by Fork has paid Fork the required License Fees as set forth in Appendix B, provided that Licensee documents the payment of such other licensee to Fork’s reasonable satisfaction.

4.6.6. Sales Prior to Effective Date. Not later than thirty (30) days following the Effective Date of this Agreement, Licensee shall submit to Fork a written report, identical in form and to the content requirements set forth in Section 4.2 (“Quarterly Reports”), for any Licensed Products Sold or Otherwise Supplied during the entire period prior to the Effective Date of this Agreement, together with payment for fees and interest thereon, compounded monthly at the statutory rate of ten percent (10%) per annum or the highest rate permitted under applicable law, whichever is lower; or if no Licensed Products were Sold or Otherwise Supplied during the entire period prior to the Effective Date of this Agreement, a statement to that effect. Upon receipt of such reports and payments, the license grant set forth in Section 2.1 will be extended to include Licensed Products Sold or Otherwise Supplied prior to the Effective Date for which a report and payment has been received. If the Effective Date is less than six (6) months after the commencement of discussions leading to execution of this Agreement between Fork and Licensee, then interest on such past practice may be waived, at Fork’s sole discretion.

4.7. Books and Records. Licensee and its Affiliates shall keep true, correct, and complete books and records of all sales, licenses, leases, uses, returns, disposals, or other transfers of Licensed Products under this Agreement for at least five (5) years from the date of their creation in order to confirm the accuracy of all of Licensee’s reports and amounts paid or payable hereunder. Fork may select an independent and professionally licensed accountant (“Auditor”) to audit, inspect and make abstracts of such books and records, at Licensee’s facility (or elsewhere as determined by Auditor) as necessary to verify their accuracy and that of all other written reports and statements provided for herein, and verify or determine fees paid or payable under this Agreement (“Audit”). Such Audit shall be performed during regular business hours upon at least ten (10) days’ notice and not more often than once annually unless an underpayment of five percent (5%) or more is found, in which case Fork may conduct more frequent Audits to the extent reasonably necessary to verify consistently accurate reporting. The Auditor may provide Fork information sufficient to support its findings. If the Audit shows an underpayment, then Licensee shall immediately pay the amounts due, plus accrued interest, plus the cost of the Audit if applicable, after receiving notice of the results of the applicable Audit. Licensee will pay the cost of the Audit if, for the period audited, an underpayment of five percent (5%) or more is found, based on and compared to payments or reports received by Fork prior to Fork’s notice informing Licensee of the Audit. Following an Audit, Fork will apply any subsequent payments received from Licensee hereunder first to the costs of the Audit and then to accrued interest before applying any remainder to outstanding License Fees. Fork may report the results of any Audit to Licensors; provided, however, that Fork shall not disclose in its report to Licensors any Licensee Confidential Information, or any other Licensee-specific information other than discrepancies in Licensee’s payments of License Fees for the period that was the subject of the Audit.

4.8. Trial Period Rules. No amounts shall accrue or become payable with respect to a Licensed Product Sold solely to the extent the Licensed Product is provided on terms that allow the End User to evaluate the Licensed Product as provided below:

4.8.1. at the end of the Trial Period, the Licensed Product is automatically disabled such that the Licensed Product would not, in the absence of a license, directly or indirectly infringe a Licensed Patent; such Trial Period not to exceed thirty (30) days;

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4.8.2. the Licensed Product is altered in a manner that renders the Licensed Product unusable for commercial or personal purposes by compromising the audio output, such as by periodically inserting an interval of silence or periodically inserting an audible tone or beep in the audio output; or

4.8.3. the Licensed Product is subject to an agreement between Licensee and an End User obligating that End User to return or destroy all copies of the Licensed Product unless that End User purchases such Licensed Product prior to the expiration of the Trial Period; such Trial Period not to exceed thirty (30) days.

For the avoidance of doubt, there shall be only one Trial Period per End User, and if the End User retains the Licensed Product for any period of time after the expiration of the Trial Period, or if the output of the Licensed Product is no longer compromised, License Fees shall be due for such Licensed Product as specified in Appendix B.

