See pg. 19-28 for licensing provisions

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RESEARCH AND LICENSE AGREEMENT

THIS AGREEMENT, effective as of _____, 1982 ("EFFECTIVE DATE") between University, a public body corporate, having a place of business at _____, ("UNIVERSITY") and Company, a Corporation having its principle place of business at _____ ("COMPANY").

WITNESSETH:

WHEREAS, under research programs funded by the UNIVERSITY, and the National Science Foundation (hereinafter, with all other sponsors of research, if any, referred to as "SPONSORS"), the UNIVERSITY Department of Biological Sciences through research conducted by John Smith, Ph.D. has developed and is continuing to develop certain scientific information relating to _____ ("TECHNOLOGY");

WHEREAS, UNIVERSITY filed a patent application entitled "_____", U.S. Serial No. ___,___ and in accordance with the patent policies in the United States Government and UNIVERSITY, all rights, title and interest in said application have been assigned to UNIVERSITY by Dr. Smith;

WHEREAS, as a center for research and education, UNIVERSITY is interested in licensing PATENT RIGHTS and RESEARCH INFORMATION and thus benefiting the public and the UNIVERSITY by facilitating the dissemination of the results of their research pertaining to the TECHNOLOGY in the form of useful products, but is without capacity to commercially develop, manufacture, and distribute any such product; and

WHEREAS, COMPANY having such capacity, desires to commercially develop, manufacture, use and distribute such products throughout the world;

NOW, THEREFORE, in consideration of the premises and of the faithful performance of the covenants herein contained, the parties hereto agree as follow:

1. DEFINITIONS

1.1 The term "ACTIVE COMPOUND" shall mean any _____.

1.2 The Term "MATERIAL" shall mean _____ discovered by Dr. Smith prior to the EFFECTIVE DATE or discovered thereafter during the course of SPONSORED RESEARCH.

1.3 The term "FIELD" shall mean the use of ACTIVE COMPOUND in the _____ market.

1.4 The term "SPONSORED RESEARCH" shall mean scientific research pertaining to the isolation, identification, synthesis, manufacture or use of any ACTIVE COMPOUND funded in whole or in part by COMPANY and conducted in the UNIVERSITY Department of Biological Sciences in accordance with the research protocol set forth in the document entitled _____ attached hereto as Attachment A and incorporated herein.

1.5 The term "INVENTION" shall mean any new and useful process, manufacture, or composition of matter

(a) described in the U.S. patent application Serial No _____ filed _____ and entitled _____ or

(b) conceived or first reduced to practice during the conduct of SPONSORED RESEARCH in which UNIVERSITY has rights by virtue of sole or joint inventorship by a staff member, student, fellow or employee of UNIVERSITY.

1.6 The term "INVESTIGATOR" shall mean Dr. Smith and any other member of the Department of Biological Sciences, graduate student, post doctoral fellow, under graduate student, or employee of UNIVERSITY who shall participate in SPONSORED RESEARCH.

1.7 The term "PATENT RIGHT" shall mean any United States or foreign patent application including U.S. Patent Application Serial No.___,___ filed _____ by Dr. Smith entitled "_____", or the equivalent of such applications, including and division, continuation, or continuation-in-part thereof, or any Letters Patent issuing thereon or reissue or extension thereof, containing one or more claims to an INVENTION.

1.8 The term "RESEARCH INFORMATION" shall mean any material, research data, formulas, process information, clinical data and other information relevant to SPONSORED RESEARCH known to the INVESTIGATOR (and the UNIVERSITY) on the EFFECTIVE DATE or thereafter arising out of SPONSORED RESEARCH.

1.9 The term "PRODUCT" shall mean any ACTIVE COMPOUND, composition containing ACTIVE COMPOUND or other

article of manufacture that incorporates ACTIVE COMPOUND or whose manufacture, composition or use employees RESEARCH INFORMATION.

1.10 The term "NET SALES PRICE" shall mean the gross billing price of any PRODUCT, as invoiced to the customer, less:

(a) discounts allowed;

(b) damaged or outdated goods;

(c) transportation charges or allowances;

(d) customs, duties and charges, and

(e) sales and other excise taxes or other governmental charges levied on or measured by the sales but not franchise or income taxes of any kind whatsoever.

