UCSD EXPRESS LICENSE
FY2015 Version

FOR

THERAPEUTIC INVENTIONS LICENSED TO A START-UP
LICENSE AGREEMENT

BETWEEN

[LICENSEE]

AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

FOR

CASE NO. SD[XXXX-XXX]

UCSD-EXPRESS Thera-1-14
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LICENSE AGREEMENT

This agreement (“Agreement”) is made by and between <COMPANY NAME>, a <STATE> corporation having an address at <ADDRESS> (“LICENSEE”) and The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200 (“UNIVERSITY”), represented by its San Diego campus having an address at University of California, San Diego, Technology Transfer Office, Mail Code 0910, 9500 Gilman Drive, La Jolla, California 92093-0910 (“UCSD”).

This Agreement is effective on _________________________ (“Effective Date”).

RECITALS

WHEREAS, the Inventions, as defined below, were made in the course of research at UCSD by Inventors (as defined below) and are covered by Patent Rights as defined below;

WHEREAS, the research was sponsored in part by the 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, the Inventors are employees of UCSD, and they are obligated to assign all of their right, title and interest in the Invention to UNIVERSITY;

WHEREAS, LICENSEE entered into a secrecy agreement (UC Control No. [xx-xx-xxxx]) with UNIVERSITY, effective [_____] for the purpose of evaluating the Invention;

WHEREAS, UNIVERSITY is desirous that the Invention be developed and utilized to the fullest possible extent so that its benefits can be enjoyed by the general public;

WHEREAS, LICENSEE is desirous of obtaining certain rights from UNIVERSITY for commercial development, use, and sale of the Invention, and the UNIVERSITY is willing to grant such rights; and

WHEREAS, LICENSEE understands that UNIVERSITY may publish or otherwise disseminate information concerning the Invention at any time and that LICENSEE is paying consideration thereunder for its early access to the Invention, not continued secrecy therein.

WHEREAS, LICENSEE is a start-up company intending to use the Invention as the foundational technology.

WHEREAS, LICENSEE has submitted a detailed business plan indicating LICENSEE’s strategies to develop and commercialize the technology and UNIVERSITY had determined, based upon such business plan, that granting a license to its rights in the Invention to LICENSEE
will benefit the public and facilitate the distribution of useful products and the utilization of new processes.

NOW, THEREFORE, the parties agree:

**ARTICLE 1. DEFINITIONS**

The terms, as defined herein, shall have the same meanings in both their singular and plural forms.

1.1 “Affiliate” means any corporation or other business entity which is bound in writing by LICENSEE to the terms set forth in this Agreement and in which LICENSEE 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 which LICENSEE is owned or controlled directly or indirectly by at least fifty percent (50%) of the outstanding stock or other voting rights entitled to elect directors; but in any country where the local law does not permit foreign equity participation of at least fifty percent (50%), then an “Affiliate” includes any company in which LICENSEE owns or controls or is owned or controlled by, directly or indirectly, the maximum percentage of outstanding stock or voting rights permitted by local law.

1.2 “Combination Product” means any product which is a Licensed Product (as defined below) and contains other product(s) that is not an excipient, diluant, adjuvant, buffer and the like and (i) does not use Invention, or Patent Rights (as defined below); (ii) the sale, use or import by itself does not contribute to or induce the infringement of Patent Rights; (iii) is sold separately by LICENSEE, its Sublicensee (as defined below) or an Affiliate; and (iv) enhances the market price of the final product(s) sold, used or imported by LICENSEE, its Sublicensee, or an Affiliate.

1.3 “Cost Based Price” means, in respect of each Licensed Product, a price not exceeding that which fairly reflects the direct cost of manufacture of such Licensed Product plus a typical margin for a generic pharmaceutical product for the respective market.

1.4 “Developing Countries” means, within the Territory, the countries designated by The World Bank (www.worldbank.org) as Low-Income Economies, as such list may change from time to time, or any subsequent list that may be mutually agreed to by UNIVERSITY and LICENSEE.

1.5 “Field” means vaccines, drugs, and therapeutics to prevent or treat disease.

1.6 “Humanitarian Purposes” means (a) the use of Licensed Products for (a) research and development purposes by any organization or other third party, anywhere in the world that has the express purpose of developing the Licensed Products for use in a Developing Country, and (b) the use of the Licensed Products by any organization or other third party for commercial purposes in a Developing Country.
1.7 “Indication” means a clinical condition for a particular mammal for which use of a Licensed Product is being investigated for regulatory approval by the United States Food and Drug Administration (FDA) (via, for example, NDA, BLA, ANDA, etc.) or the foreign equivalent of such applications. Each Indication under development herein shall be sequentially identified as a “First Indication”, “Second Indication”, and so on, with the understanding that each Indication so identified is distinct from every other Indication under development or developed.

1.8 “Invention” means the UCSD disclosure docket ________________.

1.9 “Inventors” means ______________________.

1.10 “Licensed Method” means any method that is claimed in Patent Rights (as defined below), the use of which would constitute, but for the license granted to LICENSEE under this Agreement, an infringement, an inducement to infringe or contributory infringement, of any pending or issued claim within Patent Rights.

1.11 “Licensed Product” means any service, composition or product that is claimed in Patent Rights, or that is produced by the Licensed Method, or the manufacture, use, sale, offer for sale, or importation of which would constitute, but for the license granted to LICENSEE under this Agreement, an infringement, an inducement to infringe or contributory infringement, of any pending or issued claim within the Patent Rights.

1.12 “Net Sales” means the total of the gross invoice prices of Licensed Products sold or leased by LICENSEE, Sublicensee, Affiliate, or any combination thereof, less the sum of the following actual and customary deductions where applicable and separately listed: cash, trade, or quantity discounts or rebates (as allowed under applicable law); sales tax, use tax, tariff, import/export duties or other excise taxes imposed on particular sales (except for value-added and income taxes imposed on the sales of Licensed Product in foreign countries); transportation charges; or credits to customers because of rejections or returns. For purposes of calculating Net Sales, transfers to a Sublicensee or an Affiliate of Licensed Product under this Agreement for (i) end use (but not resale) by the Sublicensee or Affiliate shall be treated as sales by LICENSEE at list price of LICENSEE, or (ii) resale by a Sublicensee or an Affiliate shall be treated as sales at the list price of the Sublicensee or Affiliate.

1.13 “Patent Costs” means all expenses for the preparation, filing, prosecution, and maintenance of all United States and foreign patents included in Patent Rights. Patent Costs shall also include out-of-pocket expenses for patentability opinions, inventorship determination, preparation and prosecution of patent application, re-examination, re-issue, interference, and opposition activities related to patents or applications in Patent Rights.

1.14 “Patent Rights” means UNIVERSITY’s rights in any of the following: the US patent application ________________ disclosing and claiming the Invention, filed by Inventors and assigned to UNIVERSITY; and continuing applications thereof including divisions, substitutions, and continuations-in-part (but only to the extent the claims thereof are entirely supported in the specification and entitled to the priority date of the parent application); any
patents issuing on said applications including reissues, reexaminations and extensions; and any corresponding foreign applications or patents.

1.15 Public Sector shall mean (A) agencies of the United Nations and the World Health Organization; (B) organizations which comprise the International Committee of the Red Cross and Red Crescent; (C) the following international charitable and funding agencies (also known as Non-Governmental Agencies): Oxfam, Medecins Sans Frontieres, the Bill and Melinda Gates Foundation, and the Rockefeller Foundation; and (D) any other accredited charitable or philanthropic organization that both UNIVERSITY and LICENSEE may agree to in writing.

1.16 “Sponsor’s Rights” means all the applicable provisions of any license to the United States Government executed by UNIVERSITY and the overriding obligations to the Federal Government under 35 U.S.C. §§ 200-212 and applicable governmental implementing regulations.

1.17 “Sublicense” means an agreement into which LICENSEE enters with a third party that is not an Affiliate for the purpose of (i) granting certain rights; (ii) granting an option to certain rights; or (iii) forbearing the exercise of any rights, granted to LICENSEE under this Agreement. “Sublicensee” means a third party with whom LICENSEE enters into a Sublicense.

1.18 “Term” means the period of time beginning on the Effective Date and ending on the expiration date of the longest-lived Patent Rights.


1.20 “Therapeutic Candidate” is a Licensed Product designated by LICENSEE for clinical development for an Indication within the Field, for which preliminary pharmacology studies, including art-accepted in vivo experimental models of the specified condition, have been completed. For clarification, a Therapeutic Candidate may be a vaccine, drug, therapeutic, or prophylactic.