5. Confidentiality.

5.1. Confidential Information. “Confidential Information” shall include any non-public information that is marked “confidential” or, if disclosed orally, is identified as confidential prior to, during, or immediately after such oral disclosure, which is disclosed by one Party (“Discloser”) to the other Party (“Recipient”) pursuant to this Agreement.

5.2. Reproduction. Recipient shall not reproduce Confidential Information except and only to the extent necessary to exercise its rights and obligations under this Agreement. Reproductions of Confidential Information shall include any trade secret legends, proprietary notices and/or copyright notices present in the Confidential Information.

5.3. Disclosure. Recipient shall restrict disclosure of Confidential Information to employees, attorneys and accountants with a need to know such information to accomplish the purposes of this Agreement, and Recipient shall advise such employees, attorneys and accountants, in advance of such disclosure, of the obligations of this Section 5 (“Confidentiality”) and shall require such employees, attorneys, and accountants to be bound, in writing, by confidentiality obligations substantially similar to those herein. Recipient shall not disclose Confidential Information to any other third party without prior written approval of Discloser. All tax credit payments and related documents shall be deemed Confidential Information and shall be disclosed only on a need-to-know basis. Except for books and records specified in Section 4.7 (“Books and Records”) above, Recipient’s obligation to maintain confidentiality of Confidential Information shall expire three (3) years from the date of disclosure.

5.4. Use. All Confidential Information that is disclosed for the purposes set forth in this Agreement shall be used only to the extent necessary to accomplish the purposes of this Agreement, shall be subject to the restrictions of this Section 5 (“Confidentiality”) and shall not be used for any other purpose. The fact that a discussion involving the disclosure of Confidential Information will occur or has occurred shall also be considered Confidential Information.

5.5. Property. All Confidential Information that is owned by the Discloser shall remain the property of Discloser. Recipient’s duty to protect Confidential Information commences upon receipt of the Confidential Information.

5.6. Exclusions. The foregoing restrictions on the use and disclosure of Confidential Information shall not apply to any Confidential Information:

5.6.1. independently developed by Recipient or lawfully received free of restriction from another source having the right to furnish the Confidential Information;

5.6.2. after it has become generally available to the public without breach of this Agreement by Recipient;

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5.6.3. that, at the time of disclosure to Recipient, was known to Recipient free of restriction as evidenced by documentation in Recipient’s possession; or

5.6.4. that Discloser agrees in writing is free of such restrictions.

5.7. Exceptions. Nothing in this Agreement shall prevent a Recipient from disclosing Confidential Information to the extent the Recipient is legally compelled to do so by any governmental, investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction, provided that the Recipient first gives Discloser notice of the required disclosure. In no event shall Recipient’s cooperation with Discloser require Recipient to take any action which, on the advice of Recipient’s counsel, could result in the imposition of any sanctions or other penalties against Recipient.

5.8. No Implied Assurances. None of the Confidential Information which may be disclosed by Discloser shall constitute any representation, warranty, guarantee, inducement or other assurance by Discloser of any kind, and, in particular, with respect to the non-infringement of any intellectual property rights, or any other rights of any third persons or of Discloser.

5.9. Injunctive Relief. The Parties agree that in the case of the breach of any provision of this Section 5 (“Confidentiality”), the aggrieved Party may suffer immediate and irreparable harm and that immediate injunctive relief may therefore be appropriate.

6. Term and Termination.

6.1. Term. This Agreement shall commence on the Effective Date and continue thereafter for a period of five (5) years. Unless terminated earlier pursuant to this Section 6, Licensee shall have the option to renew this Agreement for additional periods of five (5) years each subject to providing Fork with written notice of Licensee’s election to renew at least thirty (30) days prior to the expiration of the then-current term. As determined by Fork in its reasonable discretion, certain terms and conditions of this Agreement may be subject to change upon renewal. Furthermore, if Licensors generally increase the License Fees, Licensors have the option to increase the License Fees herein upon any renewal by the same percentage as the general price increase, but in no event more than twenty-five percent (25%) of the Schedule of Fees.

6.2. Termination for Breach. Failure to pay or perform any obligation hereunder within the time prescribed shall constitute an event of material default. Failure to cure any event of material default within sixty (60) days after receipt of written notice describing the non-performance, or thirty (30) days with respect to non-payment of funds, shall entitle the Party giving such notice to terminate, or suspend, any or all portions of this Agreement.

