Florida Atlantic University Research Corporation

EXCLUSIVE LICENSE AGREEMENT
WITH SUBLICENSEING TERMS

TABLE OF CONTENTS

Section 1. - Definitions
Section 2. - Grant
Section 3. - Consideration
Section 4. - Warranties and Disclaimer of Warranties by FAURC
Section 5. - Record keeping
Section 6. - Patent Prosecution
Section 7. - Term and Termination
Section 8. - Assignability
Section 9. - Enforcement
Section 10. - Product Liability
Section 11. - Use of Names; Conduct of Business
Section 12. - Miscellaneous
Section 13. - Notices
Section 14. - Contract Formation and Authority
Section 15. - United States Government Interests

Appendix A - Development Plan
Appendix B - Development Report
Appendix C - Royalty Report
Appendix D – Licensed Patents

This Agreement is made effective the _____________________, (the “Effective Date”) by and between the Florida Atlantic University Research Corporation, Inc. (hereinafter called “FAURC”), a nonstock, nonprofit Florida corporation, and
_________________________________ (hereinafter called “Licensee”), a corporation organized and existing under the laws of _________________;

WHEREAS FAURC is a direct support organization of Florida Atlantic University; and

WHEREAS, Florida Atlantic University has, or will have, transferred ownership rights of certain inventions to FAURC; and

WHEREAS, FAURC owns certain inventions that are described in the “Licensed Patents” defined below, and FAURC is willing to grant an exclusive license to Licensee under all of the Licensed Patents and Licensee desires an exclusive license under all of them;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the parties covenant and agree as follows:

3.19.04FAU/OTTjlm Page 1 of 18
Section 1. Definitions.

1.1. “Licensed Patents” means all of the following FAURC intellectual property:

1.1.1. the United States patent(s)/patent application(s) listed in Appendix D and all United States patents and foreign patents and patent applications based on such U.S. application(s);

1.1.2. all divisionals and continuations, both U.S. and foreign, of the United States patent(s)/patent application(s) listed in Appendix D and all United States patents and foreign patents and patent applications based on such U.S. application(s); and

1.1.3. any reissues or re-examinations of patents described in 1.1.1 or 1.1.2 above; and

1.2. “Licensed Process” means any process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents in the United States or in any country in which such process is practiced.

1.3 “Licensed Product” means any product or part thereof developed by or on behalf of Licensee or any Sublicensee which is manufactured by using a Licensed Process or is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents which Licensed Process and/or Licensed Patent is recognized, protected and enforceable in the United States or in any country in which any product is made, used or sold and which claim or pending claim has not been ruled unenforceable by a court from which no appeal is possible.

1.4 “Net Sales” shall mean the consideration or Fair Market Value attributable to the Sale of all Licensed Products or Licensed Processes, less qualifying costs directly attributable to such Sale and actually identified on the invoice or through other, reasonable documentation and borne by Licensee or any Sublicensee(s). Such qualifying costs shall be limited to the following:

a) Discounts, in amounts customary in the trade, for quantity purchases, prompt payments and for wholesalers and distributors,

b) Credits or refunds, not exceeding the original invoice amount, for claims or returns,

c) Prepaid outbound transportation expenses and transportation insurance premiums

d) Sales and use taxes and other fees imposed by any government agency.

1.5 “Fair Market Value” shall mean the cash consideration which Licensee or Sublicensees would realize from an unaffiliated, unrelated buyer in an arm’s length sale of an identical item sold in the same quantity and at the same time and place of the transaction.

1.6 “Sale” shall mean any bona fide transaction for which consideration is actually received for the sale, use, lease, transfer or other disposition of Licensed Products or Licensed Processes.

1.7. “Development Plan” shall mean a written report summarizing the development activities that are to be undertaken by the Licensee to bring Licensed Products to the market. The Development Plan is attached as Appendix A.
1.8. “Development Report” shall mean a written account of Licensee’s progress under the Development Plan having at least the information specified in Appendix B to this Agreement, and shall be sent to the address specified in Appendix B.

1.9. “Licensed Field” shall be __________________________________________________________.