ARTICLE 2. GRANTS

2.1 License. Subject to the limitations set forth in this Agreement and Sponsor’s Rights, UNIVERSITY hereby grants to LICENSEE, and LICENSEE hereby accepts, a license under Patent Rights to make, have made, to use, to sell, to offer for sale, and to import Licensed Products and to practice Licensed Methods, in the Field within the Territory and during the Term.

The license granted herein is exclusive for Patent Rights.

2.2 Sublicense.

(a) The license granted in Section 2.1 includes the right of LICENSEE to grant Sublicense to third parties during the Term but only for as long as the license is exclusive.
(b) With respect to Sublicense granted pursuant to Paragraph 2.2(a), LICENSEE shall:

(i) not receive, or agree to receive, anything of value in lieu of cash as consideration from a third party under a Sublicense granted pursuant to Paragraph 2.2(a) without the express written consent of UNIVERSITY;

(ii) to the extent applicable, include all of the rights of and obligations due to UNIVERSITY (and, if applicable, the Sponsor’s Rights) and contained in this Agreement;

(iii) promptly provide UNIVERSITY with a copy of each Sublicense issued; and

(iv) collect and guarantee payment of all payments due, directly or indirectly, to UNIVERSITY from Sublicensees and summarize and deliver all reports due, directly or indirectly, to UNIVERSITY from Sublicensees.

(c) Upon termination of this Agreement for any reason, UNIVERSITY may terminate a Sublicensee but will allow LICENSEE to assign to UNIVERSITY any Sublicenses provided that: i) the Sublicensee is in good standing upon termination of this Agreement with LICENSEE; and ii) the Sublicensee is not currently involved in litigation as an adverse party to the UNIVERSITY. In no case, however, will UNIVERSITY be bound by duties and obligations contained in any Sublicense that extends beyond the duties and obligations of the UNIVERSITY set forth in this Agreement. Any assignment of a Sublicense is subject to the Sublicensee promptly agreeing in writing to be bound by the terms of this Agreement, including, in lieu of the payment obligations under the applicable Sublicense agreement, but not necessarily limited to, payment to the UNIVERSITY of fees, royalties, and reimbursements required under Article 3.

2.3 Reservation of Rights. UNIVERSITY reserves the right to:

(a) use the Invention and Patent Rights for educational and research purposes;

(b) publish or otherwise disseminate any information about the Invention at any time; and

(c) allow other nonprofit institutions to use and publish or otherwise disseminate any information about Invention and Patent Rights for educational and research purposes.

ARTICLE 3. CONSIDERATION

3.1 Fees and Royalties. The parties hereto understand that the fees and royalties payable by LICENSEE to UNIVERSITY under this Agreement are partial consideration for the license granted herein to LICENSEE under Patent Rights. LICENSEE shall pay UNIVERSITY:
(a) a license issue fee in accordance to the following schedule shall be due within thirty (30) days after the Effective Date

<table>
<thead>
<tr>
<th>Amount</th>
<th>Data Possessed At Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) $50,000</td>
<td>UNIVERSITY possesses no more than in vitro data;</td>
</tr>
<tr>
<td>(ii) $75,000</td>
<td>UNIVERSITY possesses no more than in vivo data;</td>
</tr>
<tr>
<td>(iii) $100,000</td>
<td>UNIVERSITY possesses human data.</td>
</tr>
</tbody>
</table>

except that, in recognition of LICENSEE being a startup business and partially in lieu of cash, a promissory note, convertible at the option of the UNIVERSITY into any class of equity shares available at the time of conversion, shall be entered into for any amount of said license issue fee not paid within thirty (30) days after the Effective Date. Said promissory note shall carry the following provisions (and as further detailed in Exhibit C)

1. A term of five (5) years;
2. An interest rate of 5% per annum, payable upon maturity;
3. A right for the LICENSEE to extend the term for an additional year, at an interest rate of 7.5% (this right, and all other rights, shall also extend to the new term);
4. Upon conversion, a right for (1) UNIVERSITY to direct that its inventor(s) receive his or her share of equity directly from the company, and (2) UNIVERSITY to transfer to its inventors of the Patent Rights an inventor’s share of the shares pursuant to UNIVERSITY’s Patent Policy; provided, that, each such transfer is made in accordance with an appropriate registration rights agreement;    
5. A right for the UNIVERSITY to convert the note at a 10% discount upon an acquisition;
6. A right of the LICENSEE to pre-pay the note, but only with the consent of UNIVERSITY;
7. Upon conversion, a right of the UNIVERSITY to participate in additional equity financing on the same terms and conditions as other investors;
8. A right of the UNIVERSITY to access corporate information of the company upon request, such information including, but not limited to, current articles of incorporation, current capitalization structure, and most recent sale price of the stock;
9. The right of the UNIVERSITY to assign these rights, in whole or in part, to an accredited investor;
10. The right of the UNIVERSITY to change the interest rate upon default to 10%;
11. Upon conversion, the UNIVERSITY shall hold the rights, privileges, and preferences found in any existing class of authorized stock, except that UNIVERSITY shall neither seek nor accept representation on the board of directors;
12. The note shall be subordinate to Senior Debt, as defined in Exhibit C;
13. The note will be unsecured;
14. LICENSEE shall bear any legal expenses with respect to this financing, including any finder’s fees.

(b) milestone payments in the amounts payable according to the following schedule or events:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Twenty-five thousand dollars ($25,000)</td>
<td>IND filing</td>
</tr>
</tbody>
</table>
(ii) One hundred thousand dollars ($100,000)  Initiation of Phase II trial
(iii) Five hundred thousand dollars ($500,000)  Initiation of Phase III trial
(iv) Two Million dollars ($2,000,000)  FDA approval
(v) One Million dollars ($1,000,000)  EMEA approval
(vi) One Million dollars ($1,000,000)  Regulatory approval in Japan

For the sake of clarity, should two phases of clinical trials, each of which would individually trigger a milestone payment, be combined, then both payments are due no later than the initiation of the combined trial. For example, if Phase II and Phase III trials are combined, then both (ii) and (iii) above are due no later than initiation of the combined trial. Also, should accelerated approval occur, then milestone payments associated with Phase II or Phase III clinical trials that are not yet paid are due no later than FDA approval. For avoidance of doubt, these amounts are due for each Therapeutic Candidate.

(c) an earned royalty of one and one-half percent (1.5%) on Net Sales by LICENSEE and/or its Affiliate(s), except that royalties shall not be due to UNIVERSITY on Net Sales of (i) Licensed Products in Developing Countries, or (ii) Licensed Products to the Public Sector providing Licensed Products at a Cost Based Price in Developing Countries.; and

provided, however, that the earned royalty due on Net Sales of Combination Product by LICENSEE and/or its Affiliate(s) shall be calculated as below:

\[
\text{Earned Royalties due UNIVERSITY} = \left[ \frac{A}{(A+B)} \right] \times \text{Royalty Rate on Net Sales of the Licensed Products applicable in (i) or (ii)} \times \text{Net Sales of Combination Product}, \]

where:

\( A \) is the separately listed sale price of the Licensed Product; and

\( B \) is the separately listed sale prices of the individual products, respectively, that satisfied the requirements outlined in Paragraph 1.2 (“Combination Products”). For any products in B for which LICENSEE has reduced its earned royalties payable to UNIVERSITY under 3.1(d), this provision shall not apply.

(d) In the event LICENSEE is required to pay royalties to one or more third parties for patent rights necessary to make, use or sell Licensed Products, LICENSEE may deduct $0.50 from the earned royalties payable to UNIVERSITY for every $1.00 LICENSEE actually pays to said third parties; provided, however, in no event shall the amount payable to UNIVERSITY be less than 50% of the amount otherwise due.
(e) fifteen percent (15%) of all Sublicense fees received by LICENSEE from its Sublicensees that are not earned royalties.

(f) on each and every Sublicense royalty payment received by LICENSEE from its Sublicensees on sales of Licensed Product by Sublicensee, royalties based on the royalty rate in Paragraph 3.1(c) as applied to Net Sales of Sublicensee;

(g) beginning the calendar year of the third anniversary of the Effective Date and if the total earned royalties paid by LICENSEE under Paragraphs 3.1(c) and (g) to UNIVERSITY in any such year cumulatively amounts to less than the following schedule:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Effective Date Anniversary</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) $15,000</td>
<td>beginning the calendar year of the third Anniversary of the Effective Date</td>
</tr>
<tr>
<td>(ii) $30,000</td>
<td>beginning the calendar year of the sixth Anniversary of the Effective Date</td>
</tr>
<tr>
<td>(iii) $150,000</td>
<td>beginning the calendar year of the ninth Anniversary of the Effective Date</td>
</tr>
</tbody>
</table>

(“minimum annual royalty”), LICENSEE shall pay to UNIVERSITY a minimum annual royalty on or before February 28 following the last quarter of such year the difference between amount noted above and the total earned royalty paid by LICENSEE for such year under Paragraphs 3.1(c) and (f).