6.3. Individual Licensor’s Option to Withdraw Patents. In the event Licensee or any of its Affiliates makes a claim, raises a counterclaim, or files a suit, directly or indirectly, against a Licensor and/or any of its Affiliates over a patent alleged, or believed in such Licensor’s reasonable judgment, to be an Essential AAC Patent, then such Licensor may withdraw the grant of license under its and its Affiliates’ Essential AAC Patent(s) from this Agreement. Upon such withdrawal, Fork will promptly notify Licensee, and as of the date of the filing of such claim, counterclaim, or suit (“Claim Date”), Licensee’s Licensed Patent(s) under this Agreement will cease to include the Essential AAC Patents of such Licensor and its Affiliates. Fork will provide Licensee with a revised Appendix A to this Agreement, which shall be effective as of the Claim Date.

6.4. Termination for Convenience. Licensee may terminate this Agreement at will by providing Fork with written notice at least sixty (60) days prior to the effective date of such termination (the “Termination Date”), with such notice becoming effective only if (i) Licensee has fully performed all of its payment and other obligations under this Agreement; and (ii) either (a) Licensee certifies to Fork in writing prior to the Termination Date that it has ceased to make, use, import, Sell and Otherwise Supply Licensed Products as of the Termination Date; or (b) prior to the Termination Date, Fork has received written confirmation that Licensee has entered into bilateral agreements with each of the Licensors covering the practice of the Licensed Patents for making, having made, using, importing, Selling and Otherwise Supplying Licensed Products for the purpose of encoding or decoding data in accordance with the AAC Standard.

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6.5. Effect of Termination.

6.5.1. Effect of Termination on Payments and Reporting. Upon expiration or termination of this Agreement, the payment date of all monies due and the reporting date of all Quarterly Reports shall automatically be accelerated so that they shall all become due, payable, and deliverable no later than thirty (30) days after the effective date of expiration or termination of this Agreement.

6.5.2. Effect of Termination on License. Upon expiration or termination, all licenses granted to Licensee hereunder shall revert to Licensors, except that for a period of six (6) months after the Term of this Agreement, Licensee shall be entitled to fill orders for Licensed Products received prior to expiration or termination and to make, or have made for it, and to Sell Licensed Products for which commitments to vendors had been made prior to notice of such expiration or termination (“Sell Off Period”), except when this Agreement is terminated for material breach the foregoing Sell Off Period shall not apply, but rather the termination provisions set forth in Section 6.2 above (“Termination for Breach”) shall apply. Any expiration or termination of this Agreement pursuant to the terms in this Section 6 (“Term and Termination”) shall not relieve Licensee of its obligation to account for and make payments pursuant to the terms of this Agreement for all Licensed Products Sold or Otherwise Supplied by Licensee either prior or subsequent to the expiration or termination date.

6.6. Survival. The definitions and the Parties’ rights, duties and obligations which, by their nature, would continue beyond the expiration or termination of this Agreement, including but not limited to Sections 4.7 (“Books and Records”), 5 (“Confidentiality”), and 7 (“Representations and Warranties”) shall survive the expiration or termination of this Agreement.

7. Representations and Warranties.

7.1. Negation of Representations and Warranties by Fork and Licensors. Fork and Licensors, individually and collectively, make no representation, warranty, covenant or claim regarding:

7.1.1. the scope, validity, enforceability or infringement of the Licensed Patents;

7.1.2. any ongoing maintenance or prosecution of any of the Licensed Patents;

7.1.3. any defense of Licensee against any actions or suits of any nature brought by any third parties;

7.1.4. any obligation to bring or prosecute any actions or suits against any third parties for infringement; or

7.1.5. any sufficiency, adequacy or completeness of the Licensed Patents for any purpose including but not limited to make, use, import, Sell, or Otherwise Supply Licensed Products.

