

ITEM 126-1001-R0305

LICENSE AGREEMENT

This Agreement is made and entered into this_____ day of _____, 2003, (the "Effective Date") by and between The University of Montana and Dr. xxxxxxxxxxxxxxxx of Missoula, Montana; (hereinafter collectively referred to as "UM") and xxx, Montana (hereinafter referred to as "LICENSEE").

WITNESSETH

WHEREAS, UM is the owner of certain INTELLECTUAL PROPERTIES (as later defined herein) and has the right to grant licenses under said INTELLECTUAL PROPERTIES;

WHEREAS, UM desires to have the INTELLECTUAL PROPERTIES developed and commercialized to benefit the public, government, and commerce and is willing to grant a license thereunder;

WHEREAS, LICENSEE is experienced in the development, production, marketing, marketing and sale of products similar to those that use the INTELLECTUAL PROPERTIES and the LICENSED METHODS (as later defined herein) and that it shall commit its best efforts to a thorough, vigorous, and diligent program of exploiting the INTELLECTUAL PROPERTIES so that public utilization shall result therefrom;

WHEREAS, LICENSEE desires to obtain a license for the INTELLECTUAL PROPERTIES upon the terms and conditions hereinafter set forth;

WHEREAS both UM and LICENSEE desire to enter into a series of individual agreements that will commercially exploit technologies currently under development; and

WHEREAS other programs, projects and inventions can be added to this LICENSE AGREEMENT by mutual consent of UM and LICENSEE.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "LICENSEE" shall include any related company the voting stock of which is directly or indirectly at least fifty percent (50%) owned or controlled by xxxxxxxxxxxxxxxxxxxxxxxxxxxx., an organization which directly or indirectly controls more than fifty percent (50%) of the voting stock of xxxxxxxxxxxxxxxxxxxxxxxxxxxx. as well as xxxxxxxxxxxxxxxxxxxxxxxxxxxx.

1.2 "INTELLECTUAL PROPERTIES" shall mean all of the following UM intellectual property:

- (a) trade secrets, know-how; patents and copyrights necessary to commercialize the "XXXXXXXXXX", specifically the U.S. Patent Application "xxxxxxxxxxxxxxxxxxxxxxxxxxxx", Serial No. xxxxxxxxxxxx, filed January 9, 2003;
- (b) any divisions, continuations in-part, extensions, substitutions, renewals or reissues of U. S. patents described in (a) above;
- (c) any non-U.S. counterparts of (a) or (b).

1.3 A "LICENSED PRODUCT" shall mean any product or part thereof which utilizes INTELLECTUAL PROPERTIES.

1.4 A "LICENSED METHOD" shall mean any method which is covered in whole or in part by INTELLECTUAL PROPERTIES.

1.5 "NET PROFIT" shall mean LICENSEE's margin of sales revenues for "xxxxxxxxxxl" minus direct labor and material costs.

No deductions shall be made for standard overhead costs, for commissions paid to individuals or independent sales agencies, or for cost of collections. LICENSEE

PRODUCTS and LICENSED METHODS shall be considered "sold" when billed out or invoiced.

1.6 GROSS MARGIN is NET PROFIT divided by sales revenues, expressed as a percent.

1.7 "TERRITORY" shall mean world wide.

1.8 "FIELD OF USE" shall mean any use of LICENSED PRODUCTS and LICENSED METHODS.

ARTICLE 2 - GRANT

2.1 UM hereby grants to LICENSEE the right and license and the right to sublicense for the FIELD OF USE to practice under the INTELLECTUAL PROPERTIES and, to the extent not prohibited by other patents, to make, have made, use, lease, sell, and import LICENSED PRODUCTS and to practice LICENSED METHODS from the date of this LICENSE AGREEMENT for the last to expire of patents covered by this LICENSE AGREEMENT.

2.2 In order to establish a period of exclusivity for LICENSEE, UM hereby agrees that it shall not grant any other license to make, have made, use, lease and sell LICENSED PRODUCTS in TERRITORY or to utilize LICENSED METHODS for the FIELD OF USE in TERRITORY during the period of time that runs concurrently with this LICENSE AGREEMENT, except for:

(a) UM's exercise of termination rights pursuant to Article 13 of the Agreement; and

(b) UM's exercise of take-back rights pursuant to Article 3.1 of this Agreement.

2.3 UM reserves the right to practice the INTELLECTUAL PROPERTIES for its own noncommercial research and educational purposes; UM will use its best efforts to prevent these activities from competing with LICENSEE's marketing interests.

2.4 LICENSEE shall have the right to enter into sublicensing agreements for the rights, privileges and licenses granted hereunder only. Upon any termination of

this Agreement, sublicensee's rights shall also terminate, subject to Paragraph 13.6 hereof.