All fees and royalty payments specified in Paragraphs 3.1(a) through 3.1(h) above shall be paid by LICENSEE pursuant to Paragraph 4.3 and shall be delivered by LICENSEE to UNIVERSITY as noted in Paragraph 10.1.

3.2 Patent Costs. LICENSEE shall reimburse UNIVERSITY all future (on or after the Effective Date) Patent Costs within thirty (30) days following the date an itemized invoice is sent from UNIVERSITY to LICENSEE. In University’s discretion, for Patent Costs anticipated to exceed $20,000 (“Anticipated Costs”), UNIVERSITY will inform LICENSEE no less than thirty (30) days prior to the date when Anticipated Costs are incurred. UNIVERSITY may, at its discretion and in accordance with Section 5.1(c), require full advance payment of Anticipated Costs at least fifteen (15) business days before required filing dates (“Advance Payment Deadline”). In the event UNIVERSITY has provided LICENSEE with a 30 days’ notice of Anticipated Costs, and LICENSEE does not pay the Anticipated Costs on or before the Advance Payment Deadline, UNIVERSITY will act at its sole discretion with regard to filing, prosecution and maintenance of those Patent Rights associated with the 30 days’ notice. In the event that the Anticipated Costs paid by LICENSEE is greater than the actual cost, the excess amount is creditable against future
Patent Costs. In the event that the actual costs exceed the Anticipated Costs paid in advance by LICENSEE, LICENSEE shall pay such excess costs within thirty (30) days following the date an itemized invoice is sent as set forth in Paragraph 4.3.

Past Patent Costs are approximately \_
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(US$$
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) as of \_
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If past Patent Costs are less than or equal to Three Thousand dollars ($3,000) then past Patent Costs shall be due within thirty (30) days of the Effective Date.

If past Patent Costs are greater than Three Thousand dollars ($3,000) then LICENSEE shall reimburse UNIVERSITY all past (prior to the Effective Date) Patent Costs in accordance to the following schedule:

<table>
<thead>
<tr>
<th>Amount of Past Patent Costs</th>
<th>Anniversary of Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) 33%</td>
<td>First;</td>
</tr>
<tr>
<td>(ii) 33%</td>
<td>Second;</td>
</tr>
<tr>
<td>(iii) 34%</td>
<td>Third;</td>
</tr>
</tbody>
</table>

except that any unreimbursed past Patent Costs shall be due within thirty (30) days upon receipt by LICENSEE of Three Million dollars ($3,000,000) or more of equity financing.

3.3 Due Diligence.

(a) LICENSEE shall, either directly or through its Affiliate(s) or Sublicensee(s) diligently fulfill the obligations listed in Exhibit B

(b) If LICENSEE fails to perform any of its obligations specified in Exhibit B, then UNIVERSITY shall have the right and option to either terminate this Agreement or change LICENSEE’s exclusive license to a nonexclusive license. This right, if exercised by UNIVERSITY, supersedes the rights granted in Article 2.

(c) At any time after three (3) or more years from the Effective Date, if LICENSEE fails to show it has initiated and is maintaining an active development program for identifying or developing a Therapeutic Candidate for treating or preventing an Indication in the Field, and UCSD receives a bona fide inquiry from a third party with a bona fide financial plan that would enable the development of a product for that Indication within the Field, then UCSD shall give notice to LICENSEE. LICENSEE shall, within one hundred eighty (180) days, either (i) complete a Sublicense grant to the third party of a scope that would permit the third party to develop and commercialize a Licensed Product for that Indication of interest to the third party as set forth in the bona fide financial plan, or (ii) shall provide UCSD a detailed plan for the development of a Licensed Product for that Indication and shall begin actual implementation of, and maintain, such plan immediately. If LICENSEE does not either (i) complete a Sublicense grant or (ii) demonstrate implementation of said development plan within one hundred eighty (180) days of receipt of such notice from UCSD, then UNIVERSITY shall have the right to exclude such Indication from the Field. The provisions of this Section 3.3(b) shall not be applicable to any third party that proposes to develop a product for an Indication wherein
the proposed product is the same active pharmaceutical ingredient as a Licensed Product or Therapeutic Candidate under active development or commercialization by LICENSEE for a different Indication.

(d) Notwithstanding other provision of rights granted under this Agreement, should at any time after FDA approval of a Licensed Product, UCSD receive a bona fide inquiry from a third party to provide Licensed Products to any Developing Country for Humanitarian Purposes, then UCSD shall give notice to LICENSEE. LICENSEE shall, within one hundred eighty (180) days, either (i) complete a Sublicense grant to the third party of a scope that would permit the third party to pursue planned activities under said Sublicense, or (ii) shall provide UCSD a detailed plan for the development of a product in Developing Countries and shall begin actual implementation of, and maintain, such plan immediately. If LICENSEE does not either (i) complete a Sublicense grant or (ii) demonstrate implementation of said development plan within one hundred eighty (180) days of receipt of such notice from UCSD, then UCSD shall have the right to license the Patent Rights to said third party for solely Humanitarian Purposes. Such licenses for Humanitarian Purposes will expressly exclude the right of the third party licensee to export or sell Licensed Products from a Developing Country into a market outside any Developing Country where LICENSEE has introduced or will introduce a Licensed Product and where Patent Rights exist. In any such license, the third party licensee’s commercial use of the Patent Rights to make, have made, use, sell, offer for sale and import Licensed Products in Developing Countries for Humanitarian Purposes will be royalty free and the third party licensee will be required to provide to any requesting Developing Country the Licensed Products at either no cost or at cost. For avoidance of doubt, the third party licensee may be permitted to export Licensed Products from the Developing Country of origin to other Developing Countries and all other countries mutually agreed to by UCSD and LICENSEE.

ARTICLE 4. REPORTS, RECORDS AND PAYMENTS

4.1 Reports.

(a) Progress Reports.

Beginning six months after Effective Date and ending on the date when all outstanding milestone events have been attained LICENSEE shall report to UNIVERSITY progress covering LICENSEE’s (and Affiliate’s and Sublicensee’s) activities for the preceding six months to develop and test all Licensed Products and obtain governmental approvals necessary for marketing the same. Such semi-annual reports shall be due within sixty (60) days of the reporting period and include a summary of work completed, summary of work in progress, current schedule of anticipated events or milestones, market plans for introduction of Licensed Products, and summary of resources (dollar value) spent in the reporting period. The reports referred to in this Section 4.1(a) should be marked with the following title and case number: “License Agreement between UCSD and [LICENSEE NAME] for case [XXXX-XXX].” Reports shall be submitted as attachment to UCSD’s email address: tto-reports@ucsd.edu.
(b) **Royalty Reports.**

After the first commercial sale of a Licensed Product anywhere in the world, LICENSEE shall submit to UNIVERSITY quarterly royalty reports on or before each February 28, May 31, August 31 and November 30 of each year. Each royalty report shall cover LICENSEE’s (and each Affiliate’s and Sublicensee’s) most recently completed calendar quarter and shall show:

(i) the date of first commercial sale of a Licensed Product in each country;

(ii) the gross sales, deductions as provided in Paragraph 1.12 (Net Sales), and Net Sales during the most recently completed calendar quarter and the royalties, in US dollars, payable with respect thereto;

(iii) the number of each type of Licensed Product sold, including number of Licensed Products sold in Developing Countries and to the Public Sector, as described in 3.1(d);

(iv) Sublicense fees and royalties received during the most recently completed calendar quarter in US dollars, payable with respect thereto;

(v) the method used to calculate the royalties; and

(vi) the exchange rates used.

If no sales of Licensed Products have been made and no Sublicense revenue has been received by LICENSEE during any reporting period, LICENSEE shall so report. The reports referred to in this Section 4.1(b) should be marked with the following title and case number: “License Agreement between UCSD and [LICENSEE NAME] for case [XXXX-XXX].” Reports shall be submitted as attachment to UCSD’s email address: tto-reports@ucsd.edu.

(c) **Timely Reports.**

LICENSEE acknowledges the important value that timely reporting provides in the UNIVERSITY’s effective management of its rights under this Agreement. LICENSEE further acknowledges that failure to render the reports required under this Section 4.1 may harm UNIVERSITY’s ability to manage its rights under this Agreement. As such, reports not submitted by the required due date under this Section 4.1 will cause to be due by LICENSEE to UNIVERSITY a late reporting fee of five hundred dollars (US$500.00) per month until such report, compliant with the requirements of this Section 4.1, is received by UNIVERSITY. Payment of this fee is subject to Section 4.3, Section 7.1 and Paragraph 10.1 herein.