7.2. Representations and Warranties by Licensee. Licensee represents, warrants and covenants that:

7.2.1. Licensee enters into this Agreement for its own convenience to acquire non-exclusive rights from multiple Licensors hereto in a single transaction rather than in multiple transactions for rights to the Licensed Patents which it believes are necessary to make, use, import, Sell, or Otherwise Supply Licensed Products; and by doing so Licensors and Licensee can achieve economies of scale, reduce transaction costs, integrate complementary technologies, and promote the AAC Standard;

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7.2.2. Licensee is aware that the Licensed Patent(s) may not comprise all the technology, or include licenses to all of the patents required to make, use, import, Sell, or Otherwise Supply a Licensed Product;

7.2.3. Licensee acknowledges that Fork and Licensors, individually and collectively, make no representation, warranty, covenant or claim that the Licensed Patents hereunder include all applicable Essential AAC Patents throughout the world;

7.2.4. Licensee acknowledges that Fork and Licensors, individually and collectively, make no representation, warranty, covenant or claim that making, using, importing, Selling, or Otherwise Supplying Licensed Products will not infringe, directly, indirectly, by inducement or otherwise, any patent not licensed hereunder;

7.2.5. Licensee shall defend, indemnify, and hold Fork and the Licensors, individually and collectively, harmless and free from and against any claim, loss, damage or other liability based on or otherwise arising out of Licensee’s conduct; provided, however, that notwithstanding the foregoing, Licensee shall not be obligated to defend, indemnify and hold Fork or the Licensors harmless from and against a claim, loss, damage or liability based on or otherwise arising out of conduct by Fork or the Licensors;

7.2.6. Licensee acknowledges that Fork and the Licensors have not investigated Licensee’s particular Licensed Product(s) and that to the extent such Licensed Product(s) include features not necessarily and unavoidably required by the practice of the AAC Standard such features may infringe patents and/or intellectual property rights owned by the Licensors which are not included in the Licensed Patent(s);

7.2.7. Licensee has not, in contemplation of signing this Agreement, made an assignment of, or granted an exclusive license to, any Essential AAC Patent to any third party. During the Term, any assignment made or exclusive license granted by Licensee of any Essential AAC Patent may only be assigned or licensed under the condition that such Essential AAC Patent continues to be subject to the obligation to offer a license to all Licensors and all other licensees under an AAC Patent License Agreement administered by License Administrator pursuant to the terms and conditions of this Agreement.

7.3. Representations and Warranties by Each Party. Each Party represents, covenants and warrants that:

7.3.1. this Agreement does not violate any of that Party’s existing agreements;

7.3.2. such Party has the authority, power and right to convey the rights or accept the obligations created hereunder.

7.4. WARRANTY DISCLAIMER. THE FOREGOING REPRESENTATIONS AND WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, AND EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 7 (“REPRESENTATIONS AND WARRANTIES”), FORK AND THE LICENSORS MAKE NO WARRANTY OF ANY TYPE OR OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND HEREBY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

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7.5. WAIVER OF CONSEQUENTIAL DAMAGES AND OTHER INDIRECT DAMAGES. FORK AND THE LICENSORS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES OF ANY TYPE OR OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF ANY REPRESENTATIVE OF FORK OR ANY OF THE LICENSORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.6. LIMITATION OF REMEDIES AND LIMITATION OF LIABILITY. IN ALL EVENTS, LICENSEE’S SOLE REMEDY UNDER THIS AGREEMENT FOR ANY CLAIM OF BREACH SHALL BE TO TERMINATE THIS AGREEMENT. IN NO EVENT SHALL FORK’S AND LICENSORS’ AGGREGATE CUMULATIVE LIABILITY TO LICENSEE FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE AMOUNTS DUE TO FORK BUT UNPAID BY LICENSEE OR THE AMOUNTS PAID BY LICENSEE TO FORK IN THE TWELVE MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO THE LIABILITY, WHICHEVER IS LESS.

7.7. FAILURE OF ESSENTIAL PURPOSE. THE PARTIES AGREE THAT THE LIMITATIONS SPECIFIED IN SECTION 7.6 (“LIMITATION OF REMEDIES AND LIMITATION OF LIABILITY”) SHALL APPLY EVEN IF THIS AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

7.8. Express Allocation of Risks and Benefits. All of the terms and conditions in this Section 7 (“Representations and Warranties”) have been expressly accepted by the Parties and represent the bargained for allocations of risks and benefits under this Agreement which are reflected in the financial terms between the Parties in this Agreement. This allocation is an essential element of the basis of the bargain between the Parties.

