

**LICENSE AGREEMENT**

Effective this        day of       , 20        (the “EFFECTIVE DATE”),       , a corporation organized and existing under the laws of the state of       , having its principal office at        (“LICENSEE”) and Montana State University – Bozeman (“MSU”), having an office at 304 Montana Hall, Bozeman, MT 59717-2460, agrees as follows:

**Article 1.**

**BACKGROUND**

**Section 1.01** MSU is owner by assignment from        (“INVENTOR”) of the entire right, title and interest in the PATENT RIGHTS to “        ”.

**Section 1.02** LICENSEE wishes to obtain an EXCLUSIVE license to the TECHNOLOGY.

**Article 2.**

**DEFINITIONS**

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

**Section 2.01** “LICENSED TECHNOLOGY” means: “        ”.

**Section 2.02** “SUBLICENSE” means: a grant by LICENSEE to a third party (the “SUBLICENSEE”) of a license to the TECHNOLOGY to exercise some or all of the rights granted to LICENSEE in accordance with the terms of this Agreement.

**Article 3.**

**GRANT**

**Section 3.01** MSU hereby grants to LICENSEE, and LICENSEE hereby accepts, an EXCLUSIVE license, with the right to grant sublicenses, to the TECHNOLOGY in order to make, use, and sell the TECHNOLOGY.

**Section 3.02** MSU reserves the right to use the TECHNOLOGY for NON-COMMERCIAL RESEARCH and EDUCATIONAL PURPOSES.

**Section 3.03** All rights reserved to the U.S. Government and others under 35 USC §§200-212 and 37 CFR §401 shall remain and shall in no way be affected by this Agreement.

**Article 4.**

PERFORMANCE MILESTONES

**Section 4.01** LICENSEE will commence sale of LICENSED TECHNOLOGY within ( ) years of EFFECTIVE DATE.

**Article 5.**

SUBLICENSE

**Section 5.01** SUBLICENSES are subject to MSU's approval, and that approval shall not be unreasonably withheld.

**Section 5.02** To the extent applicable, SUBLICENSES must include all of the rights of and obligations due to MSU and sponsors of research (which may include, without limitation, the United States Government) contained in this Agreement.

**Section 5.03** The LICENSEE shall promptly provide MSU with a copy of each SUBLICENSE issued; collect and guarantee payment of all payments due MSU from SUBLICENSEE(S); and summarize and deliver all reports due MSU from SUBLICENSEE(S).

**Article 6.**

LICENSE ISSUE FEE

**Section 6.01** LICENSEE will pay to MSU a non-cancelable, non-refundable, non-creditable LICENSE ISSUE FEE in the sum of Dollars (\$) due within ten (10) days of the EFFECTIVE DATE of LICENSE.

**Article 7.**

LICENSE MAINTENANCE FEE

**Section 7.01** LICENSEE shall pay to MSU a non-cancelable, non-refundable, non-creditable LICENSE MAINTENANCE FEE in the amount of Dollars (\$) due on June 30<sup>th</sup> of each calendar year that LICENSE is in effect. LICENSE MAINTENANCE FEE will not be due in any calendar year that ROYALTY payments exceed Dollars (\$ ).

**Article 8.**

ROYALTIES AND ADDITIONAL PAYMENTS

**Section 8.01** LICENSEE shall pay to MSU a ROYALTY of percent ( %) of net sales of LICENSED TECHNOLOGY.

**Section 8.02** LICENSEE shall pay to MSU      percent (   %) of all non-royalty sublicensing income.

## Article 9.

### REPORTING

**Section 9.01** No later than sixty (60) days after June 30 of each calendar year, LICENSEE shall provide to MSU a written annual REPORT describing marketing and sales during the most recent twelve (12) month period ending June 30.

**Article 9.02** LICENSEE shall:

- (a) submit to MSU within sixty (60) days after each calendar year ending June 30, a ROYALTY REPORT setting forth for such year at least the following information:
  - (i) the quantity of LICENSED TECHNOLOGY sold by LICENSEE and/or its SUBLICENSEE(S),
  - (ii) the amount of ROYALTY due thereon, or, if no ROYALTIES are due to MSU for any reporting period, the statement that no ROYALTIES are due.
- (d) All such reports shall be maintained in confidence by MSU except as required by law; however, MSU may include in its usual reports annual amounts of ROYALTIES paid.
- (e) Late payments shall be subject to a charge of one and one half percent (1.5%) per month overdue, or two hundred fifty dollars (\$250), whichever is greater.

## Article 10.

### RECORD KEEPING

**Section 10.01** LICENSEE shall keep, and shall require its SUBLICENSEE(S) to keep, accurate records (together with supporting documentation) of TECHNOLOGY sold under this Agreement, appropriate to determine the amount of ROYALTIES due to MSU hereunder. Such records shall be retained for at least three (3) years following the end of the reporting period to which they relate. They shall be available during normal business hours for examination by an accountant selected by MSU, for the sole purpose of verifying reports and payments hereunder. In conducting examinations pursuant to this Paragraph 10.01, MSU's accountant shall have access to all records which MSU reasonably believes to be relevant to the calculation of ROYALTIES due under Paragraph 8.01.

**Section 10.02** MSU's accountant shall not disclose to MSU any information other than information relating to the accuracy of reports and payments made hereunder.