4.2 **Records & Audits.**

(a) LICENSEE shall keep, and shall require its Affiliates and Sublicensees to keep, accurate and correct records of all Licensed Products manufactured, used, and sold, and
Sublicense fees received under this Agreement. Such records shall be retained by LICENSEE for at least five (5) years following a given reporting period.

(b) All records shall be available during normal business hours for inspection at the expense of UNIVERSITY by UNIVERSITY’s Internal Audit Department or by a Certified Public Accountant selected by UNIVERSITY and in compliance with the other terms of this Agreement for the sole purpose of verifying reports and payments or other compliance issues. Such verification shall not occur more frequently than once every twelve (12) months. Such inspector shall not disclose to UNIVERSITY any information other than information relating to the accuracy of reports and payments made under this Agreement or other compliance issues. In the event that any such inspection shows an under reporting and underpayment in excess of five percent (5%) for any twelve-month (12-month) period, then LICENSEE shall pay the cost of the audit as well as any additional sum that would have been payable to UNIVERSITY had the LICENSEE reported correctly, plus an interest charge at a rate of ten percent (10%) per year. Such interest shall be calculated from the date the correct payment was due to UNIVERSITY up to the date when such payment is actually made by LICENSEE. For underpayment not in excess of five percent (5%) for any twelve-month (12-month) period, LICENSEE shall pay the difference within thirty (30) days without interest charge or inspection cost.

4.3 Payments.

(a) All fees, reimbursements and royalties due UNIVERSITY shall be paid in United States dollars and all checks shall be made payable to “The Regents of the University of California”, referencing UNIVERSITY’s taxpayer identification number, 95-6006144, and sent to UNIVERSITY according to Paragraph 10.1 (Correspondence). When Licensed Products are sold in currencies other than United States dollars, LICENSEE shall first determine the earned royalty in the currency of the country in which Licensed Products were sold and then convert the amount into equivalent United States funds, using the exchange rate quoted in the Wall Street Journal on the last business day of the applicable reporting period.

(b) Royalty Payments.

(i) Royalties shall accrue when Licensed Products are invoiced, or if not invoiced, when delivered to a third party or Affiliate.

(ii) LICENSEE shall pay earned royalties quarterly on or before February 28, May 31, August 31 and November 30 of each calendar year. Each such payment shall be for earned royalties accrued within LICENSEE’s most recently completed calendar quarter.

(iii) Royalties earned on sales occurring or under Sublicense granted pursuant to this Agreement in any country outside the United States shall not be reduced by LICENSEE for any taxes, fees, or other charges imposed by the government of such country on the payment of royalty income, except that all payments made by
LICENSEE in fulfillment of UNIVERSITY’s tax liability in any particular country may be credited against earned royalties or fees due UNIVERSITY for that country. LICENSEE shall pay all bank charges resulting from the transfer of such royalty payments.

(iv) If at any time legal restrictions prevent the prompt remittance of part or all royalties by LICENSEE with respect to any country where a Licensed Product is sold or a Sublicense is granted pursuant to this Agreement, LICENSEE shall convert the amount owed to UNIVERSITY into US currency and shall pay UNIVERSITY directly from its US sources of funds for as long as the legal restrictions apply.

(v) LICENSEE shall not collect royalties from, or cause to be paid on Licensed Products sold to the account of the US Government or any agency thereof as provided for in the license to the US Government.

(vi) In the event that any patent or patent claim within Patent Rights is held invalid in a final decision by a patent office from which no appeal or additional patent prosecution has been or can be taken, or by a court of competent jurisdiction and last resort and from which no appeal has or can be taken, all obligation to pay royalties based solely on that patent or claim or any claim patentably indistinct therefrom shall cease as of the date of such final decision. LICENSEE shall not, however, be relieved from paying any royalties that accrued before the date of such final decision, that are based on another patent or claim not involved in such final decision.

(vii) Royalty payments under Article 3, recoveries and settlements under Article 5, and royalty reports under 4.1(b) shall be rendered for any and all Licensed Products even if due after expiration of the Agreement. If no applicable Patent Rights existed in the Territory at the time of any making, use, sale, offer for sale, or import, then no royalty payments or royalty reports shall be due.

(c) Late Payments. In the event royalty, reimbursement and/or fee payments are not received by UNIVERSITY when due, LICENSEE shall pay to UNIVERSITY interest charges at a rate of ten percent (10%) per year. Such interest shall be calculated from the date payment was due until actually received by UNIVERSITY.

ARTICLE 5. PATENT MATTERS

5.1 Patent Prosecution and Maintenance.

(a) Provided that LICENSEE has reimbursed UNIVERSITY for Patent Costs pursuant to Paragraph 3.2, UNIVERSITY shall diligently prosecute and maintain the United States and, if available, foreign patents, and applications in Patent Rights using counsel of its choice. For purposes of clarity, if LICENSEE is not current in reimbursing UNIVERSITY for such patent prosecution costs, UNIVERSITY shall have no obligation
to incur any new Patent Costs under this Agreement or to further prosecute Patent Rights or file any new patents under Patent Rights. UNIVERSITY shall provide LICENSEE with copies of all relevant documentation relating to such prosecution and LICENSEE shall keep this documentation confidential. The counsel shall take instructions only from UNIVERSITY, and all patents and patent applications in Patent Rights shall be assigned solely to UNIVERSITY. UNIVERSITY shall in any event control all patent filings and all patent prosecution decisions and related filings (e.g. responses to office actions) shall be at UNIVERSITY’s final discretion (prosecution includes, but is not limited to, interferences, oppositions and any other inter partes matters originating in a patent office).

(b) UNIVERSITY shall consider amending any patent application in Patent Rights to include claims reasonably requested by LICENSEE to protect the products contemplated to be sold by LICENSEE under this Agreement. UNIVERSITY shall consider comments by LICENSEE addressing strategy for patent prosecution.

(c) LICENSEE may elect to terminate its reimbursement obligations with respect to any patent application or patent in Patent Rights upon three (3) months’ written notice to UNIVERSITY. UNIVERSITY shall use reasonable efforts to curtail further Patent Costs for such application or patent when such notice of termination is received from LICENSEE. UNIVERSITY, in its sole discretion and at its sole expense, may continue prosecution and maintenance of said application or patent, and LICENSEE shall have no further license with respect thereto. Non-payment of any portion of Patent Costs or Anticipated Costs with respect to any application or patent may be deemed by UNIVERSITY as an election by LICENSEE to terminate its reimbursement obligations with respect to such application or patent. UNIVERSITY is not obligated at any time to file, prosecute, or maintain Patent Rights in a country, where, for that country’s patent application LICENSEE is not paying Patent Costs, or to file, prosecute, or maintain Patent Rights to which LICENSEE has terminated its license hereunder.

(d) LICENSEE shall apply for an extension of the term of any patent in Patent Rights if appropriate under the Drug Price Competition and Patent Term Restoration Act of 1984 and/or European, Japanese and other foreign counterparts of this law. LICENSEE shall prepare all documents for such application, and UNIVERSITY shall execute such documents and to take any other additional action as LICENSEE reasonably requests in connection therewith.

(e) LICENSEE may delegate its rights under this section 5.1 in whole, but not in part, to a single Sublicensee.

5.2 Patent Infringement.

(a) In the event that UNIVERSITY (to the extent of the actual knowledge of the licensing professional responsible for the administration of this Agreement) or LICENSEE learns of infringement of potential commercial significance of any patent licensed under this Agreement, the knowledgeable party will provide the other (i) with written notice of such infringement and (ii) with any evidence of such infringement available to it (the
“Infringement Notice”). During the period in which, and in the jurisdiction where, LICENSEE has exclusive rights under this Agreement, neither UNIVERSITY nor LICENSEE will notify a third party (including the infringer) of infringement or put such third party on notice of the existence of any Patent Rights without first obtaining consent of the other. If LICENSEE notifies a third party of infringement or puts such third party on notice of the existence of any Patent Rights with respect to such infringement without first obtaining the written consent of UNIVERSITY and UNIVERSITY is sued in declaratory judgment, UNIVERSITY shall have the right to terminate this Agreement immediately without the obligation to provide sixty (60) days’ notice as set forth in Paragraph 7.1. Both UNIVERSITY and LICENSEE will use their diligent efforts to cooperate with each other to terminate such infringement without litigation.