8. Right to Independent Negotiation.

8.1. Acknowledgements. Licensee understands and acknowledges that the Licensed Patents are offered to be licensed for the convenience of Licensee, and Licensee is free to negotiate licenses and/or fees for the Licensed Patents directly with the Licensors independently, individually and directly on mutually acceptable terms and conditions which may be different from those set forth in this Agreement.

8.2. Independent Negotiations. Licensee also understands and acknowledges that Licensee is free to conduct the negotiations described in this Section 8 (“Right to Independent Negotiation”) simultaneously with any or all of the Licensors independently, individually and directly.

9. General.

9.1. Section Titles. Section titles are intended only to aid and assist the reader as an index device and are not intended to be substantive or fully descriptive of the contents of the section or to be used for construction or interpretation.

9.2. Assignment. Licensee shall not assign this Agreement or delegate any of its rights, duties or obligations hereunder without the prior written consent of Fork, except in connection with Licensee’s merger with another entity, or sale to another entity of its entire business, or substantially all of the assets used to carry out the business related to practice of the technology to which this Agreement pertains, provided that such entity shall promptly agree in writing with Fork to perform all Licensee’s obligations and duties hereunder. Any attempt to do so without such consent is void. Fork may assign the administration and management of this Agreement or its rights, interests and obligations under this Agreement to a successor in connection with a merger with or acquisition by or sale of all of Fork’s assets, or in the event the Licensors designate a different license administrator. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.

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9.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations, including any applicable laws and regulations relating to export, import, and applicable royalty withholding laws and regulations, and will defend and hold Fork and all Licensors harmless from any expense or damage resulting from Licensee’s violation or alleged violation of any such law or regulation. Licensee shall not export or re-export any data acquired from Licensors under this Agreement, or the direct product thereof, to any country in contravention of applicable law.

9.4. Costs. Any covenant requiring a Party to perform or provide an act or service shall be construed to impose upon such Party the burden of the cost thereof unless otherwise provided for herein.

9.5. Assertion of Unenforceability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and the unenforceable or invalid provision shall be amended to achieve as closely as possible the economic effect of the original provision.

9.6. Modification and Waiver. No provision of this Agreement shall be deemed modified by any act or omission of a Party or its agents, or by failure to object to any acts of a Party which may be inconsistent with the terms of this Agreement. No waiver of a breach committed by a Party in one instance shall constitute a waiver or permission to commit or continue breaches in other or like instances. This Agreement shall not be amended or modified other than by a duly executed amendment signed by authorized representatives of the Parties, except that Fork may provide updates to Appendix A, and the Parties may provide updates to contact information, addresses and other administrative matters Fork written notice, email, facsimile, or as provided in Section 4.5.7 above.

9.7. Calendar Days. All references to days under this Agreement are a reference to calendar days; thus, for example, when action is required “within thirty (30) days” then in all cases such action is required within thirty (30) calendar days.

9.8. Notices. All notices and communication shall be in written English, to the addresses below, or to such other contact information as either Party may designate pursuant to proper notice, and, except to the extent an alternative means is specified below or elsewhere in this Agreement, sent by an internationally-recognized courier service that provides proof of delivery. All notices so provided shall be deemed effective upon receipt as indicated by such proof, and in no case later than ten (10) days after sending. Notwithstanding the foregoing, Fork may send notices updating contact information, addresses and other administrative matters, and any updates to the list of Licensors and Licensed Patents in Appendix A pursuant to Sections 2.6.2 or 6.3 or otherwise, Fork email, facsimile, as provided in Section 4.5.7 above, or other electronic means. The parties may agree on additional procedures for electronic communication; such agreement may be entered into by electronic means. If and when so entered into, such procedures will be deemed to be incorporated into the notice procedures set forth in this Section 9.8 (“Notices”). All fees payable to Fork shall be paid by check tendered to the following address or wire transfer to the bank and account set forth in the applicable invoice from Fork (or such other payment addresses or bank account as Fork shall designate in writing):