Transfer of a PRODUCT to an AFFILIATE for sale by the AFFILIATE shall not be considered a sale; in the case of such a transfer the NET SALES PRICE shall be based on the gross billing price of the PRODUCT by the AFFILIATE as invoiced to its customer.

Every commercial use or disposition by COMPANY or any of its AFFILIATES or LICENSEES of any PRODUCT, other than in a bona fide sale to a bona fide customer (not to be construed as including COMPANY or any such AFFILIATE or LICENSEE) shall be considered a sale of such PRODUCT at the NET SALE PRICE then payable in an arm's length transaction.

In the event any PRODUCT is sold as a component of a combination of active functional elements, NET SALES PRICE for purposes of determining royalty payments on such combination, shall be calculated by multiplying the NET SALES PRICE of that combination by the fraction $\frac{A}{A+B}$, in which "A" is the gross selling price of the PRODUCT portion of the combination when sold separately during the ACCOUNTING PERIOD in which the sale was made, and "B" is the gross selling price of the other active elements of the combination sold separately during the ACCOUNTING PERIOD in question. In the event that no separate sale of either such above-designated PRODUCT or such above-designated elements of the combination is made during the ACCOUNTING PERIOD in which the sale was made, NET SALES shall be calculated by multiplying NET SALES PRICE of such combination by the fraction the $\frac{C}{C+D}$, in which "C" is the standard fully-absorbed cost of the PRODUCT portion of such combination, and "D" is the standard fully-absorbed cost of the other component(s), such costs being arrived at using the standard accounting procedures of COMPANY which will be in accord with generally accepted accounting practices. The "ACCOUNTING PERIOD" shall be the periods for which royalty payments are due as provided for in paragraph 4.12.

1.11 The term "AGREEMENT YEAR" shall mean the twelve (12) months next following the EFFECTIVE DATE, or such other date as the parties may from time to time hereafter jointly designate in writing, and each succeeding twelve (12) month period thereafter for the term of the Agreement. If not otherwise specified, terms involving time periods shall be applied pro rata according to any time frame in which less than the full specified period is involved.

1.12 The term "AFFILIATE" as applied to COMPANY shall mean COMPANY and any company or other legal entity other than COMPANY in whatever country organized, controlling, controlled by or under common control with COMPANY. The term "control" means 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.

1.13 The term "FIRST COMMERCIAL SALE" shall mean the first sale of any PRODUCT by COMPANY, its AFFILIATES or LICENSEES, following approval of its marketing by the United States (governmental agency) .

2. UNIVERSITY RESEARCH AND COMPANY'S SUPPORT THEREOF

2.1 During the thirty (30) days next following the EFFECTIVE DATE, UNIVERSITY, through Dr. Smith shall disclose to COMPANY such RESEARCH INFORMATION which shall be known to Dr. Smith on the EFFECTIVE DATE;

2.2 During the three (3) years next following the EFFECTIVE DATE, UNIVERSITY shall;

a. i. through Dr. Smith or any other scientist designated by UNIVERSITY, conduct SPONSORED RESEARCH; and

ii. to the extent allowed by the UNIVERSITY's Institutional Review Board and funded by COMPANY by grants in addition to the grants set forth in the following 2.3, conduct clinical evaluations of any PRODUCT.

b. as to all SPONSORED RESEARCH;

i. shall promptly and systematically disclose to COMPANY, RESEARCH INFORMATION;

ii. permit duly authorized employees of or representatives of COMPANY to visit the laboratories of UNIVERSITY's Department of Biological Sciences, at the invitation and convenience of Dr. Smith, for the purpose of

facilitating disclosure to COMPANY of RESEARCH INFORMATION;

iii. promptly advise COMPANY of the conception or reduction to practice of any INVENTION and the filing of PATENT RIGHT;

iv. promptly provide COMPANY with a reasonable amount of any MATERIAL; and

v. except as otherwise provided by 3.1, 3.2, 4.1 or 4.6 below, use reasonable efforts to make all such disclosures to no commercial entity other than COMPANY;