2.5 LICENSEE agrees that any sublicenses granted by it shall provide that the obligations to UM of Articles 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 15 of this Agreement shall be binding upon the sublicensee as if it were a party to this Agreement. LICENSEE further agrees to attach copies of these Articles to sublicense agreements.

2.6 LICENSEE agrees to forward to UM a copy of any and all sublicense agreements before execution by the parties.

2.7 LICENSEE shall not receive from sublicensees anything of value in lieu of cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of UM.

2.8 The license granted hereunder shall not be construed to confer any rights upon LICENSEE by implication, estoppel or otherwise as to any technology not specifically set forth in the FIELD OF USE under the INTELLECTUAL PROPERTIES.

ARTICLE 3 - DUE DILIGENCE

3.1 LICENSEE shall use commercially reasonable efforts to bring one or more LICENSED PRODUCTS or LICENSED METHODS to market. On a semiannual schedule, by June 30 and December 31 of each year LICENSEE will provide UM with a list of LICENSED PRODUCTS and/or LICENSED METHODS that are being marketed or are under development. If LICENSED PRODUCTS and/or LICENSED METHODS are not yet being marketed, a brief description of development activities, resources spend and committed to development, and dated milestones will be provided in writing to UNIVERSITY. If UM determines that LICENSEE is not using commercially reasonable efforts to bring an identified LICENSED PRODUCT or LICENSED METHOD to market it shall notify LICENSEE in writing. LICENSEE shall have 90 (ninety) days after such notification to submit a development and a marketing plan acceptable to UM, or UM shall have the right to remove the identified LICENSED PRODUCT or LICENSED METHOD from this LICENSE AGREEMENT.

3.2 UM will notify LICENSEE of any new INTELLECTUAL PROPERTIES, involving methods or devices to assist animal migrations, developed by Dr. XXXXXXXX, that arise subsequent to the execution of this AGREEMENT. Such notification shall be in writing and within 60 (sixty) days of the date UM receives

information about new INTELLECTUAL PROPERTY. LICENSEE shall have an exclusive option for 90 (ninety) days following such notification to initiate negotiations to include the new INTELLECTUAL PROPERTIES under this Agreement.

ARTICLE 4 - ROYALTIES

4.1 For the rights, privileges and license and the right to sublicense granted hereunder, LICENSEE shall pay royalties to UM in the manner hereinafter provided to the end of the term of the AGREEMENT. Royalties will be calculated only from sales of "xxxxxxxxxx" and associated accessory fittings and ramps; any impact of this equipment on increasing LICENSEE's culvert sales will not be considered. For the exclusive access to UM INTELLECTUAL PROPERTIES and other UM resources, for each commercial application or use of LICENSED PRODUCT or LICENSED METHOD, LICENSEE will pay UM royalties, based on NET PROFIT as follows:

If the GROSS MARGIN on "XXXX" is 10% (ten percent) or less, the royalty rate will be 1% (one percent) of NET PROFIT on "XXXX."

If the GROSS MARGIN on "XXXX" is over 10% (ten percent) but less than 15% (fifteen percent), the royalty rate will be 2% (two percent) of NET PROFIT on "XXXX."

If the GROSS MARGIN on "XXXX" is over 15% (fifteen percent) but less than 20% (twenty percent), the royalty rate will be 3% (three percent) of NET PROFIT on "XXXX."

If the GROSS MARGIN on "XXXX" is over 20% (twenty percent) but less than 30% (thirty percent), the royalty rate will be 4% (four percent) of NET PROFIT on "XXXX."

If the GROSS MARGIN on "XXXX" is over 30% (thirty percent) the royalty rate will be 5% (four percent) of NET PROFIT on "XXXX."

As noted in section 6.1, below, LICENSEE may credit any royalties due UM against LICENSEE's direct costs for patents until all such costs are reimbursed.

4.2 LICENSEE will either pay UM 50% (fifty percent) of any sublicense fees or royalties that it receives from sublicensees.

4.3 Royalty payments shall be paid in United States dollars in Missoula, Montana, or at such other place as UM may reasonably designate consistent with the laws and regulations controlling in any foreign country. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate prevailing at the Chase Manhattan

Bank (N.A.) on the last business day of the calendar quarterly reporting period to which such royalty payments have been paid.

ARTICLE 5 - REPORTS AND RECORDS

5.1 LICENSEE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to UM hereunder. Said books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. Said books and the supporting data shall be open for review, upon advice notice of LICENSEE and during LICENSEE's regular business hours, for five (5) years following the end of the calendar year to which they pertain, to the inspection of UM or its agents for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement. Should such inspection lead to the discovery of a greater than ten percent (10%) discrepancy to UM's detriment in payment of royalties owing hereunder, LICENSEE agrees to pay the full cost of such inspection.