Fork Licensing Corporation

Attention: AAC License Administrator

1275 Market Street

San Francisco, CA 94103

Telephone: (415) 645-4700

Notices to Licensee shall be sent to the address on page 1, or to the following if specified:

Company:

Attn:

Address:

Fax:

Email: gerry@Ecoutezmobile.com

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9.9. Dispute Resolution. This Agreement shall be governed by, and construed in accordance with, the substantive law of the State of California and applicable federal law of the United States, but without regard to choice of law provisions thereof. This Agreement shall be deemed to have been made and entered into in San Francisco, California. The Parties hereby submit to the jurisdiction of, and waive any venue objections against, the United States District Court for the Northern District of California, San Francisco Division and the Superior Court of the State of California, San Francisco County, in any litigation arising out of or relating to this Agreement. In the event that any action is brought to resolve any dispute under this Agreement, the prevailing Party shall be entitled to recover from the other Party all costs and expenses incurred in that action as well as any appeal therefrom, including all reasonable attorney’s fees and costs. Licensee shall not object to any enforcement action brought by Fork under this Agreement on the basis that the Licensors should be required to seek, maintain, or be joined to such action. Each Party expressly waives the defense of sovereign immunity and any other defense based on the fact or allegation that it is an agency or instrumentality of a sovereign state.

9.10. Relationship of the Parties. The Parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or other agency between Fork and Licensee, and neither Fork nor Licensee has the authority to bind the other or incur any obligation on behalf of the other.

9.11. Controlling Language. This Agreement and the Appendices hereto are prepared and executed in the English language only, which language shall be controlling in all respects. Any translations of this Agreement into any other language are for reference only and shall have no legal or other effect. Any notice which is required or permitted to be given by one Party to the other under this Agreement shall be in the English language and shall be in writing. All proceedings related to this Agreement shall be conducted in the English language.

9.12. Third Party Beneficiary. Licensee acknowledges and agrees that each Licensor is a direct and intended third party beneficiary of those provisions of this Agreement expressly or implicitly referencing Licensor and Licensor shall be entitled to enforce the terms of such provisions directly against Licensee. Nothing in this Agreement, express or implied, is intended to or shall confer upon Licensee or any other third party any right, benefit or remedy of any nature whatsoever under or by reason of any separate agreement between any of Fork, the Licensors or any third party. Except for each Licensor and the Parties, nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.13. Counterparts. This Agreement may be executed, whether in person or by facsimile transmission, simultaneously in counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

9.14. Review by Counsel. Each Party hereby acknowledges and agrees that it is sophisticated and has consulted legal counsel with respect to this transaction. As a consequence, the Parties expressly waive any presumption of any statutory or common law rule relating to the interpretation of contracts against the drafter.

9.15. Entire Agreement. This Agreement, together with the Appendices attached hereto and incorporated by this reference, contains the entire agreement between Fork and Licensee, and supersedes all other prior or contemporaneous representations, discussions, negotiations and agreements, whether written or oral between them relating to the subject matter hereof.

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APPENDIX A

AAC STANDARD, LICENSORS, AND LICENSED PATENTS

The patent license granted herein may only be used for the practice of the following Audio Object Types (AOTs) and/or Profiles as defined in the AAC Standard:

MPEG-4 AAC Profile, including MPEG-2 AAC LC

MPEG-4 High Efficiency AAC Profile, including MPEG-2 AAC LC in combination with SBR

MPEG-4 High Efficiency AAC v2 Profile

MPEG-4 Low Delay AAC Profile

MPEG-4 Low Delay AAC v2 Profile

MPEG 4 Error Resilient AAC Scalable (AOT 20)

MPEG-4 Error Resilient AAC Enhanced Low Delay (AOT 39)

MPEG-D Extended HE-AAC Profile

Licensors:

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● Fraunhofer Gesellschaft zur Foerderung der angewandten Forschung e.V (Fraunhofer) Hansastrasse 27c Munich 80686 Federal Republic of Germany

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● Sony Corporation 1-7-1- Konan, Minato-ku, Tokyo 108-0075 Japan

● Telefonaktiebolaget LM Ericsson (publ) (Ericsson) Torshamnsgatan 23, SE-164 83 Stockholm Sweden