1.10 “Licensed Territory shall be limited to ____________________________________________.

Section 2. Grant.

2.1. License. FAURC hereby grants to Licensee an exclusive license, limited to the Licensed Field and the Licensed Territory under FAURC’s rights in the Licensed Patents to make, use and sell Licensed Products or Licensed Processes, or both. FAURC reserves to itself and Florida Atlantic University all rights under the Licensed Patents and or Licensed Processes for research purposes at Florida Atlantic University, including research for any sponsors. This license grant is subject to certain government rights as described in Section 15.

2.2. Sublicense

2.2.1. Licensee may grant written, nonexclusive sublicenses to third parties (a “Sublicensee”) through a written sublicense agreement (a “Sublicense”). Any Sublicense shall state that the Sublicense shall terminate in the event of the termination of this Agreement. Any Sublicense shall include provisions for paying all royalties that are due FAURC based upon sales by Sublicensee of Licensed Products or Licensed Processes as described in Section 3.3.

2.2.2. In respect to Sublicenses granted by Licensee under Section 2.2.1., if Licensee receives any fees or other payments in consideration for any rights granted under a Sublicense, and such payments are not based directly upon the amount or value of Licensed Products or Licensed Processes sold by the Sublicensee nor represent payment of costs to Licensee for a development program which Licensee is obligated to perform under such Sublicense, then Licensee shall pay FAURC fifty percent (50%) of such payments in the manner specified in Section 3.5. Licensee shall not receive from Sublicensees anything of value in lieu of cash payments in consideration for any Sublicense under this Agreement without the express prior written permission of FAURC which permission shall not be unreasonably withheld or delayed. Licensee shall provide FAURC with a copy of each Sublicense within thirty (30) days of the execution of the Sublicense.

2.3 License to FAURC. To the extent permitted by applicable law, Licensee hereby grants and shall require its Sublicensees(s) to grant FAURC an option to obtain a nonexclusive, royalty-free, irrevocable, paid-up license, with the right to grant sublicenses, under any and all inventions hereafter made or acquired by Licensee (or its Sublicensee(s)) to the extent any such inventions are Improvements. “Improvements” shall mean any modification of an invention described in Licensed Patents which, if unlicensed, would infringe one or more claims of the Licensed Patents. Licensee shall provide FAURC with a written, enabling disclosure of each such invention (such as a U.S. patent application), unambiguously identifying it as an invention governed by this paragraph, within six (6) months of filing a patent application thereon. If FAURC does not exercise its option to receive a license there under within sixty (60) days of the date of the disclosure, its option under this paragraph shall be deemed terminated, but only with respect to the invention so disclosed.
Section 3.  **Consideration.**

3.1.  **Development.**

3.1.1. Licensee agrees to and warrants that: it has, or will obtain, the expertise necessary to independently evaluate the Licensed Patents, Licensed Products and Licensed Processes; it will establish and actively and diligently pursue the Development Plan (see Appendix A), using commercially reasonable efforts, to the end that the inventions of the Licensed Patents will be utilized to provide Licensed Products or Licensed Processes, or both, for sale in the retail market within the Licensed Field and until the date of first commercial sale of Licensed Products or Licensed Processes it will supply FAURC with a written Development Report (see Appendix B) within one month following the end of each six month period ending on June 30th and December 31st. All development activities and strategies and all aspects of product design and decisions to market and the like are entirely at the discretion of Licensee, and Licensee shall rely entirely on its own expertise in this respect. FAURC’s review of Licensee’s Development Plan is solely to verify the existence of Licensee’s commitment to development activity and to ensure compliance with Licensee’s obligations to commercialize the inventions of the Licensed Patents, as set forth above.

3.1.2. Licensee agrees that the first commercial sale of products to the retail customer shall occur on or before _______________________________ or this Agreement shall terminate pursuant to Section 7.3 hereto.

3.2. **License Issue Fees.** Licensee agrees to pay to FAURC a License Issue Fee of ______________ dollars ($______________ upon signing of this Agreement.