(b) If infringing activity of potential commercial significance by the infringer has not been abated within ninety (90) days following the date the Infringement Notice takes effect, LICENSEE may institute suit for patent infringement against the infringer. UNIVERSITY may voluntarily join such suit at its own expense, but may not thereafter commence suit against the infringer for the acts of infringement that are the subject of LICENSEE’s suit or any judgment rendered in that suit. LICENSEE may not join UNIVERSITY in a suit initiated by LICENSEE without UNIVERSITY’S prior written consent. If, in a suit initiated by LICENSEE, UNIVERSITY is involuntarily joined other than by LICENSEE, LICENSEE will pay any costs incurred by UNIVERSITY arising out of such suit, including but not limited to, any legal fees of counsel that UNIVERSITY selects and retains to represent it in the suit.

(c) If, within a hundred and twenty (120) days following the date the Infringement Notice takes effect, infringing activity of potential commercial significance by the infringer has not been abated and if LICENSEE has not brought suit against the infringer, UNIVERSITY may institute suit for patent infringement against the infringer. If UNIVERSITY institutes such suit, LICENSEE may not join such suit without UNIVERSITY’S consent and may not thereafter commence suit against the infringer for the acts of infringement that are the subject of UNIVERSITY’S suit or any judgment rendered in that suit.

(d) Notwithstanding anything to the contrary in this Agreement, in the event that the infringement or potential infringement pertains to an issued patent included within the Patent Rights and written notice is given under any statute expediting litigation (e.g. the Drug Price Competition and Patent Term Restoration Act of 1984 and/or foreign counterparts of this Law) ("Act"), then the party in receipt of such notice under the Act (in the case of UNIVERSITY to the extent of the actual knowledge of the licensing officer responsible for the administration of this Agreement) shall provide the Infringement Notice to the other party promptly. If the time period is such that the LICENSEE will lose the right to pursue legal remedy for infringement by not notifying a third party or by not filing suit, the notification period and the time period to file suit will be accelerated to within forty-five (45) days of the date of such notice under the Act to either party.
(e) Any recovery or settlement received in connection with any suit will first be shared by UNIVERSITY and LICENSEE equally to cover the litigation costs each incurred, and next shall be paid to UNIVERSITY or LICENSEE to cover any litigation costs it incurred in excess of the litigation costs of the other. In any suit initiated by LICENSEE, any recovery in excess of litigation costs will be shared between LICENSEE and UNIVERSITY as follows: (i) for any recovery other than amounts paid for willful infringement: (A) UNIVERSITY will receive fifteen percent (15%) of the recovery if UNIVERSITY was not a party in the litigation and did not incur any litigation costs; (B) UNIVERSITY will receive twenty-five percent (25%) of the recovery if UNIVERSITY was a party in the litigation, but did not incur any litigation costs, including the provisions of Paragraph 5.2(b) above, or (C) UNIVERSITY will receive fifty percent (50%) of the recovery if UNIVERSITY incurred any litigation costs in connection with the litigation; and (ii) for any recovery for willful infringement, UNIVERSITY will receive fifty percent (50%) of the recovery. In any suit initiated by UNIVERSITY, any recovery in excess of litigation costs will belong to UNIVERSITY. UNIVERSITY and LICENSEE agree to be bound by all determinations of patent infringement, validity, and enforceability (but no other issue) resolved by any adjudicated judgment in a suit brought in compliance with this Section 5.2.

(f) Any agreement made by LICENSEE for purposes of settling litigation or other dispute shall comply with the requirements of Section 2.2 (Sublicenses) of this Agreement.

(g) Each party will cooperate with the other in litigation proceedings instituted hereunder but at the expense of the party who initiated the suit (unless such suit is being jointly prosecuted by the parties).

(h) Any litigation proceedings will be controlled by the party bringing the suit, except that UNIVERSITY may be represented by counsel of its choice in any suit brought by LICENSEE.

5.3 Patent Marking. LICENSEE shall mark all Licensed Products made, used or sold under the terms of this Agreement, or their containers, in accordance with the applicable patent marking laws. LICENSEE shall be responsible for all monetary and legal liabilities arising from or caused by (i) failure to abide by applicable patent marking laws and (ii) any type of incorrect or improper patent marking.

ARTICLE 6. GOVERNMENTAL MATTERS

6.1 Governmental Approval or Registration. If this Agreement or any associated transaction is required by the law of any nation to be either approved or registered with any governmental agency, LICENSEE shall assume all legal obligations to do so. LICENSEE shall notify UNIVERSITY if it becomes aware that this Agreement is subject to a United States or foreign government reporting or approval requirement. LICENSEE shall make all necessary filings and pay all costs including fees, penalties, and all other out-of-pocket costs associated with such reporting or approval process.
6.2 Export Control Laws. LICENSEE shall observe all applicable United States and foreign laws with respect to the transfer of Licensed Products and related technical data to foreign countries, including, without limitation, the International Traffic in Arms Regulations and the Export Administration Regulations.

6.3 Preference for United States Industry. If LICENSEE sells a Licensed Product or Combination Product in the US, LICENSEE shall manufacture said product substantially in the US, as required under 35 U.S.C. §§ 204 and applicable regulations.

ARTICLE 7. TERMINATION OR EXPIRATION OF THE AGREEMENT

7.1 Termination by UNIVERSITY.

(a) If LICENSEE fails to perform or violates any term of this Agreement, then UNIVERSITY may give written notice of default (“Notice of Default”) to LICENSEE. If LICENSEE fails to cure the default within sixty (60) days of the Notice of Default, UNIVERSITY may terminate this Agreement and the license granted herein by a second written notice (“Notice of Termination”) to LICENSEE. If a Notice of Termination is sent to LICENSEE, this Agreement shall automatically terminate on the effective date of that notice. Termination shall not relieve LICENSEE of its obligation to pay any fees owed at the time of termination and shall not impair any accrued right of UNIVERSITY. During the term of any such Notice of Default or period to cure, to the extent the default at issue is a failure to pay past or ongoing Patent Costs as provided for under this Agreement, UNIVERSITY shall have no obligation to incur any new Patent Costs under this Agreement and shall have no obligation to further prosecute Patent Rights or file any new patents under Patent Rights.

(b) This Agreement will terminate immediately, without the obligation to provide sixty (60) days’ notice as set forth in Paragraph 7.1(a), if LICENSEE files a claim including in any way the assertion that any portion of UNIVERSITY’s Patent Rights is invalid or unenforceable where the filing is by the LICENSEE, a third party on behalf of the LICENSEE, or a third party at the written urging of the LICENSEE.

(c) This Agreement shall automatically terminate without the obligation to provide sixty (60) days’ notice as set forth in Paragraph 7.1(a) upon the filing of a petition for relief under the United States Bankruptcy Code by or against the LICENSEE as a debtor or alleged debtor.

7.2 Termination by LICENSEE.

(a) LICENSEE shall have the right at any time and for any reason to terminate this Agreement upon a ninety (90)-day written notice to UNIVERSITY. Said notice shall state LICENSEE’s reason for terminating this Agreement.

(b) Any termination under Paragraph 7.2(a) shall not relieve LICENSEE of any obligation or liability accrued under this Agreement prior to termination or rescind any
payment made to UNIVERSITY or action by LICENSEE prior to the time termination becomes effective. Termination shall not affect in any manner any rights of UNIVERSITY arising under this Agreement prior to termination.

7.3 **Survival on Termination or Expiration.** The following Paragraphs and Articles shall survive the termination or expiration of this Agreement:

(a) Article 4 (REPORTS, RECORDS AND PAYMENTS);

(b) Paragraph 7.4 (Disposition of Licensed Products on Hand);

(c) Article 8 (LIMITED WARRANTY AND INDEMNIFICATION);

(d) Article 9 (USE OF NAMES AND TRADEMARKS);

(e) Section 10.2 hereof (Secrecy);

(f) Paragraph 10.5 (Failure to Perform); and

(g) Paragraph 10.6 (Governing Laws).

7.4 **Disposition of Licensed Products on Hand.** Upon termination of this Agreement, LICENSEE may dispose of all previously made or partially made Licensed Product within a period of one hundred and twenty (120) days of the effective date of such termination provided that the sale of such Licensed Product by LICENSEE, its Sublicensees, or Affiliates shall be subject to the terms of this Agreement, including but not limited to the rendering of reports and payment of royalties required under this Agreement.

**ARTICLE 8. LIMITED WARRANTY AND INDEMNIFICATION**

8.1 **Limited Warranty.**

(a) UNIVERSITY warrants that it has the lawful right to grant this license. This warranty does not include Patent Rights to the extent assigned, or otherwise licensed, by UNIVERSITY’s inventors to third parties.

(b) The license granted herein is provided “AS IS” and without WARRANTY OF MERCHANTABILITY or WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE or any other warranty, express or implied. UNIVERSITY makes no representation or warranty that the Licensed Product, Licensed Method or the use of Patent Rights will not infringe any other patent or other proprietary rights.