● VoiceAge Corporation 750 Chemin Lucerne, Mont-Royal, QC H3R 2H6, Canada

List of Licensed Patents:

Patent Holder(s) Country Patent Number

Dolby AR 061807

Dolby AU 2003270114

Dolby AU 2006235812

Dolby AU 2006235813

Dolby AU 2006336954

Dolby AU 2010215469

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Fraunhofer EP (AT,BE,CH,DE,ES,FI,FR,GB,IE,IT,NL,PT,SE) 1721489

Fraunhofer EP (AT,BE,CH,DE,DK,ES,FI,FR,GB,GR,IE,IT,LI,LU,MC,NL,PL,PT,SE,TR) 1803117

Fraunhofer EP (AT,BE,CH,DE,ES,FI,FR,GB,IE,IT,LI,LU,MC,NL,PL,PT,SE,TR) 1803325

Fraunhofer EP (AT,BE,CH,DE,ES,FI,FR,GB,IE,IT,LI,LU,MC,NL,PL,PT,SE,TR) 1854218

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Fraunhofer EP (BE,DE,ES,FR,GB,IT,NL,PL,TR) 2074615

Fraunhofer EP (BE,DE,ES,FR,GB,IT,NL,PL,PT,TR) 2076901

Fraunhofer EP (BE,DE,ES,FR,GB,IT,NL,PL,TR) 2378516

Fraunhofer EP (BE,DE,ES,FI,FR,GB,IT,NL,PL,PT,SE,TR) 2884490

Fraunhofer HK 1040327

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Fraunhofer HK 1104412

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Fraunhofer IN 255634

Fraunhofer IN 255688

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Patent Holder(s) Country Patent Number

Fraunhofer IN 257622

Fraunhofer IN 259275

Fraunhofer IN 259305

Fraunhofer IN 262770

Fraunhofer IN 263033

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Fraunhofer IN 268919

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Philips/Dolby International CN ZL200480032342.6

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APPENDIX B

SCHEDULE OF FEES

These License Fees will not be increased for any reason during the initial Term, including but not limited to the addition of Licensors and/or Licensed Patents to Appendix A after the Effective Date.

(1) Standard Rate Structure - Worldwide Rates:

Licensee shall pay Fork for each Licensed Product Sold or Otherwise Supplied in accordance with the following table.

Volume

(per unit\* / annual reset) Per Unit Fee

For the first 1 to 500,000 units $ 0.98

For units 500,001 to 1,000,000 $ 0.78

For units 1,000,001 to 2,000,000 $ 0.68

For units 2,000,001 to 5,000,000 $ 0.45

For units 5,000,001 to 10,000,000 $ 0.42

For units 10,000,001 to 20,000,000 $ 0.22

For units 20,000,001 to 50,000,000 $ 0.20

For units 50,000,001 to 75,000,000 $ 0.15

For units 75,000,001 and more $ 0.10

\* Licensed Products with more than two Channels count as 1.5 units.

(2) Alternative Rate Structure – Country/Region-Based Rates:

As an alternative to the Standard Rate Structure described above, Licensee may elect the bifurcated rate structure described below, which includes a different rate table for those Licensed Products that are Sold or Otherwise Supplied for use by an End User within certain countries/regions.

The first table below (R1 Rate Table) applies to those Licensed Products Sold or Otherwise Supplied for use by an End User within the countries/regions listed on the R1 Country/Region List below in which any Licensed Patent remains unexpired (i.e., “R1 Products”).

The second table below (R2 Rate Table) applies to those Licensed Products Sold or Otherwise Supplied for use by an End User within countries/regions that are not listed on the R1 Country/Region List in which any Licensed Patent remains unexpired (i.e., “R2 Products”).

If any Licensed Product is Sold or Otherwise Supplied for use by an End User in a country/region in which there is no unexpired Licensed Patent, but is manufactured in a country/region in which a Licensed Patent remains unexpired, then the identity of the country/region of manufacture shall determine the applicable R1 or R2 rate.

The volume of units of R1 Products may not be aggregated with the volume of units of R2 Products for purposes of determining the applicable rate under either the R1 or R2 Rate Tables.