ARTICLE 6 - PATENT PROSECUTION

6.1 LICENSEE shall pay directly or shall reimburse UM during the term of this Agreement for all reasonable U.S. and foreign patent costs and other costs for protection of INTELLECTUAL PROPERTIES covered by this AGREEMENT; such reimbursements shall be credited against royalties due as provided in ARTICLE 4.1, above. The prosecution, filing and maintenance of all other patents and applications that may subsequently fall under this AGREEMENT shall be the primary responsibility of LICENSEE; provided, however, that UM shall have reasonable opportunities to advise LICENSEE and shall cooperate with LICENSEE in such prosecution, filing and maintenance.

6.2 Payment of all fees and costs relating to the filing, prosecution, and maintenance of the patents covered by this AGREEMENT shall be the responsibility of LICENSEE, whether such fees and costs were incurred before or after the date of this AGREEMENT.

ARTICLE 7 - INFRINGEMENT

7.1 LICENSEE shall inform UM promptly in writing of any alleged infringement of the INTELLECTUAL PROPERTIES by a third party and of any available evidence thereof. Likewise UM shall inform the LICENSEE promptly in writing of any alleged infringement of INTELLECTUAL PROPERTIES by a third party.

7.2 During the term of this Agreement, LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense all infringements of the INTELLECTUAL PROPERTIES and, in furtherance of such right, UM hereby agrees that LICENSEE may include UM as a party plaintiff in any such suit, without expense to UM. The total cost of any such infringement action commenced or defended solely by LICENSEE shall be borne by LICENSEE and LICENSEE shall keep any recovery or damages for past infringement derived therefrom.

7.3 If within three (3) months after having been notified of any alleged infringement, LICENSEE shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if LICENSEE shall notify UM at any time prior thereto of its intention not to bring suit against any alleged infringer, then, and in those events only, UM shall have the right, but shall not be obligated, to prosecute at its own expense any infringement of the INTELLECTUAL PROPERTIES, and UM may, for such purposes, use the name of LICENSEE as party plaintiff; provided, however, that such right to bring such an infringement action shall remain in effect only for so long as the license granted herein remains exclusive. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the consent of LICENSEE, which consent shall not unreasonably be withheld. Any recovery of damages by UM for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of UM relating to such suit. The balance remaining from any such recovery shall be divided equally between LICENSEE and UM.

7.4 In the event that LICENSEE shall undertake the enforcement and/or defense of the INTELLECTUAL PROPERTIES by litigation, LICENSEE may withhold up to one hundred percent (100%) of the payments otherwise thereafter due UM under Article 4 hereunder and apply the same toward reimbursement of up to half of LICENSEE's actual documented expenses, including reasonable attorneys' fees, in connection therewith. Any recovery of damages by LICENSEE for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of LICENSEE relating to such suit, and next toward reimbursement of UM for any payments under Article 4 past due or withheld and applied pursuant to this Article 7.

7.5 In the event that a declaratory judgment action alleging invalidity or noninfringement of any of the INTELLECTUAL PROPERTIES shall be brought against LICENSEE, UM, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

7.6 In any infringement suit as either party may institute to enforce the INTELLECTUAL PROPERTIES pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

7.7 LICENSEE, during the exclusive period of this Agreement, shall have the sole right in accordance with the terms and conditions herein to sublicense any alleged infringer for future use of the INTELLECTUAL PROPERTIES; royalties under such sublicenses shall be treated per Article 4.

ARTICLE 8 - PRODUCT LIABILITY

8.1 LICENSEE shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold UM, its trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property, or resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the LICENSED PRODUCT(s) and/or LICENSED METHOD(es) or arising from any obligation of LICENSEE hereunder, excepting only claims that the INTELLECTUAL PROPERTIES infringe third party intellectual property.

8.2 LICENSEE shall obtain and carry in full force and effect commercial, general liability insurance which shall protect LICENSEE and UM with respect to events covered by Paragraph 8.1 above. Such insurance shall be written by a reputable insurance company authorized to do business in the United States, shall list UM as an additional named insured thereunder, shall be endorsed to include product liability coverage and shall require thirty (30) days written notice to be given to UM prior to any cancellation or material change thereof. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of Three Million Dollars (\$3,000,000) for personal injury or death, and One Million Dollars (\$1,000,000)

per occurrence with an aggregate of Three Million Dollars (\$3,000,000) for property damage. LICENSEE shall provide UM with Certificates of Insurance evidencing the same.