(c) UNIVERSITY WILL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, ENHANCED DAMAGES FOR INTELLECTUAL PROPERTY INFRINGEMENT, OR
FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY LICENSEE, SUBLICENSEES, JOINT VENTURES, OR AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY) EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALSO, UNIVERSITY WILL NOT BE LIABLE FOR ANY DIRECT DAMAGES SUFFERED BY LICENSEE, SUBLICENSEES, JOINT VENTURES, OR AFFILIATES ARISING OUT OF OR RELATED TO PATENT RIGHTS TO THE EXTENT ASSIGNED, OR OTHERWISE LICENSED, BY UNIVERSITY’S INVENTORS TO THIRD PARTIES.

(d) Nothing in this Agreement shall be construed as:

(i) a warranty or representation by UNIVERSITY as to the validity or scope of any Patent Rights;

(ii) a warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or shall be free from infringement of patents of third parties;

(iii) an obligation to bring or prosecute actions or suits against third parties for patent infringement except as provided in Section 5.2 hereof;

(iv) conferring by implication, estoppel or otherwise any license or rights under any patents of UNIVERSITY other than Patent Rights as defined in this Agreement, regardless of whether those patents are dominant or subordinate to Patent Rights; or

(v) an obligation to furnish any know-how not provided in Patent Rights.

8.2 Indemnification.

(a) LICENSEE will, and will require Sublicensees to, indemnify, hold harmless, and defend UNIVERSITY and its officers, employees, and agents; the sponsors of the research that led to the Invention; and the inventors of patents or patent applications under Patent Rights, and their employers; against any and all claims, suits, losses, damages, costs, fees, and expenses resulting from, or arising out of, the exercise of this license or any Sublicense. This indemnification will include, but will not be limited to, any product liability.

(b) LICENSEE, at its sole cost and expense, shall insure its activities in connection with the work under this Agreement and obtain, keep in force and maintain insurance or an equivalent program of self insurance as follows:
(i) comprehensive or commercial general liability insurance (contractual liability included) with limits of at least:

(A) before first use in humans and with no product on the market:
   a. each occurrence, five hundred thousand dollars (US$500,000);
   b. products/completed operations aggregate, zero dollars (US$0);
   c. personal and advertising injury, five hundred thousand dollars (US$500,000); and
   d. general aggregate (commercial form only), one million dollars (US$1,000,000);

(B) upon first use in humans and with no product on the market:
   a. each occurrence, one million dollars (US$1,000,000);
   b. products/completed operations aggregate, five million dollars (US$5,000,000);
   c. personal and advertising injury, one million dollars (US$1,000,000); and
   d. general aggregate (commercial form only), five million dollars (US$5,000,000); and

(C) upon first commercial sale of a Licensed Product:
   a. each occurrence, five million dollars (US$5,000,000);
   b. products/completed operations aggregate, ten million dollars (US$10,000,000);
   c. personal and advertising injury, five million dollars (US$5,000,000); and
   d. general aggregate (commercial form only), ten million dollars (US$10,000,000).

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination or expiration of this Agreement. The insurance described in (A) shall have a retroactive date of placement prior to or coinciding with the Effective Date.

(ii) Worker’s Compensation as legally required in the jurisdiction in which the LICENSEE is doing business; and

(iii) the coverage and limits referred to above shall not in any way limit the liability of LICENSEE.

(c) LICENSEE shall furnish UNIVERSITY with certificates of insurance showing compliance with all requirements. Such certificates shall: (i) provide for thirty (30) day advance written notice to UNIVERSITY of any modification; (ii) indicate that UNIVERSITY has been endorsed as an additionally insured party under the coverage.
referred to above; and (iii) include a provision that the coverage shall be primary and shall not participate with nor shall be excess over any valid and collectable insurance or program of self-insurance carried or maintained by UNIVERSITY.

(d) UNIVERSITY shall notify LICENSEE in writing of any claim or suit brought against UNIVERSITY in respect of which UNIVERSITY intends to invoke the provisions of this Article. LICENSEE shall keep UNIVERSITY informed on a current basis of its defense of any claims under this Article. LICENSEE will not settle any claim against UNIVERSITY without UNIVERSITY’s written consent, where (a) such settlement would include any admission of liability or admission of wrong doing on the part of the indemnified party, (b) such settlement would impose any restriction on UNIVERSITY/indemnified party’s conduct of any of its activities, or (c) such settlement would not include an unconditional release of UNIVERSITY/indemnified party from all liability for claims that are the subject matter of the settled claim.

ARTICLE 9. USE OF NAMES AND TRADEMARKS

9.1 Except as provided in 9.3, 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 (including contraction, abbreviation or simulation of any of the foregoing). Unless required by law, the use by LICENSEE of the name, “The Regents of the University of California” or the name of any campus of the University of California in advertising, publicity, or other promotional activities is prohibited, without the express written consent of UNIVERSITY.

9.2 UNIVERSITY may disclose to the Inventors the terms and conditions of this Agreement upon their request. If such disclosure is made, UNIVERSITY shall request the Inventors not disclose such terms and conditions to others.

9.3 UNIVERSITY may acknowledge the existence of this Agreement and the extent of the grant in Article 2 to third parties, but UNIVERSITY shall not disclose the financial terms of this Agreement to third parties, except where UNIVERSITY is required by law to do so, such as under the California Public Records Act. LICENSEE hereby grants permission for UNIVERSITY (including UCSD) to include LICENSEE’s name and a link to LICENSEE’s website in UNIVERSITY’s and UCSD’s annual reports and on UNIVERSITY’s (including UCSD’s) websites that showcase technology transfer-related stories.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 Correspondence. Any notice or payment required to be given to either party under this Agreement shall be deemed to have been properly given and effective:

(a) on the date of delivery if delivered in person, or
(b) five (5) days after mailing if mailed by first-class or certified mail, postage paid, to the respective addresses given below, or to such other address as is designated by written notice given to the other party.

If sent to LICENSEE:

[Name and address of licensee – please include specific information for separate locations for invoices and notices, if applicable]

Attention: __________________
Phone: _____________
Fax:________________

If sent to UNIVERSITY by mail:
University of California, San Diego
Technology Transfer Office
9500 Gilman Drive Mail Code 0910
La Jolla, CA 92093-0910
Attention: Assistant Vice Chancellor

If sent to UNIVERSITY by courier:
University of California, San Diego
Technology Transfer Office
10300 North Torrey Pines Road
Torrey Pines Center North, Third Floor
La Jolla, CA 92037
Attention: Assistant Vice Chancellor

10.2 Secrecy.

(a) “Confidential Information” shall mean information which is not generally available in the public domain and which is disclosed by UNIVERSITY to LICENSEE or vice versa during the term of this Agreement, which if disclosed in writing shall be marked “Confidential,” or if first disclosed otherwise, shall within thirty (30) days after such disclosure be summarized in writing by the disclosing party, marked “Confidential,” and sent to recipient party.

(b) The recipient party shall:

(i) use the disclosing party’s Confidential Information for the sole purpose of performing under the terms of this Agreement or for management oversight or audit;

(ii) safeguard Confidential Information against disclosure to others with the same degree of care as it exercises with its own data of a similar nature;

(iii) not disclose Confidential Information to others (except to its employees, agents or consultants who are bound by a like obligation of confidentiality) without the express written permission of the disclosing party, except that the recipient party shall not be prevented from using or disclosing any of the Confidential Information that:
(A) the recipient party can demonstrate by written records was previously known to it;

(B) is now, or becomes in the future, public knowledge other than through acts or omissions of recipient party;

(C) is lawfully obtained by the recipient party from sources independent of the disclosing party. Or

(D) is required to be disclosed by law or a court of competent jurisdiction; and

(c) The secrecy obligations of the parties with respect to Confidential Information shall continue for a period ending five (5) years from the termination date of this Agreement.

10.3 Assignability. This Agreement may be assigned by UNIVERSITY, but is personal to LICENSEE and assignable by LICENSEE only with the written consent of UNIVERSITY, except LICENSEE may assign this Agreement and the license granted herein to an Affiliate or in conjunction with the sale or transfer of substantially all of the assets associated with performance under this Agreement.

10.4 No Waiver. No waiver by either party of any breach or default of any covenant or agreement set forth in this Agreement shall be deemed a waiver as to any subsequent and/or similar breach or default.

10.5 Failure to Perform. In the event of a failure of performance due under this Agreement and if it becomes necessary for either party to undertake legal action against the other on account thereof, then the prevailing party shall be entitled to reasonable attorneys’ fees in addition to costs and necessary disbursements.