3.3 **Royalty.** In addition to the Section 3.2 License Issue Fees, Licensee agrees to pay to FAURC as earned royalties a royalty calculated as a percentage of Net Sales in accordance with the terms and conditions of this Agreement. The royalty is deemed earned as of the date of the Sale of Licensed Product or Licensed Process. The royalty shall remain fixed while this Agreement is in effect at a rate of ___________ percent ( ____%) of Net Sales of Licensee or Sublicensees.

3.4.  **Other Payments.**

3.4.1 Licensee agrees to pay FAURC Minimum Royalty payments as follows:

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and every year thereafter on the same date for the life of the Agreement.

The Minimum Royalty shall be paid in advance on a quarterly basis for each year in which this Agreement is in effect. The Minimum Royalty for a given year shall be due in advance and shall be paid in quarterly installments on March 31, June 30, September 30, and December 31 for the following quarter. Any Minimum Royalty paid in a calendar year will be credited against the earned royalties for that calendar year.
It is understood that the Minimum Royalties will be applied to earned royalties on a calendar year basis, and that sales of Licensed Products and/or Licensed Processes requiring the payment of earned royalties made during a prior or subsequent calendar year shall have no effect on the annual Minimum Royalty due FAURC for other than the same calendar year in which the royalties were earned.

3.4.2. Licensee agrees to pay FAURC Milestone Payments as follows:

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3.5. Accounting and Payments.

3.5.1. Amounts owing to FAURC under Sections 2.2 and 3.3 shall be paid on a quarterly basis with such amounts due and received by FAURC on or before the thirtieth (30th) day following the end of the calendar quarter ending on March 31, June 30, September 30 or December 31 in which such amounts were earned. The balance of any amounts which remain unpaid more than thirty (30) days after they are due to FAURC shall accrue interest until paid at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed under applicable law. However, in no event shall this interest provision be construed as a grant of permission for any payment delays.

3.5.2. Except as otherwise directed, all amounts owing to FAURC under this Agreement shall be paid in U.S. dollars to FAURC at the address provided in Section 13.1. All royalties owing with respect to Net Sales stated in currencies other than U.S. dollars shall be converted at the rate shown in the Federal Reserve Noon Valuation - Value of Foreign Currencies on the day preceding the payment.

3.5.3. A full accounting showing how any amounts payable to FAURC under Sections 2.2 and 3.3 have been calculated shall be submitted to FAURC on the date of each such payment. Such accounting shall be on a per-country and product line, model or trade name basis and shall be summarized on the form shown in Appendix C of this Agreement. In the event no payment is owed to FAURC, an accounting demonstrating that fact shall be supplied to FAURC.

3.5.4. FAURC is exempt from paying income taxes under U.S. law. Therefore, all payments due under this Agreement shall be made without deduction for taxes, assessments, or other charges of any kind which may be imposed on FAURC by any government outside of the United States or any political subdivision of such government with respect to any amounts payable to FAURC pursuant to this Agreement. All such taxes, assessments, or other charges shall be assumed by Licensee.

Section 4. Warranties and Disclaimer of Warranties by FAURC and Florida Atlantic University.

4.1. FAURC hereby represents and warrants to Licensee as follows:

4.1.1 To its knowledge, FAURC owns the Licensed Patents and has not assigned any rights therein or given any license or other rights thereto to any party other than Licensee.
4.2 Nothing in this Agreement shall be construed as:

4.2.1. a warranty or representation by FAURC or Florida Atlantic University as to the validity or scope of any right included in the Licensed Patent

4.2.2. a warranty or representation that anything made, used, sold or otherwise disposed of under the license granted in this Agreement will or will not infringe patents of third parties;

4.2.3. an obligation to bring or prosecute actions or suits against third parties for infringement of Licensed Patents; except as required under section 9.2;

4.2.4. an obligation to furnish any know-how not provided in Licensed Patents or any services other than those specified in this Agreement; or

4.2.5. a warranty or representation by FAURC or Florida Atlantic University that it will not grant licenses to others to make, use or sell products not covered by the claims of the Licensed Patents which may be similar to or compete with products made or sold by Licensee or its Sublicensee(s).