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R1 Rate Table:

Volume

(per unit\* / annual reset) Per Unit Fee

For the first 1 to 500,000 units $ 0.98

For units 500,001 to 1,000,000 $ 0.78

For units 1,000,001 to 2,000,000 $ 0.68

For units 2,000,001 to 5,000,000 $ 0.45

For units 5,000,001 to 10,000,000 $ 0.42

For units 10,000,001 to 20,000,000 $ 0.22

For units 20,000,001 to 50,000,000 $ 0.20

For units 50,000,001 to 75,000,000 $ 0.15

For units 75,000,001 and more $ 0.10

\* Licensed Products with more than two Channels count as 1.5 units.

R2 Rate Table:

Volume

(per unit\* / annual reset) Per Unit Fee

For the first 1 to 500,000 units $ 0.64

For units 500,001 to 1,000,000 $ 0.51

For units 1,000,001 to 2,000,000 $ 0.44

For units 2,000,001 to 5,000,000 $ 0.29

For units 5,000,001 to 10,000,000 $ 0.27

For units 10,000,001 to 20,000,000 $ 0.14

For units 20,000,001 to 50,000,000 $ 0.13

For units 50,000,001 to 75,000,000 $ 0.10

For units 75,000,001 and more $ 0.07

\* Licensed Products with more than two Channels count as 1.5 units.

R1 Country/Region List:

Andorra

American Samoa

Australia

Austria

Belgium

Bermuda

Bulgaria

Canada

Croatia

Cyprus

Czech Republic

Denmark LatFork

Lichtenstein

Lithuania

Luxembourg

Malta

Monaco

Netherlands

New Zealand

Norway

Poland

Portugal

Puerto Rico

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R1 Country/Region List (continued)

Estonia

Finland

France

Germany

Greece

Guam

Hong Kong

Hungary

Iceland

Israel

Italy

Ireland

Japan Romania

San Marino

Singapore

Slovakia

Slovenia

South Korea

Spain

Sweden

Switzerland

Taiwan

Turkey

United Kingdom

United States and its Territories

United States Virgin Islands

Procedures For Electing the Alternative Rate Structure

The Standard Rate Structure shall apply unless Licensee has elected to use the Alternative Rate Structure in accordance with this section.

Notice and Timing of Election: Licensee may elect the Alternative Rate Structure by providing written notice to Fork of its election prior to the Effective Date of this Agreement. During the Term of this Agreement, Licensee may elect to change to the Standard Rate Structure or the Alternative Rate Structure by providing written notice to Fork of its election to change, and making the administrative fee payment described below. Upon such election and fee payment after the Effective Date, the Standard Rate Structure or Alternative Rate Structure, as appropriate, will apply to Licensed Products Sold or Otherwise Supplied after the end of the calendar quarter in which notice was provided. When changing to the Standard Rate Structure or the Alternative Rate structure after the Effective Date of this Agreement, the Licensee’s annual unit volume count will be reset to zero and the applicable tier rate(s) will apply beginning with the quarter in which the Standard Rate Structure takes effect.

Fee: At the time that Licensee provides notice of an election to change to the Alternative Rate Structure or the Standard Rate Structure after the Effective Date, Licensee shall pay to Fork an administrative fee of fifteen thousand dollars (US $15,000) for each such election to change.

Eligibility: Notwithstanding the above, Licensee may make an election to change to the Standard Rate Structure only if Licensee is in good standing, i.e. Licensee has fully complied with all obligations under the Agreement, including all payment and reporting obligations.

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Appendix C

Declaration of Small Entity Status

On behalf of [Licensee Company Name], the undersigned hereby declares that, at the time of executing this Declaration of Small Entity Status and Agreement, it is a Small Entity as defined in Section 1.23 and confirms that:

[Licensee Company Name], together with its Affiliates, has no more than fifteen (15) employees; and [Licensee Company Name]’s, together with its Affiliates, combined annual gross revenues do not exceed US $1 million.

The undersigned hereby represents and warrants that all statements herein are accurate and true, and that the undersigned has the authority to execute this form on behalf of [Licensee Company Name].

DATE SIGNATURE

Name:

Title:

Company:

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