**Section 10.03** Such examination by MSU's accountant shall be a MSU's expense, except that if such examination shows an underreporting or underpayment in excess of five percent (5%) for any twelve (12) month period, then LICENSEE shall pay the cost of such examination as well as any additional sum that would have been payable to MSU had the LICENSEE reported correctly, plus interest on said sum at the rate of one and one half percent (1.5%) per month.

## Article 11.

### PATENT PROSECTUTION AND MAINTENANCE

**Section 11.01** LICENSEE shall reimburse MSU for all past and future out-of-pocket expenses associated with filing and pursuit of PATENTS for LICENSED TECHNOLOGY.

## Article 12.

### TERMINATION OF AGREEMENT

**Section 12.01** This Agreement, unless terminated as provided herein, shall remain in effect until the last patent for the TECHNOLOGY has expired or been abandoned.

**Section 12.02** MSU may terminate this Agreement as follows:

- (a) if LICENSEE does not make a payment due hereunder and fails to cure such non-payment within forty-five (45) days after the date of notice in writing of such non-payment by MSU,
- (b) if LICENSEE shall become insolvent, shall make an assignment for the benefit of creditors, or shall have a petition in bankruptcy filed for or against it. Such termination shall be effective immediately upon MSU giving written notice to LICENSEE.
- (c) if an examination by MSU's accountant pursuant to Article 8 shows an underreporting or underpayment of LICENSEE in excess of twenty percent (20%) for any twelve (12) month period.

**Section 12.03** LICENSEE shall provide, in all SUBLICENSES granted by it under this Agreement that LICENSEE's interest in such SUBLICENSES shall at MSU's option, terminate or be assigned to MSU upon termination of this Agreement.

**Section 12.04** LICENSEE may terminate this Agreement by giving ninety (90) days advance written notice of termination to MSU. Upon termination, LICENSEE shall submit a final Royalty Report to MSU and any royalty payments and unreimbursed Patent expenses invoiced by MSU shall become immediately payable.

**Article 13.**

WARRANTY

**Section 13.01** MSU EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR EXPRESS WARRANTIES AND MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LICENSED TECHNOLOGY INFORMATION SUPPLIED BY MSU.

**Article 14.**

INDEMNIFICATION

**Section 14.01** LICENSEE shall indemnify, defend, and hold harmless MSU and its current or former director, governing board members, trustees, officers, faculty, medical and professional staff, employees, students, agents and their respective successors, heirs and assignees (collectively, the "INDEMNITEES"), 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 litigation) (collectively "CLAIMS"), based upon, arising out of, or otherwise relating to this Agreement, including without limitation any cause of action relating to product liability .

**Article 15.**

USE OF NAMES

**Section 15.01** LICENSEE shall not use MSU's name or insignia, or any adaptation of them, or the name of any of MSU's inventors in any advertising, promotional or sales literature, including without limitation press releases, without the prior written approval of MSU.

**Article 16.**

ASSIGNMENTS

**Section 16.01** Without the prior written approval of MSU in each instance, which approval shall not be unreasonably withheld, neither this Agreement nor the rights granted hereunder shall be transferred or assigned in whole or in part by LICENSEE to any party, whether voluntarily or involuntarily, by operation of law or otherwise. This Agreement shall be binding upon the respective successors, legal representatives and assignees of MSU and LICENSEE.

**Article 17.**

MISCELLANEOUS

**Section 17.01** The interpretation and application of the provisions of this Agreement shall be governed by the laws of the State of Montana.

**Section 17.02** Should a court of competent jurisdiction hold any provision of this Agreement to be invalid, illegal, or unenforceable, and such holding is not reversed on appeal, it shall be considered severed from this Agreement. All other provisions, rights, and obligations shall continue without regard to the severed provision, provided that the remaining provisions of this Agreement are in accordance with the intention of the parties.

**Section 17.03** This Agreement constitutes the entire understanding between the parties and neither party shall be obligated by any condition or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

MONTANA STATE UNIVERSITY

RECIPIENT

\_\_\_\_\_  
Thomas J. McCoy, Vice President  
Research, Creativity and Technology Transfer

Date

Date

**Term Sheet**  
 for an Exclusive License Agreement between  
**Company** (“LICENSEE”) and Montana State University (“MSU”)  
 Subject of License: “ ”

Scope of License	Exclusive, worldwide, with right to grant sublicenses within the Field
Field	Manufacture, sale, or use of      as described in Patent Rights
Patent Rights	The patent applications and/or patents corresponding to the U.S. Patent Application Serial No.      , and the inventions described and claimed therein
Retained rights of MSU and U.S. Government	The right to use the patent rights for academic research or other not-for-profit scholarly purposes
License Issue Fee	( \$      )
Annual License Maintenance Fee	Dollars ( \$      ) LICENSE MAINTENANCE FEES not due in any calendar year that ROYALTY PAYMENTS as defined under Paragraph 8.01 for the same calendar year, exceed the LICENSE MAINTENANCE FEE due for that year. LICENSE MAINTENANCE FEES due are non-refundable
Additional Payments	1.      percent (      %) of non-royalty sublicense income 2. Reimbursement to MSU of all patenting costs past, present, & future
Royalties	percent (      %) of net sales
Patent Prosecution	MSU shall own and prosecute and maintain patents under Patent Rights