4.3 EXCEPT AS SPECIFICALLY SET FORTH ABOVE IN SECTION 4.1, THE LICENSED PATENTS AND LICENSED PROCESSES AND ALL OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS IS” BASIS AND NEITHER FAURC NOR FLORIDA ATLANTIC UNIVERSITY MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO. BY WAY OF EXAMPLE BUT NOT LIMITATION, NEITHER FAURC NOR FLORIDA ATLANTIC UNIVERSITY MAKE ANY REPRESENTATION OR WARRANTIES (i) OF COMMERCIAL UTILITY (ii) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (iii) THAT THE USE OF THE LICENSED PRODUCTS AND LICENSED PROCESSES AND ALL OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT WILL NOT INFRINGE ANY PATENT, COPYRIGHT OR TRADEMARK OR OTHER PROPRIETARY RIGHTS OF OTHERS. EXCEPT IF, AND TO THE EXTENT THAT, ANY SUCH CLAIM IS A DIRECT CONSEQUENCE OF FAURC’S BREACH OF ITS REPRESENTATIONS AND WARRANTIES IN SECTION 4.1, NEITHER FAURC NOR FLORIDA ATLANTIC UNIVERSITY SHALL BE LIABLE TO LICENSEE, LICENSEE’S SUCCESSORS OR ASSIGNS OR ANY THIRD PARTY WITH RESPECT TO ANY CLAIM ARISING FROM LICENSEE’S USE OF LICENSED PRODUCTS OR LICENSED PROCESSES OR ANY TECHNOLOGY LICENSED UNDER THIS AGREEMENT OR FROM THE MANUFACTURE, USE OR SALE OF LICENSED PRODUCTS OR LICENSED PROCESSES OR ANY CLAIM FOR LOSS OF PROFITS, LOSS OR INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

Section 5. Record keeping.

5.1. Licensee shall keep books and records sufficient to verify the accuracy and completeness of Licensee’s accounting referred to above, including without limitation inventory, purchase and invoice records, manufacturing records, sales analysis, general ledgers, financial statements, and tax returns relating to the Licensed Products and Licensed Processes. Such books and records shall be preserved for a period not less than six years after they are created, both during and after the term of this Agreement.

5.2. Licensee shall take all steps necessary so that FAURC may, within thirty (30) days of its request, review and copy all of the books and records at a single location to verify the accuracy of Licensee’s accounting. Such
review may be performed by any authorized employee of FAURC as well as by any attorney or registered CPA
designated by FAURC, upon reasonable notice and during regular business hours.

5.3. If a royalty payment deficiency is determined, Licensee shall pay the royalty deficiency outstanding within
thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts as described in Section
3.5.1.

5.4. If a royalty payment deficiency for a calendar year exceeds five percent (5%) of the royalties paid for that
year, then Licensee shall be responsible for paying FAURC’s reasonable, out-of-pocket expenses incurred with
respect to such review.

5.5 Licensee shall include provisions similar to those in Sections 5.1 through 5.4 for the benefit of FAURC in
all agreements between Licensee and Sublicensees and Licensee shall take all reasonable measures to enforce
Sublicensee’s obligations under such provisions.

Section 6. Patent Prosecution

6.1. FAURC shall diligently prosecute and maintain the Licensed Patents using counsel mutually agreeable to
FAURC and Licensee. FAURC shall provide Licensee with copies of relevant documentation so that Licensee
may be informed and apprised of the continuing prosecution of Licensed Patents, and Licensee agrees to keep
such information confidential.

6.2 If Licensee does not wish to pursue any particular preparation, filing, prosecution, issuance, or maintenance
of the Licensed Patents, and so notifies FAURC in a timely manner so that FAURC can avoid costs associated
with such preparation, filing, prosecution, issuance, or maintenance, then Licensee shall not be responsible for
the expense of such preparation, filing, prosecution, issuance, or maintenance and any rights directly involved in
such preparation, filing, prosecution, issuance, or maintenance shall be excluded from the rights granted under
this Agreement and FAURC shall be permitted to license such rights to third parties.