10.6 Governing Laws. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, but the scope and validity of any patent or patent application shall be governed by the applicable laws of the country of the patent or patent application.

10.7 Force Majeure. A party to this Agreement may be excused from any performance required herein if such performance is rendered impossible or unfeasible due to any catastrophe or other major event beyond its reasonable control, including, without limitation, war, riot, and insurrection; laws, proclamations, edicts, ordinances, or regulations; strikes, lockouts, or other serious labor disputes; and floods, fires, explosions, or other natural disasters. When such events have abated, the non-performing party’s obligations herein shall resume.

10.8 Headings. The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
10.9 **Entire Agreement.** 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.

10.10 **Amendments.** 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.

10.11 **Severability.** In the event that any of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained in it.

*IN WITNESS WHEREOF,* both UNIVERSITY and LICENSEE have executed this Agreement, in duplicate originals, by their respective and duly authorized officers on the day and year written.

[COMPANY NAME]:

By: _____________________________
   (Signature)

Name: ___________________________

Title: ___________________________

Date: ___________________________

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**

By: _____________________________
   (Signature)

Jane Moores, Ph.D.

Assistant Vice Chancellor-Technology Transfer

Date: ___________________________

**ATTEST:**

By: _____________________________
   (Signature)

Name: ___________________________

Date: ___________________________

**ATTEST:**

By: _____________________________
   (Signature)

Name: ___________________________

Date: ___________________________

Every inventor that is currently a UC employee to attest to agreement.
Exhibit A – Articles of Incorporation, Capitalization Table

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Exhibit B – Due Diligence

(i) diligently proceed with the development, manufacture and sale of Licensed Products;

(ii) provide to UNIVERSITY a schedule for the recruitment of key management positions by [______________].

(iii) have a corporate management team in place by [______].

(iv) LICENSEE will have $X,000,000 of available non-contingent, operating capital to proceed with the exploration and development of Licensed Product by [______________]. Capital will be from a third party who may or may not be an investor in LICENSEE and unused capital will be on deposit in a financial institutional acceptable to both UNIVERSITY and LICENSEE.

(v) annually spend not less than [_____] dollars (US$[______]) for the development of Licensed Products for humans during the first [_____] years of this Agreement. LICENSEE may, at its sole option, fund the research of any one of the Inventors and credit the amount of such funding actually paid to UCSD against its obligation under this paragraph;

(vi) annually spend not less than [_____] dollars (US$[______]) for the development of Licensed Products for mammals other than humans during the first [_____] years of this Agreement. LICENSEE may, at its sole option, fund the research of any one of the Inventors and credit the amount of such funding actually paid to UCSD against its obligation under this paragraph;

(vii) For each Licensed Product

(A) [______]

(B) [______]

[Etc.]

(vii) [Etc. – non-humans]

(ix) submit a [_____] covering Licensed Products to the United States [_____] within [_____] (___) years from the Effective Date of this Agreement;

(x) market Licensed Products in the United States within six (6) months of receiving regulatory approval to market such Licensed Products;

(xi) first commercial sale of human therapeutics by [______]:

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(xii) first commercial sale of therapeutics for mammals other than humans by ____________

(xiii) fill the market demand for Licensed Products following commencement of marketing at any time during the term of this Agreement;

(xiv) LICENSEE, Affiliate, or a Sublicensee must sell at least __________ Licensed Product every 6 months after the date of first sale of a Licensed Product;

(xv) obtain all necessary governmental approvals for the manufacture, use and sale of Licensed Products; and

(xvi) LICENSEE agrees to consider, at its sole option, means to address third world access to Licensed Products on a compassionate basis. In the event that, during the term of this Agreement, any U.S. law or regulation is passed in the U.S. which obliges UNIVERSITY and/or the LICENSEE to supply Licensed Products to third world countries on a compassionate use or similar basis as a result of the funding of the Patent Rights by US governmental agencies or foundations, UNIVERSITY and LICENSEE will negotiate in good faith how to comply with such requirement in the most effective way.
Exhibit C – Convertible Note

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT COVERING SUCH SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF SUCH SECURITIES REASONABLY SATISFACTORY TO THE COMPANY STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE ACT.
CONVERTIBLE PROMISSORY NOTE

[$____________] USD [___________], 20[__]

San Diego, California

FOR VALUE RECEIVED, [____________], a [_________] (the “Company”), promises to pay to The Regents of the University of California, a California corporation having its statewide administrative offices at 1111 Franklin Street, Oakland, California 94607-5200, represented by its San Diego campus having an address at University of California, San Diego, Technology Transfer Office, Mail Code 0910, 9500 Gilman Drive, La Jolla, California 92093-0910 (the “Holder”), or its registered assigns, in lawful money of the United States of America, the principal sum of [______ ($_____ U.S. Dollars)], or such lesser amount as shall equal the outstanding principal amount hereof, together with simple interest from the date of this Note on the unpaid principal balance at a rate equal to five percent (5.0%) per annum, computed on the basis of the actual number of days elapsed and a year of 365 days. All unpaid principal, together with any then unpaid and accrued interest and other amounts payable hereunder, if not converted by the provisions of Section 6 below, shall be due and payable on demand at any time after the earlier of (i) ________, [______], five years from the License Effective Date (as defined in the License Agreement between the Regents of the University of California and the Company, dated [______]) (the “Maturity Date”), or (ii) when, upon or after the occurrence of an Event of Default (as defined below), such amounts are declared due and payable by the Holder or made automatically due and payable in accordance with the terms hereof.

The following is a statement of the rights of the Holder and the conditions to which this Note is subject, and to which the Holder, by the acceptance of this Note, agrees:

1. Definitions. As used in this Note, the following capitalized terms have the following meanings:

   (a) “Acquisition” shall mean (i) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation); or (ii) a sale of all or substantially all of the assets of the Company, in either case, in which the shareholders of the Company immediately prior to the acquisition or sale, as the case may be, do not hold a majority of the outstanding shares of capital stock of the surviving corporation. Notwithstanding the foregoing, a transaction shall not be deemed an Acquisition if the sole purpose of the transaction is to change the state of the Company’s incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company’s securities immediately prior to such transaction.
(b) “Obligations” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to Holder of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of this Note, including all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

(c) “Person” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

2. Events of Default. The occurrence of any of the following shall constitute an “Event of Default” under this Note:

(a) Failure to Pay. The Company shall fail to pay (i) when due any principal or interest payment on the due date hereunder or (ii) any other payment required under the terms of this Note on the date due, and such payment shall not have been made within fifteen (15) days following the Company’s receipt of the Holder’s written notice to the Company of such failure to pay;

(b) Voluntary Bankruptcy or Insolvency Proceedings. The Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated in full or in part, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vii) take any action for the purpose of effecting any of the foregoing; or

(c) Involuntary Bankruptcy or Insolvency Proceedings. Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of its property, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered, or such proceeding shall not be dismissed or discharged within thirty (30) days after commencement of such proceeding.

(d) Cross Default. Any default (i) in the payment or performance, or any defined event of default, under the terms of any material contract, instrument, document or agreement entered into by the Company, with any person or entity resulting in the right of such
person or entity, whether or not exercised, to accelerate the obligations thereunder or (ii) under any such agreement which could reasonably be expected to have a material adverse effect on the Company’s business; provided, however, that the Event of Default under this Section 2(d) caused by the occurrence of a default under such other agreement shall be cured or waived for purposes of this Agreement upon Holder receiving written notice from the party asserting such default of such cure or waiver of the default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Holder has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith judgment of Holder be materially less advantageous to Company or any such third party obligor.

3. Rights of Holder Upon Default. Upon the occurrence or existence of any Event of Default (other than an Event of Default described in Sections 2(b) or 2(c)) and at any time thereafter during the continuance of such Event of Default, the Holder may raise, effective upon notice to the Company, the annual interest rate on the unpaid principal to ten percent (10%).

4. Prepayment. The principal amount of this Note and the accrued interest thereon may not be prepaid without the written consent of the Holder. Any such permitted prepayment will be applied first to the interest accrued on this Note and second, if the amount of prepayment exceeds the amount of all such accrued interest, to the payment of principal of this Note. The Company shall give at least twenty (20) days written notice to the Holder prior to prepayment so that the Holder has the opportunity to convert this Note according to Section 6 below. In addition, upon written notification to Holder and Holder’s receipt of supporting information from the Company deemed relevant by Holder, Holder will enter into good faith negotiations with the Company at any time during the term of the Note for a possible buy-out of the Note on mutually acceptable terms.