2.3 In consideration of said undertaking by UNIVERSITY, during the period SPONSORED RESEARCH is being conducted, COMPANY shall at COMPANY's expense:

a. make research grants to UNIVERSITY in accordance with the following schedule:

on or before:	at least the amount of

Every such grant, so long as Dr. Smith is a member of UNIVERSITY's Professional Staff, shall

be expended under the direction of Dr. Smith for SPONSORED RESEARCH; and

b. with respect to all research and PRODUCT development conducted by COMPANY pertaining to PRODUCTS, promptly inform UNIVERSITY of all results, data, and analytic protocol unless such disclosure would be contrary to 3.1.

2.4 COMPANY shall at its option undertake to conduct such further testing and developmental work as is deemed necessary and appropriate by COMPANY in order to obtain the governmental approvals, in such countries as COMPANY may select, to market a PRODUCT, provided that nothing in this paragraph shall obligate COMPANY to continue testing or developmental work on any PRODUCT which scientific data indicates is unsafe or inefficacious or which COMPANY determines lacks market potential.

2.5 At any time during the term of this Agreement either party may propose in writing research not described in Attachment A to be designated as SPONSORED RESEARCH. Each such proposal shall include a description of the research proposed and a budget of the costs to be funded by COMPANY and a schedule of payment of such costs. Unless the

parties shall otherwise agree in writing, negotiations between them over any such proposal shall not extend beyond the sixthieth (60) day next following the date when the proposal shall have first been so made, and whenever such negotiations shall end without agreement between the parties to proceed with the proposed project, the party originating the proposal may undertake such project without the other party and seek funding for such proposal from any source. When such proposal and budget is accepted by UNIVERSITY and COMPANY, the work shall commence and budgeted amounts shall be paid as set forth in the proposal or as agreed by the parties.

3. CONFIDENTIALITY OF RESEARCH INFORMATION AND PUBLICATION RIGHTS

(NOTE: Many Universities and investigators do not wish to accept corporate sponsors condifential information because, the Universities, particularly, can not really prevent the disclosure of such information by staff members, graduate students, visiting scientists, etc. who may learn such confidential information. Therefore, a variety of clauses are being developed to solve the dilema thus created.)

3.1(a) UNIVERSITY and INVESTIGATORS may, but are not obligated to, receive from COMPANY, COMPANY proprietary information. Such proprietary information shall be designated, in writing, as COMPANY's proprietary information at the time it is offered to the UNIVERSITY (COMPANY PROPRIETARY INFORMATION) and UNIVERSITY and the INVESTIGATORS shall have the option whether or not to accept the information so designated. If accepted, UNIVERSITY's only obligation with respect to COMPANY PROPRIETARY INFORMATION is set forth in the following 3.2(a). The obligations of any INVESTIGATOR who shall accept and receive COMPANY PROPRIETARY INFORMATION shall set forth in a separate Confidentiality Agreement to be entered into between the such INVESTIGATOR and COMPANY. Such Confidentiality Agreement shall not abridge UNIVERSITY's traditional rights to publish as set forth in the following 3.2(a).

b. COMPANY agrees to hold in confidence for a period of five (5) years from the date of disclosure to COMPANY all RESEARCH INFORMATION received from UNIVERSITY hereunder.

a. The obligations of UNIVERSITY and COMPANY with respect to COMPANY PROPRIETARY INFORMATION or

RESEARCH INFORMATION, respectively, pursuant to 3.1 and 3.2 shall not apply to information that:

i. UNIVERSITY and COMPANY may at any time agree in writing to disclose;

ii. on the EFFECTIVE DATE of this Agreement shall be generally available to the public or thereafter shall become so available through no unauthorized act of of the receiving party;

iii. shall not have been acquired by the receiving party, directly or indirectly, from the other party pursuant or incidentally to this Agreement; or

iv. shall have been acquired by the receiving party from any third person who is entitled to make such a disclosure and who has no obligation of confidentiality to the disclosing party.