8.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, UM, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF INTELLECTUAL PROPERTIES CLAIMS, ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY UM THAT THE PRACTICE BY LICENSEE OF THE LICENSE GRANTED HEREUNDER SHALL NOT INFRINGE THE INTELLECTUAL PROPERTIES OF ANY THIRD PARTY. IN NO EVENT SHALL UM, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER UM SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE CLAIMS OR REPRESENTATIONS MADE BY ANY PARTY.

ARTICLE 9 - EXPORT CONTROLS

It is understood that UM is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the applicable agency of the United States Government and/or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign countries without prior approval of such agency. UM neither represents that a license shall not be required nor that, if required, it shall be issued. UM will provide reasonable assistance to LICENSEE in obtaining such licenses, at LICENSEE's expense.

ARTICLE 10 - NON-USE OF NAMES

Neither party shall use the names or trademarks of the other party, nor any adaptation thereof, nor the names of any of their employees, in any advertising, promotional or sales literature without prior written consent obtained from such other party, in each case, except that LICENSEE may state that it is licensed by UM under one or more of the patents and/or applications comprising the INTELLECTUAL PROPERTIES.

ARTICLE 11 - ASSIGNMENT

This Agreement is not assignable without the prior written consent of the other party and any attempt to do so shall be void.

ARTICLE 12 - DISPUTE RESOLUTION

12.1 Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with the Agreement, including any dispute relating to patent validity or infringement, which the parties shall be unable to resolve within sixty (60) days shall be mediated in good faith. If such mediation fails, such disputes may be taken to Montana courts, which the parties agree shall be the courts of jurisdiction.

12.2 Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

ARTICLE 13 - TERMINATION

13.1 If LICENSEE shall be declared bankrupt, voluntarily file or have filed against a petition for bankruptcy, unless such petition is dismissed within sixty (60) days of filing, this Agreement shall terminate upon notice to LICENSEE by UM.

13.2 Should LICENSEE fail to make any payment or meet prescribed milestones whatsoever due and payable to UM hereunder, UM shall have the right to terminate this Agreement effective on sixty (60) days' written notice, unless LICENSEE shall make all such payments to UM within sixty (60) day period. Upon the expiration

of the sixty (60) day period, if LICENSEE shall not have made all such payments to UM, the rights, privileges and license granted hereunder shall automatically terminate.

13.3 Upon any material breach or default of this Agreement by either party, other than those occurrences set out in Paragraphs 13.1 and 13.2 herein above, which shall always take precedence in that order over any material breach or default referred to in this Paragraph 13.3, the other party shall have the right to terminate this Agreement and the rights, privileges and license granted hereunder effective on ninety (90) days' written notice to the breaching party. Such termination shall become automatically effective unless the breaching party shall have cured any such material breach or default prior to the expiration of the ninety (90) day period.

13.4 LICENSEE shall have the right to terminate this Agreement at any time on sixty (60) days written notice to UM, and upon payment of all amounts due UM through the effective date of the termination.

13.5 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination; and Articles 1, 8, 9, 10, 13.5, 13.6, and 15 shall survive any such termination. LICENSEE and any sublicensee thereof may, however, after the effective date of such termination, sell all LICENSED PRODUCTS, and complete LICENSED PRODUCTS in the process of manufacture at the time of such termination and sell the same, provided that LICENSEE shall make the payments to UM as required by Article 4 of this Agreement and shall submit the reports required by Article 5 hereof.

13.6 Upon termination of this Agreement for any reason, any sublicensee not then in default shall have the right to seek a license from UM. UM agrees to negotiate such licenses in good faith under reasonable terms and conditions.

ARTICLE 14 - PAYMENTS, NOTICES
AND OTHER COMMUNICATIONS

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of UM:

Director the Office of Technology Transfer

Office of the Vice President for Research
The University of Montana
Missoula, Montana 59812

In the case of LICENSEE:

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Montana, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

15.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

15.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

15.4 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

15.5 The parties agree that confidential information delivered or disclosed by either party to the other party in connection with the review and transactions contemplated in this Agreement shall not be disclosed or used except for the purposes contemplated in this Agreement, without the consent of the other party. Information shall not in any event be deemed to be confidential information if it is (i) in the public domain without violation of the terms of this Article; (ii) known by the party receiving it before receipt hereunder; (iii) received from a third party without violation of a nondisclosure obligation of that third party to the party delivering or disclosing the

information; or (iv) independently developed by or for the party receiving the information and not directly or indirectly derived from or based upon information delivered or disclosed hereunder. The obligations of confidentiality shall survive termination of this Agreement for a period of 5 (five) years.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

THE UNIVERSITY OF MONTANA

By _____

Vice President for Research

Date _____

By _____

Professor

Date _____

XXXXXXXXXXXXXXXXXXXX

By _____

Date _____