5. Subordination. The indebtedness evidenced by this Note is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all of the Company’s Senior Indebtedness. “Senior Indebtedness” shall mean the principal of and unpaid interest and premium, if any, on (a) indebtedness of the Company or with respect to which the Company is a guarantor, whether outstanding on the date hereof or hereafter created, to banks, insurance companies or other lending or thrift institutions regularly engaged in the business of lending money, whether or not secured and (b) any deferrals, renewals or extensions or any debentures, notes or other evidence of indebtedness issued in exchange for such Senior Indebtedness.

In the event that prior to the Maturity Date, this Note shall become due and payable due to an Event of Default or other reason, (a) no amount shall be paid by the Company, whether in cash or property in respect of the principal of or interest on this Note at the time outstanding, unless and until the full amount of any Senior Indebtedness then outstanding shall be paid in full, and (b) no claim or proof of claim shall be filed with the Company by or on behalf of the Holder of this Note which shall assert any right to receive any payments in respect of the principal of and interest on this Note except subject to the payment in full all of the Senior Indebtedness then outstanding.
If an event of default has occurred with respect to any Senior Indebtedness, permitting the holder thereof to accelerate the maturity thereof, then unless and until such event of default shall have been cured or waived or shall have ceased to exist, or all Senior Indebtedness shall have been paid in full, no payment shall be made in respect of the principal of or interest on this Note.

Nothing contained in this the preceding paragraphs shall impair, as between the Company and the Holder, the obligation of the Company, which is absolute and unconditional, to pay to the Holder hereof the principal hereof and interest hereon as and when the same shall become due and payable, or shall prevent the Holder, upon default hereunder, from exercising all rights, powers and remedies otherwise provided herein or by applicable law, all subject to the rights, if any, of the holders of Senior Indebtedness under the preceding paragraphs to receive cash or other properties otherwise payable or deliverable to the Holder pursuant to this Note.

6. **Conversion.**

   (a) **Optional Conversion.** At any time while this Note is outstanding, all or any portion of the Obligations under this Note may be converted at the option of the Holder into shares of the Company’s capital stock as provided herein, and such shares shall have the same rights, privileges, preferences, and contractual rights as those shares of the same class and series except that Holder will not be subject to any obligations or more restrictive terms created or imposed after the date of conversion (such as “pay to play” provisions) without its written consent. The Holder shall have the option of converting this Note into shares of any series of Preferred Stock of the Company issued by the Company to third party investors; provided, however, that if there is no Preferred Stock issued, Holder may convert into shares of Common Stock of the Company. The Company will take all actions necessary to authorize additional shares to allow such conversion. The number of shares of capital stock that shall be issued to the Holder shall be determined by dividing the total principal outstanding under this Note, together with all accrued but unpaid interest thereon, by a conversion price equal to the lowest per share purchase price paid for the class or series of capital stock selected by the Holder, and shall include any additional equity rights (such as warrants) which accompanied the original or subsequent issuance of such capital stock. The Holder will also be offered the right to become a party to all stock purchase and investor rights agreements and be accorded the same rights and privileges and be subject to the same restrictions and obligations. The Holder acknowledges that the transaction documents may contain customary representations and warranties and transfer restrictions (including a 180-day lock-up agreement in connection with an initial public offering) in a form acceptable to the Holder. The Holder also agrees to deliver the original of this Note; provided, however, that upon satisfaction of the conditions set forth in this Section 5(a), this Note shall be deemed converted and of no further force and effect, whether or not it is delivered for cancellation as set forth in this sentence.

   (b) **Conversion on Acquisition.** In the event of an Acquisition prior to the Maturity Date or the conversion or repayment of this Note, Holder may, immediately prior to such event, (i) declare this Note due and payable or, in lieu of (i), (ii) convert all principal and accrued interest under this Note as if an Optional Conversion described in Section 6(a) above occurred, except such conversion shall be at a ten percent (10%) discount to the lowest per share purchase price paid for the class or series selected by the Holder.
(c) Fractional Shares; Effect of Conversion. No fractional shares shall be issued upon conversion of this Note. Upon the conversion of all of the Obligations outstanding under this Note, in lieu of issuing any fractional shares to the Holder, the number of shares issued to the Holder shall be rounded up to the nearest whole share. Upon conversion of this Note in full, the Company shall be forever released from all its obligations and liabilities under this Note.

7. Participation Rights. If, at the time of conversion as described in Section 6 above, any of the current stockholders in the Company have rights of first offer to purchase additional equity securities of the Company in any type of financing, the Holder or its assignee will be granted the same rights of first offer. If, at the time of conversion as described in Section 6 above, any of the current stockholders in the Company do not have rights of first offer to purchase additional equity securities of the Company in any type of financing, the Holder or its assignee will be granted a contractual right of first offer on mutually agreeable terms.

8. Extension of Term. Upon at least thirty (30) days prior written notice to Holder or its assignee, the Company shall have the option to extend the five-year term of this Note for an additional calendar year after the Maturity Date (provided there has been no Event of Default prior to such Maturity Date), and all terms and provisions in this Note will apply except that interest from the date of such extension shall be payable at the rate of seven and one half percent (7.5%). This option shall also be available at the end of each such successive calendar year following such extension.

9. Successors and Assigns. Subject to the restrictions on transfer described in Section 11 below, the rights and obligations of the Company and the Holder of this Note shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

10. Waiver and Amendment. Any provision of this Note may be amended, waived or modified only in a writing signed by both the Company and the Holder.

11. Transfer of this Note or Securities Issuable on Conversion Hereof. The Holder may assign or transfer this Note (or any rights herein) or the securities issued in connection with a conversion under Section 6 herein, to an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the “Securities Act”). If this Note (or rights herein) are transferred, the new Note and each certificate representing any securities transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the Securities Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Prior to presentation of this Note for registration of transfer, the Company shall treat the Holder as the owner and registered holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and the Company shall not be affected by notice to the contrary.

12. University Inventor(s). The Company acknowledges that under current patent rights policies of the University of California (“University”), inventor(s) employed by the
University have the right to receive a portion of equity received by the University for their innovation. The Company hereby agrees that, on Holder’s written notice, the Company will issue shares (and related rights) described in Section 6 directly to those inventors designated by the Holder; provided that, each such transfer is made in accordance with an appropriate investors’ rights agreement.

13. **Rights of Holder.** The Holder shall have no right to representation on the Company’s Board of Directors.

14. **Collateral.** This Note shall be unsecured.

15. **Notices: Access to Information.** The Company agrees to immediately provide the Holder or any assignee with written notice of the occurrence of any event which is described in Section 2(d) of this Note. The Holder may inspect Company facilities and such books and records and material contracts, including but not limited to the Company’s current articles (or certificate) of incorporation, as amended or restated if applicable, current financial statements and capitalization structure, and most recent sale price of the Company’s capital stock.

16. **Treatment of Note.** To the extent permitted by generally accepted accounting principles, the Company will treat, account and report the Note as debt and not equity for accounting purposes and with respect to any returns filed with federal, state or local tax authorities.

17. **Notices.** Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed effectively given (i) upon actual delivery to the party to be notified, (ii) one (1) business day after deposit with a recognized overnight delivery service, or (iii) three (3) business days after deposit with the U.S. Postal Service by first class certified or registered mail, postage prepaid, return receipt requested. All such communications shall be addressed to the Company at its principal office and to the Holder at its address appearing on the books of the Company, or at such other address as either party shall have furnished to the other party upon ten (10) days’ notice as provided herein.

18. **No Rights as Stockholder.** This Note, as such, shall not entitle the Holder to any voting rights or other rights as a stockholder of the Company. In the absence of conversion of this Note into capital stock of the Company, no provisions of this Note, and no enumeration of the rights or privileges of the Holder, shall cause the Holder to be a stockholder of the Company for any purpose.

19. **Pari Passu Note.** Subject to Section 5 above, the Holder acknowledges and agrees that the payment of all or any portion of the outstanding principal amount of this Note and all interest hereon shall be pari passu in right of payment and in all other respects to all existing and future indebtedness of the Company.

20. **Usury.** In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.
21. **Expenses; Waivers.** The Company agrees to pay the Holder, upon its written request, for any attorney fees and costs incurred by the Holder in connection with negotiations between Holder and the Company with respect to changes requested in the terms of the Note from those in the version of the Note originally presented to the Company. In addition, if action is instituted to collect this Note, the Company promises to pay all costs and expenses, including, without limitation, reasonable attorneys’ fees and costs, incurred by Holder in connection with such action. Any waiver by the Holder or any assignee of any provision in this Note shall be effective only in the specific instance and for the specific purpose for which made or given. The Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

22. **Governing Law.** This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California or of any other state.

IN WITNESS WHEREOF, the Company has caused this Convertible Promissory Note to be issued as of the date first set forth above.

[Name of Company]

By: ________________________________

Name: ______________________________

Title: ______________________________