Recognizing UNIVERSITY's desire to publish research results and COMPANY's desire to develope the technology for the earliest introduction to the public: UNIVERSITY agrees to use reasonable efforts not to disclose or transfer RESEARCH INFORMATION to other than COMPANY without the prior written approval of COMPANY except as provided for in paragraphs 3.2 (a) and (b), 4.1 and 4.6.

a. UNIVERSITY agrees to submit early drafts to all manuscripts disclosing SPONSORED RESEARCH to COMPANY at least thirty (30) days prior to their submission for publication and COMPANY shall have the right to advise UNIVERSITY as to the patentability of any INVENTIONS disclosed therein or the inclusion of any COMPANY PROPRIETARY INFORMATION. UNIVERSITY when so advised by COMPANY as to the inclusion of any COMPANY PROPRIETARY INFORMATION, except to the extent it is included within the definition of RESEARCH INFORMATION herein, shall use its best efforts not to allow such INFORMATION to be published unless publication is necessary to avoid an immediate health hazard to the public; otherwise, at the end of such thirty (30) day period, UNIVERSITY shall have the right, at UNIVERSITY's sole discretion, to submit such manuscripts for publication after giving due consideration to postponing disclosure of patentable INVENTIONS;

b. Nothing in the Agreement shall be construed to prohibit or limit in any way;

i. the filing by UNIVERSITY of any report required by any public authority pertaining to

SPONSORED RESEARCH, except that UNIVERSITY agrees to obtain confidential treatment for RESEARCH INFORMATION included in said report to the extent that such public authority permits such confidential treatment;

ii. the non-public disclosure and discussion of RESEARCH INFORMATION between UNIVERSITY INVESTIGATORS and their academic colleagues. UNIVERSITY shall advise UNIVERSITY INVESTIGATORS that when making such non-public disclosures, consideration should be given to UNIVERSITY's and COMPANY's interest in obtaining the benefits of worldwide patent coverage of any INVENTIONS included in RESEARCH INFORMATION; and

iii. UNIVERSITY's right to disclose to any party RESEARCH INFORMATION pertaining to any INVENTION to which COMPANY does not exercise its option to a license in accordance with paragraph 4.3 or which UNIVERSITY shall be entitled to license to another pursuant to the terms of this Agreement.

3.2 UNIVERSITY shall not distribute MATERIALS without the prior written approval of COMPANY, except where such distribution is to:

a. academic investigators at nonprofit institutions and such investigators agree in writing not to transfer or use for commercial purposes such MATERIAL; or

b. for the purpose of obtaining chemical, physical, or biological analysis or characterization of any MATERIAL and the party conducting such analysis agrees in writing not to disclose or use said MATERIAL.

4. PATENTS AND LICENSES

4.1 Each member of the Faculty, fellow, employee or student of UNIVERSITY who during the course of SPONSORED RESEARCH shall make an INVENTION, solely or jointly, ("UNIVERSITY INVENTOR") shall promptly report such INVENTION to UNIVERSITY. Each UNIVERSITY INVENTOR shall assign all of his rights, title and interest in any INVENTION to UNIVERSITY. Each employee of COMPANY who makes an INVENTION, whether solely or jointly, shall report such INVENTION to COMPANY and shall assign all of his rights, title and interest to COMPANY unless such assignment is contrary to federal law. Inventions made jointly by assignors to UNIVERSITY and COMPANY shall be jointly owned whenever legally possible.

UNIVERSITY promptly shall advise COMPANY in writing, of each INVENTION disclosed to UNIVERSITY. Representatives of UNIVERSITY and COMPANY shall then discuss whether a patent application or applications pertaining to such invention should be filed and in which countries. Applications assigned solely to UNIVERSITY shall be filed by UNIVERSITY, applications assigned solely to COMPANY shall be filed by COMPANY and jointly assigned applications shall be filed as mutually agreed upon by the parties. All patent costs pertaining to INVENTIONS including preparation, filing, prosecution, issuance and maintenance costs shall be borne by COMPANY except as provided for below.