6.3. Except as described in Section 6.2, Licensee shall be responsible for and pay all future costs and expenses
incurred by FAURC (and, where practical, approved in advance in writing by Licensee, with such approval not
to be unreasonably withheld or delayed) for the preparation, filing, prosecution, issuance, and maintenance of the
Licensed Patents within thirty (30) days of receipt of an invoice from FAURC. It shall be the responsibility of
Licensee to keep FAURC fully apprised of the “small entity” status of Licensee with respect to the U.S. patent
laws and with respect to the patent laws of any other countries, if applicable, and to inform FAURC of any
changes in such status, within thirty days of any such change.

Section 7. Term and Termination.

7.1. The term of this license shall begin on the Effective Date of this Agreement and continue until the earlier of
the date that no Licensed Patent remains an enforceable patent or the payment of earned royalties under Section
3.3, once begun, ceases for more than ________ ( ) calendar quarters.

7.2. Licensee may terminate this Agreement at any time by doing all of the following: a) giving at least ninety
(90) days written and unambiguous notice of such termination to FAURC b) ceasing to make, have made, use,
import, sell and offer for sale all Licensed Products and Licensed Processes, c) terminating all Sublicenses and
causing all Sublicensees to cease making, having made, using, importing, selling and offering for sale all Licensed Products and Processes, and d) paying all monies due FAURC under this Agreement. Such a notice of termination shall be accompanied by a statement of the reasons for termination.

7.2. If Licensee at any time defaults in the timely payment of any monies due to FAURC, fails to timely submit to FAURC any Development Report, fails to actively pursue the Development Plan, or commits any breach of any other covenant contained in this Agreement, and Licensee fails to remedy any such breach or default within forty five (45) days after written notice thereof by FAURC, FAURC may, at its option, terminate this Agreement by giving thirty (30) days notice of termination to Licensee.

7.4. FAURC may terminate this Agreement upon the occurrence of the third separate default by Licensee within any consecutive three-year period for failure to pay royalties when due. A discrepancy in or underpayment of royalties will not constitute such a default unless Licensee did not pay to FAURC amounts which it knew were owed to FAURC.

7.5. FAURC may terminate this Agreement if Licensee takes any action, or fails to take any action, which would indicate that Licensee will enter bankruptcy proceedings or if Licensee enters bankruptcy proceedings, voluntarily or involuntarily.

7.6. If Licensee enters bankruptcy proceedings, voluntarily or involuntarily, all duties of FAURC and all rights (but not duties) of Licensee under this Agreement immediately terminate without the necessity of any action being taken by FAURC or Licensee.

7.7. Upon the termination of this Agreement, Licensee shall remain obligated to provide an accounting for and to pay all monies owed and royalties earned up to the date of the termination.

7.8. The provisions of Sections 4.2 and 10 shall survive termination of this Agreement.

Section 8. Assignability.

This Agreement may not be transferred or assigned by Licensee except with the prior written consent of FAURC. The foregoing sentence shall not be construed to require Licensee to obtain FAURC's approval of any Sublicensee.

Section 9. Enforcement.

9.1. Each of FAURC and Licensee are responsible for notifying the other promptly of any infringement of Licensed Patents which may come to its attention. FAURC and Licensee shall consult one another in a timely manner concerning any appropriate response to the infringement.

9.2. Licensee may prosecute such infringement at its own expense. If requested by Licensee, FAURC will join in any legal actions enforcing or defending the Licensed Patents against third parties deemed necessary or
advisable by Licensee to prevent or seek damages, or both, from the infringement of the Licensed Patents provided that Licensee funds all costs associated with such actions, using counsel of Licensee's selection, and indemnifies and holds FAURC harmless with respect to any claims or damages made against or sustained by FAURC in connection with such involvement. In no event will FAURC be obligated by this provision to pay attorneys’ fees or court costs. Licensee must not settle or compromise any such suit in a manner that imposes any obligations or restrictions on FAURC or grants any rights to the Licensed Patents without FAURC’s prior written permission. Financial recoveries from any such litigation will first be applied to reimburse Licensee for its litigation expenditures with additional recoveries being paid to Licensee, subject to a royalty due FAURC based on the provisions of Section 3.