In the event COMPANY is not interested in having a patent application filed with respect to a particular INVENTION, COMPANY shall advise UNIVERSITY of such fact within ninety (90) days from the date on which the INVENTION was disclosed to COMPANY by UNIVERSITY or sooner if necessary to avoid the loss of PATENT RIGHTS. UNIVERSITY then may file and prosecute such patent application in any country where COMPANY elects not to file, at its own expense, and such patent applications and patents shall not be included within the rights licensed to COMPANY pursuant to paragraph 4.4 of this Agreement and UNIVERSITY shall be free to license such patent to any other party.

In the event that UNIVERSITY do not wish to file a patent application with respect to a particular INVENTION, or does not wish to file patent applications with respect to specific countries, they shall without delay notify COMPANY, and COMPANY shall be free, where not contrary to United States law, to file at its expense patent applications in the name of UNIVERSITY, if necessary, and UNIVERSITY shall render COMPANY, at COMPANY's expense, all necessary assistance in order to facilitate such filing. All information given COMPANY by UNIVERSITY in accordance with this paragraph 4.1, will be held in confidence by COMPANY so long as such information remains unpublished or publicly undisclosed by UNIVERSITY.

4.2 With respect to any patent application filed by mutual agreement of the parties, each patent application, office action, response to office action, request for terminal disclaimer, and request for reissue or reexamination of any patent issuing from such application shall be provided to COMPANY sufficiently prior to the filing of such application, response or request to allow for review and comment by COMPANY.

4.3 As to each patent application claiming an INVENTION assigned in whole or in part to UNIVERSITY, UNIVERSITY shall, upon written request submitted by COMPANY within the twelve (12) months next following the date of such application, grant to COMPANY and any AFFILIATE of COMPANY designated in writing by COMPANY, a license as defined in the next succeeding paragraph under UNIVERSITY's rights; and, in the absence of such request by COMPANY, UNIVERSITY may grant a license to such patent to any other person or persons on any terms.

4.4 To the extent not prohibited by the United States Government or by contractural obligations of UNIVERSITY to any other sponsor of research, at the written request of COMPANY in accordance with the foregoing paragraph 4.3, UNIVERSITY hereby agree to grant and do grant to COMPANY

a. an exclusive worldwide, royalty bearing license in the FIELD under PATENT RIGHTS to make, have made, use and sell PRODUCTS;

b. to the extent an exclusive license is not available to COMPANY in a country, a nonexclusive; royalty-bearing license in the FIELD under PATENT RIGHTS to make, have made, use and sell PRODUCTS;

c. the right to sublicense PATENT RIGHTS exclusively licensed to COMPANY; and

d. the right to use RESEARCH INFORMATION, and UNIVERSITY agrees not to grant to any other commercial entity the right to use RESEARCH INFORMATION, except as such INFORMATION is:

i. made publically available as provided for in paragraph 3.2; or

ii. necessary for another entity to make, use or sell products under any license granted by UNIVERSITY under paragraphs 4.1 and 4.6; and

e. all licenses pursuant to a.-c. above to INVENTIONS conceived or first actually reduced to practice during the course of federally funded research are subject to the rights, conditions and limitations imposed by U.S. law.

The above licenses to sell PRODUCTS include the right to grant to the purchaser of PRODUCTS from COMPANY its AFFILIATES and LICENSEES the right to use such purchased PRODUCTS in a method coming within the scope of PATENT RIGHTS.

4.5 COMPANY shall use best efforts to develop PRODUCTS for commercial sales and distribution throughout

the world, and to such end COMPANY, its AFFILIATES or its LICENSEES shall seek to achieve the following three (3) objectives within the designated years following the completion of SPONSORED RESEARCH in accordance with the following schedule:

a. within ____ (__) years, to (i) initiate and diligently pursue clinical evaluation of a PRODUCT and in connection therewith to take all actions necessary under the Food, Drug and Cosmetic Act (21 USC 301-391), and (ii) to determine whether to manufacture such a PRODUCT for commercial sale to inform UNIVERSITY of such determination;

b. within ____ (__) year, (i) manufacture and distribute PRODUCT for market testing, and (ii) to introduce PRODUCT in the United States, Europe and Japan; and

c. within ____ (__) years announce and market for general commercial sale a PRODUCT on a world-wide basis;

provided, however, that UNIVERSITY shall not unreasonably withhold its assent to any revision in such schedule whenever requested in writing by COMPANY and supported by evidence of technical difficulties or delays in the clinical

studies or regulatory process that the parties could not reasonably have avoided. Failure to achieve the above objectives shall result in UNIVERSITY having the right to cancel any exclusive license granted hereunder or convert any exclusive license to a non-exclusive license.

4.6 At intervals no longer than every six (6) months, COMPANY shall report in writing to UNIVERSITY on progress made toward the said three (3) objectives.

4.7 Nothing herein shall be construed to prevent UNIVERSITY from licensing any INVENTION, PATENT RIGHT, or RESEARCH INFORMATION to any other for manufacturing, using or selling of any PRODUCT or method outside of the FIELD.

5. ROYALTIES

5.1 On all sales of PRODUCTS anywhere in the world by COMPANY, its AFFILIATES or LICENSEES, COMPANY shall pay UNIVERSITY royalties in accordance with the following schedule, such undertaking and schedule having been agreed to for the purpose of reflecting and advancing the mutual convenience of the parties:

a. For each PRODUCT sold by COMPANY or its AFFILIATES and LICENSEES;

i. _____ percent (___%) of the NET SALES PRICE so long as the PRODUCT, its manufacture or use shall be subject to a valid claim of any PATENT RIGHT licensed exclusively to COMPANY; and

ii. _____ percent (___%) of the NET SALES PRICE whenever the PRODUCT, its manufacture or use shall be subject to a valid claim of only such PATENT RIGHTS as shall be licensed nonexclusively to COMPANY in the country in question.

5.2 During each of the _____ (_) years next following the FIRST COMMERCIAL SALE anywhere in the world by COMPANY, its AFFILIATES or LICENSEES of each PRODUCT not coming within the scope of PATENT RIGHTS in the country in which the PRODUCT is manufactured, used or sold, COMPANY shall pay UNIVERSITY a royalty on the sale of such PRODUCT amounting to _____ (_) percent of the NET SALES PRICE of such PRODUCT sold by COMPANY.

5.3 If and whenever UNIVERSITY shall license any PATENT RIGHT to another licensee for a royalty or royalties more favorable to such licensee than herein provided for

COMPANY, UNIVERSITY shall give written notice thereof to COMPANY and as of the effective date of such more favorable royalty or royalties, COMPANY's obligation hereunder to pay royalty or royalties to UNIVERSITY shall be revised to the more favorable rate.

5.4 In the event that the royalty paid to UNIVERSITY is a significant factor in the return realized by COMPANY so as to diminish COMPANY's capability to respond to competitive pressures in the market, UNIVERSITY agrees to consider a reasonable reduction in the royalty paid to UNIVERSITY as to each such PRODUCT for the period during which such market condition exists. Factors determining the size of the reduction will include profit margins of PRODUCTS and on analogous products, prices of competitive products, total prior sales by COMPANY and COMPANY's expenditures in PRODUCT development.

5.5 COMPANY shall keep, and shall cause each of its AFFILIATES and LICENSEES, if any, to keep, full and accurate books of account containing all particulars that may be necessary for the purpose of calculating all royalties payable to UNIVERSITY. Such books of account shall be kept at their principal place of business and, with all necessary

supporting data shall, during all reasonable times for the three (3) years next following the end of the calendar year to which each shall pertain be open for inspection at reasonable times by UNIVERSITY or its designee at its expense for the purpose of verifying royalty statements or compliance with this Agreement.

5.6 With each semiannual payment, COMPANY shall deliver to UNIVERSITY a full and accurate accounting to include at least the following information:

a. Quantity of each PRODUCT sold or leased (by country) by COMPANY, and its AFFILIATES OR LICENSEES;

b. Total billings for each PRODUCT (by country);

c. Quantities of each PRODUCT used by COMPANY and its AFFILIATES or LICENSEES or sold to the United States Government;

d. Names and addresses of all Licensees of COMPANY; and

e. Total royalties payable to UNIVERSITY.