9.3 Licensee’s rights under Section 9.2 are subject to the continuing right of FAURC to intervene at FAURC’s own expense and join Licensee in any claim or suit for infringement of the Licensed Patents. Financial recoveries from any such litigation will first be applied to reimburse Licensee and FAURC for their litigation expenditures with additional recoveries being first subject to a royalty due FAURC based on the provisions of Section 3 and then shared between FAURC and Licensee in proportion with their share of the litigation expenses in such infringement action.

9.4 If Licensee fails to prosecute any infringement within six (6) months of notice of such infringement, FAURC may prosecute such infringement at its own expense. In such event, financial recoveries will be entirely retained by FAURC.

9.5 In any action to enforce any of the Licensed Patents, either party, at the request and expense of the other party shall cooperate to the fullest extent reasonably possible. This provision shall not be construed to require either party to undertake any activities, including legal discovery, at the request of any third party except as may be required by lawful process of a court of competent jurisdiction.

Section 10. Product Liability

10.1 Licensee shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold FAURC, Florida Atlantic University, the state of Florida, their agents, representatives and employees and the inventors of the Licensed Patents harmless against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from the production, manufacture, sale, use, lease, consumption or advertisement of Licensed Products or Licensed Processes by Licensee arising from any right or obligation of Licensee or any Sublicensee hereunder. Notwithstanding the above, FAURC at all times reserves the right to retain counsel of its own to defend FAURC’s, Florida Atlantic University’s, and the inventor’s interests and Licensee will fully cooperate with FAURC in such defense.

10.2 Licensee warrants that it has and will maintain liability insurance coverage appropriate to the risk involved in developing and marketing the products subject to this Agreement, in no event less than _______________ dollars ($________________), and that such insurance coverage will list FAURC, Florida Atlantic University, the state of Florida, their agents, representatives and employees and the inventors of the Licensed Patents as additional insureds. Within sixty (60) days after the execution of this Agreement and thereafter annually between January 1 and January 31 of each year, Licensee will present evidence to FAURC, that this insurance coverage was obtained and is being maintained. In addition, Licensee shall provide FAURC with at least thirty (30) days prior written notice of any change in or cancellation of the insurance coverage.
10.3 Licensee will include provisions similar to those in Sections 10.1 and 10.2 in any agreements with Sublicensees for the benefit of FAURC, Florida Atlantic University, the state of Florida, their agents, representatives and employees and the inventors of the Licensed Patents.

Section 11. Use of Names; Conduct of Business.

11.1 Licensee shall not use (nor authorize any Sublicensee to use) FAURC’s name, the name of any inventor of Licensed Patents governed by this Agreement, or the name of Florida Atlantic University in any sales promotion, advertising, or any other form of publicity without the prior written approval of FAURC, which approval will not be unreasonably withheld. Provided that no indication of endorsement by Florida Atlantic University is made, Licensee may use the name of any inventor with the prior written approval of that inventor.

11.2 FAURC may, in its sole discretion, cooperate with and aid Licensee’s commercialization efforts of, and related to, the Licensed Patents as appropriate for an academic institution. Any such cooperation must be mutually agreed upon and reduced to writing. Licensee agrees that any such future cooperation requiring Florida Atlantic University facilities will be done only with the prior written approval of Florida Atlantic University and according to Florida Atlantic University’s standard policies relating to outside sponsored research including fees, use of facilities, and conflicts.

11.3 Licensee will cooperate with FAURC to assure that faculty and staff members of Florida Atlantic University associated in any way with Licensee resolve conflict of interest matters consistent with Florida Atlantic University policies. Licensee will respond in a timely manner to requests for information from Florida Atlantic University and FAURC regarding conflict of interest matters and allow formal reviews of conflict of interest matters two times each year. Licensee will not prevent Florida Atlantic University faculty or staff associated with Licensee from maintaining their employment responsibilities to Florida Atlantic University including a) their duty to assign inventions to Florida Atlantic University, b) their obligation to seek research funding, suitable for Florida Atlantic University, as part of the faculty and staff of Florida Atlantic University and c) their responsibility to publish the results of their research efforts in a timely manner.