5.7 In each year the amount of royalty due shall be calculated semi-annually as of April 1 and October 1 ("ACCOUNTING PERIOD") and shall be paid semiannually within

the sixty (60) days next following such date, every such payment to be supported by the accounting prescribed in paragraph 5.7 and to be made in United States currency. Whenever conversion from any foreign currency shall be required, such conversion shall be at the rate of exchange thereafter published in The Wall Street Journal for the business day closest to the applicable April 1 or October 1, as the case may be.

6. INFRINGEMENT

6.1 UNIVERSITY will protect its PATENT RIGHTS from infringement and prosecute infringers when in its sole judgement such action may be reasonably necessary, proper and justified.

6.2 If COMPANY shall have supplied UNIVERSITY with written evidence demonstrating to UNIVERSITY's satisfaction prima facie infringement of a claim of a PATENT RIGHT by a third party selling products in competition with COMPANY, COMPANY may by notice request UNIVERSITY to take steps to protect the PATENT RIGHT, and unless UNIVERSITY shall within six (6) months of the receipt of such notice either (i) cause such infringement to terminate or (ii) initiate legal

proceedings against the infringer, COMPANY may upon notice to UNIVERSITY initiate legal proceedings against the infringer at COMPANY's expense, provided that COMPANY may deduct from royalties payable hereunder reasonable costs and legal fees incurred to conduct such proceedings, but in no event shall such royalties be reduced by more than 50 percent of the amount due to UNIVERSITY.

6.3 In the event one party shall initiate or carry on legal proceedings to enforce any PATENT RIGHT against an alleged infringer, the other party shall fully cooperate with an supply all assistance reasonably requested by the party initiating or carrying on such proceedings. The party which institutes any suit to protect or enforce a PATENT RIGHT shall have sole control of that suit and shall bear the reasonable expenses incurred by said other party in providing such assistance and cooperation as is requested pursuant to this paragraph. Any damages received by the party bringing suit shall be shared by COMPANY and UNIVERSITY in the same proportion as they bore the expenses of the litigation.

6.4 For the purpose of the proceedings referred to in this Section 6, UNIVERSITY and COMPANY shall permit the use

of their names and shall execute such documents and do such other acts as may be necessary. The party initiating or carrying on such legal proceedings shall keep the other party informed of the progress of such proceedings and said other party shall be entitled to counsel in such proceedings but at its own expense.

7. INDEMNIFICATION

7.1 COMPANY will indemnify and hold harmless UNIVERSITY against any and all actions, suits, claims, demands or prosecutions that may be brought or instituted against UNIVERSITY based on or arising out of this Agreement, including without limitation, the following:

a. the manufacture, packaging, use, sale or other distribution of PRODUCTS by COMPANY, any AFFILIATE OR LICENSEE;

b. any representation made or warranty given by COMPANY, any AFFILIATE or LICENSEE with respect to any licensed PRODUCT; or

c. the use by COMPANY, any AFFILIATE or LICENSEE of licensed RESEARCH INFORMATION.

8. TERMINATION

8.1 The SPONSORED RESEARCH provided for under this Agreement is intended to be for a term of three (3) years beginning with the EFFECTIVE DATE of this Agreement and may be extended thereafter by mutual agreement in writing on an annual basis on substantially the same terms as provided for in this Agreement.

8.2 So long as Dr. Smith is available to direct the SPONSORED RESEARCH at UNIVERSITY, COMPANY may not terminate the SPONSORED RESEARCH except for breach of the provisions of paragraph 2.1 or 2.2. If for any reason they shall no longer be available at UNIVERSITY, the parties agree to negotiate in good faith, the continuance of the SPONSORED RESEARCH. However, if a director acceptable to COMPANY cannot be agreed upon, COMPANY may terminate except for an obligation to continue for up to six (6) months beyond notification of Dr. Smith's departure, salary support at the pretermination level of all Ph.D. personnel who have been committed to the SPONSORED RESEARCH on a half-time or greater basis.

8.3 If either party shall fail to faithfully perform any of its obligations under this Agreement, the

nondefaulting party may give written notice of the default to the defaulting party. Unless such default is corrected within sixty (60) days after such notice, the notifying party may terminate this Agreement upon thirty (30) days' prior written notice.