11.4 Licensee agrees that intellectual property discovered by an employee of FAURC or Florida Atlantic University in the field in which such employee is engaged to do research, or made with FAURC or Florida Atlantic University support, is owned by FAURC or Florida Atlantic University.

Section 12. Miscellaneous.

12.1 This Agreement shall be construed in accordance with the laws of the State of Florida. If any provisions of this Agreement are or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the parties or this Agreement, those provisions shall be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement shall remain in full force and effect. If such a deletion is not so allowed, makes the remaining terms illogical, or changes substantially the meaning and intent of this Agreement, the parties agree to substitute new terms as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws and regulations. The parties hereto are independent contractors and not joint venturers or partners.
12.2. Licensee shall apply patent markings that meet all requirements of U.S. law, 35 U.S.C. §287, with respect to all Licensed Products sold by it subject to this Agreement, and shall require its Sublicensees to do likewise.

12.3. This Agreement constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing, except as provided for elsewhere in this Section 12, made prior to or at the signing hereof, shall vary or modify the written terms of this Agreement. Neither party shall claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

12.4. In the event the validity of any Licensed Patent is legally challenged, Licensee shall continue to pay royalties with respect to that patent as if such contest were not underway but if the patent is adjudicated invalid or unenforceable by a court from which there are no reasonable grounds for appeal then no royalties hereunder shall thereafter be required to be paid. During any period for which all Licensed Patents related to any Sales have been adjudicated invalid or unenforceable, but until such time as such adjudication is not subject to reasonable appeal, Licensee may deposit royalties associated with such Sales into an escrow account. If such Licensed Patents are adjudicated valid and enforceable then the amount deposited in the escrow account shall be immediately paid to FAURC. If such Licensed Patents are adjudicated invalid or unenforceable by a court from which there are no reasonable grounds for appeal then the amount deposited in the escrow account shall be returned to Licensee.

12.5. Licensee shall not encumber or otherwise grant a security interest in any of the rights granted hereunder to any third party.

12.6. To the extent allowed by Florida law, in the event of any litigation arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees, at the trial and all appellate levels and in any bankruptcy proceedings. Venue for any legal actions arising out of or in connection with this Agreement shall be solely in Palm Beach County, Florida. The parties waive trial by jury.

12.7. Counsel for both parties have participated in the preparation of this Agreement and therefore the Agreement shall not be construed against or in favor of either party based on which party's counsel was responsible for the drafting of the Agreement.


Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given at the earlier of the time when actually received as a consequence of any effective method of delivery, including but not limited to hand delivery, transmission by telecopier, addressed to the party for whom intended at the address below or at such changed address as the party shall have specified by written notice, provided that any notice of change of address shall be effective only upon actual receipt.

13.1. Florida Atlantic Research Corporation
Attn: President
777 Glades Road
Boca Raton, FL 33431
561-297-1165
561-297-2141 (fax)

with a copy to:

Legal Counsel
Florida Atlantic Research Corporation
777 Glades Road
Boca Raton, FL 33431
jludin@fau.edu
561-297-2131
561-297-2141 (fax)

13.2. Licensee

with a copy to:
Section 14. Contract Formation and Authority.

Each of FAURC and Licensee warrants and represents that the persons signing this Agreement on its behalf have authority to execute this Agreement and that the execution of this Agreement does not violate any law, rule or regulation applicable to it or any contract or other agreement by which it is bound.

Section 15. United States Government Interests.

It is understood that the United States Government (through any of its agencies or otherwise) or the Government of the State of Florida may have funded research during the course of or under which some of the inventions of the Licensed Patents may have been conceived or made. The United States Government and the government of the State of Florida are entitled, as a right, under the provisions of 35 U.S.C. §202-212 and applicable regulations of Title 37 of the Code of Federal Regulations and other federal and state regulations, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the inventions of such Licensed Patents for governmental purposes. Any license granted to Licensee in this Agreement shall be subject to such right, if any.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates indicated below.