8.4 Upon termination of the SPONSORED RESEARCH under this Agreement prior to the end of the three (3) year period, all INVENTIONS resulting from SPONSORED RESEARCH which have been reduced to practice in a form sufficient for filing a patent application shall be licensed to COMPANY as provided for in this Agreement. Termination of this Agreement and the licenses granted COMPANY under paragraph 4.4 after the end of the research support shall not relieve COMPANY of the obligation to make payments due on earned royalties accuring prior to the effective date of such termination, or affect the rights of UNIVERSITY to receive written statements accounting for royalties payable and to inspect COMPANY's books and records as provided for herein.

8.5 Unless otherwise terminated, as provided for in this Agreement, the Agreement will continue until (i) twelve (12) months after COMPANY last shall sell PRODUCT, (ii) so long as a PRODUCT sold is covered by any extent claim of any

PATENT RIGHT, or (iii) so long as sales of any PRODUCT subject to the royalty provisions of 5.2 shall continue.

9. MISCELLANEOUS

9.1 This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and supersedes and replaces all prior agreements, understandings, writings and discussions between the parties relating to said subject matter.

9.2 In order to faciliate implementation of this Agreement, UNIVERSITY and COMPANY are designating the following individuals to act on their behalf with respect to the License Agreement for the matters indicated below.

a. With respect to matters concerning research budgets, proposals for research, manuscripts for publication, written transmittals of RESEARCH INFORMATION and transmittal of materials, _____;

b. With respect to disclosure of any INVENTION or any correspondence pertaining to any INVENTION or PATENT RIGHT the _____; and

c. With respect to any amendment of or waiver under this License Agreement, any written notice or other communication pertaining to the License Agreement, or any other matter pertaining to the License Agreement, the _____.

The above designations may be superseded from time to time by alternative designations made by the _____.

9.3 This Agreement may be amended and any of its terms or conditions may be waived only by a written instrument executed by the parties or, in the case of a waiver, by the party waiving compliance. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect its rights at a later time to enforce the same. No waiver by either party of any condition or term in any one or more instances shall be construed as a further or continuing waiver of such condition or term or any other condition or term.

9.4 This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

9.5 Any delays in or failure of performance by either party under this Agreement shall not be considered a breach of this Agreement if and to the extent caused by occurrences beyond the reasonable control of the party affected, including but not limited to Acts of God; acts, regulations of laws of any government; strikes or other concerted acts or workers; fires; floods; explosions, riots; wars; rebellion and sabotage; and any time for performance hereunder shall be extended by the actual time of delay caused by such occurrence.

9.6 COMPANY shall not use the name of UNIVERSITY or of any UNIVERSITY staff member, employee or student or any adaptation thereof in any advertising, promotional or sales literature without the prior written approval of UNIVERSITY.

9.7 Any notice and payment of research funds or royalties required or permitted to be given hereunder shall be deemed sufficient if mailed by registered or certified mail (return receipt requested) or delivered by hand to the party to whom such notice is required or permitted to be given as set forth in the foregoing paragraph 9.2.

9.8 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of _____.

9.9 This Agreement shall not be assignable by UNIVERSITY without COMPANY's written consent except for the right to receive royalties payable herein. COMPANY may at its own discretion and without approval by UNIVERSITY transfer its interest or any part thereof under this Agreement to a wholly-owned subsidiary or any assignee or purchaser of the portion of its business associated with the FIELD. In the event of any such transfer, the transferee shall assume and be bound by the provisions of this Agreement. Otherwise this Agreement shall be assignable by COMPANY only with the consent in writing of UNIVERSITY.

9.10 If any provision(s) of this Agreement are or become invalid, are ruled illegal by any court of competent jurisdiction or are deemed unenforceable under then current applicable law from time to time in effect during the term hereof, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby. It is further the intention of the parties that in lieu of each such provision which is invalid, illegal, or

unenforcable, there be substituted or added as part of this Agreement a provision which shall be as similar as possible in economic uniness objectives as intended by the parties to such invalid, illegal or unenforceable provision, but shall be valid, legal and enforceable.

THE PARTIES have duly executed this Agreement as of the date first above written.

UNIVERSITY

By _____

Title _____

Date _____

COMPANY

By _____

Title _____

Date _____

177/map