FLORIDA ATLANTIC UNIVERSITY RESEARCH CORPORATION
___________________________________, President
(print name)
___________________________________ Date: ___________
(signature)

LICENSEE

________________________________________________________
(print name)                                                                                              (print title)
___________________________________ Date: ____________
(signature)

FAURC Ref: _____________________________________________
APPENDIX A
DEVELOPMENT PLAN

A development plan of the scope outlined below shall be submitted to FAURC by Licensee prior to the execution of this agreement. In general, the plan should provide FAURC with a summary overview of the activities that Licensee believes are necessary to bring products to the marketplace.

I. Development Program

A. Development activities to be undertaken

(Please break activities into subunits with the date of completion of major milestones)

1. 
2. 
3. 
4. 

B. Estimated total development time

II. Governmental Approval

A. Types of submissions required

B. Government agency, e.g., FDA, EPA, etc.

III. Proposed Market Approach

IV. Competitive Information

A. Potential competitors

B. Potential competitive devices/compositions

C. Known competitor’s plans, developments, technical achievements

D. Anticipated date of product launch

Total Length: approximately 2-3 pages
APPENDIX B
DEVELOPMENT REPORT

When appropriate, indicate estimated start date and finish date for activities.

A. Date Development Plan Initiated and Time Period Covered by this Report.

B. Development Report (4-8 paragraphs).
   1. Activities completed since last report including the object and parameters of the development, when initiated, when completed and the results.
   2. Activities currently under investigation, i.e., ongoing activities including object and parameters of such activities, when initiated, and projected date of completion.

C. Future Development Activities (4-8 paragraphs).
   1. Activities to be undertaken before next report including, but not limited to, the type and object of any studies conducted and their projected starting and completion dates.
   2. Estimated total development time remaining before a product will be commercialized.

D. Changes to Initial Development Plan (2-4 paragraphs).
   1. Reasons for change.
   2. Variables that may cause additional changes.

E. Items to be Provided if Applicable:
   1. Information relating to Licensed Products that has become publicly available, e.g., published articles, competing products, patents, etc.
   2. Development work being performed by third parties, other than Licensee, to include name of third party, reasons for use of third party, planned future uses of third parties including reasons why and type of work.
   3. Update of competitive information trends in industry, government compliance (if applicable) and market plan.
   4. Information and copies of relevant materials evidencing the status of any patent applications or other protection relating to Licensed Products or the Licensed Patents.

PLEASE SEND DEVELOPMENT REPORTS TO:
Office of Technology Transfer
Florida Atlantic University Research Corporation
777 Glades Road
Boca Raton, FL 33431
561-297-1165
561-297-2141 (fax)
APPENDIX C
FAURC ROYALTY REPORT

Licensee: __________________________ Agreement No. __________
Inventor: ____________________________________________

Period Covered: From date: / / Through date: / /

Prepared By: __________________________ Date: __________
Approved By: __________________________ Date: __________

If license covers several major product lines, please prepare a separate report for each line. Then combine all product lines into a summary report.

Report Type: [ ] Single Product Line Report:
[ ] Multiproduct Summary Report. Page 1 of _____ Pages
[ ] Product Line Detail. Line: __________ Trade name: __________ Page: __________

Report Currency: U. S. Dollars Other __________________________

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<th>Net Sales</th>
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Total Royalty: __________ Conversion Rate: __________ Royalty in U.S. Dollars: __$_$

Please provide the following by using a separate sheet of paper if necessary

1. Note any unusual occurrences that affected royalty amounts during this period.
2. Provide a non-binding royalty forecast for the next four (4) quarters for FAURC’s internal planning purposes only:
   Next Quarter: ________ Q2: ________ Q3: ________ Q4: ________
3. Indicate the reason for returns or other adjustments if significant.
4. To assist FAURC’s forecasting, please comment on any significant expected trends in sales volume.
APPENDIX D

Licensed Patents

Patents:

Patent Applications:

Trademark Applications: