

[FORM] EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT is made and entered into the [_____] day of [____], 200[_] (the "Effective Date") by and between the **GEORGIA TECH RESEARCH CORPORATION**, a nonprofit corporation organized and existing under the laws of the State of Georgia and having its principal offices at 505 Tenth Street, Atlanta, Georgia 30332-0415, (hereinafter "GTRC") and [____], a corporation existing under the laws of the State of [____] and having its principal offices at [_____] (hereinafter "Licensee").

W I T N E S S E T H:

WHEREAS, GTRC owns and wants to provide for the commercialization of a certain invention entitled ["_____"], which is the subject of GTRC Invention Disclosure number [_____] and U.S. Patent Application Number [_____] (hereinafter "Invention"); and

WHEREAS, GTRC has available to it, as of the Effective Date of this Agreement, certain know-how, technology, trade secrets, data, methods and other information related to the Invention (hereinafter "Know-how"); and

WHEREAS, Licensee wishes to utilize the Invention and Know-how (hereinafter, collectively "Technology") to develop, manufacture, and sell Products containing the Technology in the Field of Use; and

WHEREAS, GTRC, a nonprofit corporation, desires to have the Technology and Products related thereto developed and marketed at the earliest possible time in order that Products may be available for the public use and benefit.

NOW, THEREFORE, GTRC and Licensee in consideration of the foregoing and the mutual promises contained herein and intending to be legally bound hereby agree as follows:

1. **DEFINITIONS**

As used herein:

- 1.1 "Net Selling Price" shall mean the actual gross invoice price of Products Sold by Licensee and any approved sub-licensee, less only usual trade discounts actually allowed to unaffiliated persons or entities, sales tax which the Licensee or approved sub-licensee has to pay or absorb, customs duties and transportation and insurance charges, if included in the gross price, and any and all Federal, foreign, State or local taxes (except income tax) actually incurred by the Licensee or approved sublicensee, if applicable, on such Sales.
- 1.2 "Patent" shall mean any issued letters patent disclosing and claiming the Invention, including a reissued patent, a patent issuing from a continuation

application, divisional application or continuation-in-part application, and any corresponding foreign patent application relating thereto.

- 1.3 "Products" shall mean any method or product through which the Technology is commercialized and/or utilized by Licensee and any sublicensee.
- 1.4 "Proprietary Information" shall mean information and trade secrets owned or controlled by GTRC at any time during the term of this Agreement, which relate to the Inventions covered by the Patents, including but not limited to, invention records, research records and reports, engineering and technical data, designs, production specifications, processes, methods, procedures, facilities and Know-how.
- 1.5 "Sales", "Sell", or "Sold" shall mean any sale, transfer, lease, license, use, permission to use or other transfer of the right of possession or other conveyance by Licensee or any approved sublicensee.
- 1.6 "Territory" shall mean the world.
- 1.7 "Field of Use" shall [_____].

2. GRANT OF LICENSE

- 2.1 Subject to Paragraph 2.2 and the other terms of this Agreement, GTRC hereby grants to Licensee:
 - (i) an exclusive, nontransferable license, with the right of sublicense as set forth in Article 4 below, in and to the Invention to make, have made, sell, offer for sale, use, and import Products throughout the Territory in the Field of Use; and
 - (ii) a nonexclusive, nontransferable license, with the right of sublicense as set forth in Article 4 below, in and to Know-how to make, have made, sell, offer for sale, use, and import Products throughout the Territory in the Field of Use.
- 2.2 Notwithstanding anything to the contrary contained herein and pursuant to Public Laws 96-517, 97-256, 98-260, codified at 35 U.S.C. 200-212 (together with its corresponding regulations, the "Bayh-Dole Act"), the United States government retains for itself a non-exclusive, non-transferable, irrevocable, fully paid-up license to practice and have practiced the Invention on behalf of the United States government throughout the Territory. Furthermore, this Agreement and the license granted herein are expressly subject to all applicable United States government rights as provided by the Bayh-Dole Act and any regulations issued under the Act, as may be amended from time to time.

- 2.3 Licensee shall not export any Product or enter into any sublicense without fully and completely complying with any and all United States export or munitions control regulations and laws.
- 2.4 Any provision of this Agreement to the contrary notwithstanding, GTRC reserves an irrevocable, nonexclusive, royalty-free, nontransferable license to make and use the Technology for educational and research and development activities practiced by GTRC and Georgia Institute of Technology (hereinafter "GIT"), alone or with one or more not-for-profit third parties.
- 2.5 Any rights related to the Products not expressly granted to Licensee hereunder are reserved by GTRC.

3. CONSIDERATION

- 3.1 In consideration of the granting herein of the License as described in Article 2, Licensee shall pay GTRC:
- 3.1.1 [_____] U.S. Dollars (\$[_____]) within ten (10) days of the Effective Date of this Agreement;
- 3.1.2 the royalties as set forth below in Article 5; and
- 3.1.3 the patent costs associated with the licensed Invention, as set forth hereunder in Paragraph 11.1, including a total of \$_____ in patent expenses incurred prior to the date hereof. Such payment will be made within ninety (90) days of the Effective Date.

4. SUBLICENSES

- 4.1 Subject to this Article and Paragraph 2.3 above, Licensee may grant written sublicenses specifically approved in writing by GTRC, which approval shall not be unreasonably withheld, provided that each sublicense contains a provision that such sublicense and the rights thereby granted are personal to the sublicensee thereunder and such sublicense cannot be further assigned or sublicensed. Licensee agrees to deliver to GTRC a true and correct copy of each and every sublicense agreement entered into by Licensee within thirty (30) days after execution thereof, and shall promptly advise GTRC in writing of any modification (and supply same) or termination of each sublicense agreement.
- 4.2 Any sublicense granted pursuant to this Article shall be in accordance with and subject to the terms, conditions and limitations of this Agreement, including but

not limited to the same protection for GTRC's Proprietary Information and Indemnification protection set forth herein.

- 4.3 As provided in Paragraph 5.1 herein, royalties shall be payable by Licensee on all Products Sold by Licensee and any sublicensee, and such royalty payment provisions shall be included in all sublicenses.
- 4.4 In respect to any sublicense granted by Licensee in accordance with this Article, Licensee shall promptly pay to GTRC an amount equal to [____] percent ([____]%) of any one-time lump sum or other payment howsoever calculated (except for royalty payments which are covered in Paragraph 5.1 herein), made by the sublicensee thereunder in consideration for the grant of such sublicense to it by the Licensee.
- 4.5 Licensee acknowledges and agrees that (i) the use of a sublicense shall not relieve it of any of its obligations, duties or limitations under this Agreement; and (ii) any action or omission of a sublicense shall have the same consequence or effect as if such action or omission was Licensee's own.

5. ROYALTIES

- 5.1 Licensee shall pay GTRC royalties at the rate of [_____] percent ([_____]%) of the Net Selling Price of Products Sold by Licensee or any sublicensee under this Agreement. Notwithstanding anything contained herein Paragraph 5.1, Licensee shall have no obligation to pay GTRC royalties on Products Sold by Licensee or any sublicensee under this Agreement to the United States government.
- 5.2 All payments to GTRC under this Agreement shall be made in U.S. dollars at GTRC's address for notice. Such payments shall be paid to GTRC quarterly on a calendar year basis. Payment for Sales made during each quarter of each calendar year or portion thereof shall be made to GTRC within thirty (30) days after the last day of each quarter. March 31, June 30, September 30 and December 31 shall mark the end of each quarter. Licensee shall submit with each such quarterly payment a statement reflecting the total gross Sales by Licensee and all sublicensees, the Net Selling Price for each Product Sold by Licensee and all sublicensees and any applicable deductions under Paragraph 1.1 to calculate Net Selling Price.
- 5.3 Licensee shall pay all royalties due hereunder to GTRC and GTRC shall not be required to look to any other entity for payment.
- 5.4 The royalties on Sales that are made in currencies other than U.S. Dollars shall be made using the appropriate foreign exchange rate for such currency published in

the Wall Street Journal on the last day of the quarter for which royalties are due and payable.

5.5 If either party terminates this Agreement prior to the Agreement's expiration, any outstanding royalties through the date of termination shall be paid to GTRC within thirty (30) days of the non-terminating party's receipt of written notice of the termination.

5.6 All non-U.S. taxes or any other fees or duties related to royalty payments shall be made by Licensee and are not deductible from payments due GTRC.

6. ACCOUNTS

6.1 Not later than March 1 of each calendar year, Licensee shall furnish to GTRC a statement showing the Net Selling Price for each Product multiplied by the number Sold by Licensee and all sublicensees during the immediate preceding calendar year or portion thereof, and the royalties payable thereon calculated in the manner required in Article 5.

6.2 Licensee shall keep at its usual place of business, and require any sublicensee to keep at its place of business, true and particular accounts of all matters connected with the use of the Technology and the manufacture and Sale of all Products and shall keep books of account relating to royalties payable hereunder containing complete and accurate accounts in sufficient detail as may be necessary or proper for enabling the amount of such royalties to be conveniently ascertained, including but not limited to the necessary records to calculate Net Selling Price.

6.3 If requested in writing by GTRC, Licensee and any sublicensee of Licensee shall at all reasonable times during normal business hours permit GTRC representatives to make an examination and audit of all records required to be kept pursuant to Paragraph 6.2 hereof. Prompt adjustment shall be made for any errors disclosed by such examination. If said audit reveals underpayments to GTRC in excess of five percent (5%) of the payments made to GTRC by Licensee, Licensee will pay all costs associated with such audit or will reimburse GTRC for all costs associated with such audit within ten (10) days of receipt of notice from GTRC setting forth such costs.

7. IMPROVEMENTS

7.1 Should Licensee or any consultant or employee of Licensee during the term of this Agreement make or discover any improvement in connection with the **Invention**, whether patentable or not, which if practiced would constitute an infringement of any Patent, Licensee shall forthwith disclose or cause the same to

be disclosed to GTRC, and such improvement shall be deemed to be a part of the "Invention" and shall be subject to the terms hereof for the purpose of calculating royalties hereunder. The foregoing notwithstanding, Licensee shall own all right, title and interest in any such discovery or improvement. However, Licensee shall make available to GTRC and GIT any improvements it makes to the Invention and grants to GTRC and GIT an irrevocable, nonexclusive, royalty-free, nontransferable license to use the improvements throughout the world for educational and research and development purposes only. If so requested by GTRC, Licensee shall make available or supply to GTRC such information or data as is necessary or convenient for the proper understanding or use of such discovery or improvement.

- 7.2 If GTRC makes or discovers any improvement developed solely by [_____] in connection with the Invention, whether patentable or not, which if practiced would constitute an infringement of any Patent, GTRC shall, subject to the pre-existing rights of any third party and the applicable export or munition control regulations and laws of the United States, forthwith disclose or cause the same to be disclosed to Licensee. Any such improvement shall belong to and be the sole and exclusive property of GTRC, and any patent will be filed in the name of GTRC. If Licensee elects to bear the costs of prosecuting such applications for letters patent or equivalent protection and maintaining the letters patent issuing from such applications, such improvement shall be deemed to be included in the term "Invention" and to be included in this Agreement and be subject to the terms hereof and any application for letters patent or other equivalent protection made in respect thereof shall be treated as if it were included in the term "Patent". In the event Licensee elects not to bear such costs, such improvement shall not be included in the term "Invention" and shall not be included in this Agreement.

8. CONFIDENTIALITY

- 8.1 Licensee shall not disclose any Proprietary Information pertaining to the Technology other than to Licensee employees who must have access to such Information in order to carry out Licensee's obligations under this Agreement and to potential sublicensees of the Technology, provided such disclosure is in accordance with Paragraph 8.3 hereof. Prior to disclosure of Proprietary Information to Licensee employees, such employees shall be under a written obligation of confidentiality to Licensee at least as restrictive as the provisions contained herein. Notwithstanding any state or federal law governing Trade Secrets, all Proprietary Information shall be maintained in confidence by Licensee for the longer of: 1) three (3) years from the expiration of the original term of this Agreement, or 2) the expiration of all Patents related to the Invention.

- 8.2 To protect GTRC's Proprietary Information, Licensee shall adopt security measures commonly observed in industries that rely on Proprietary Information. These measures shall include, but are not limited to, restricted access to such information, marking such information as confidential or proprietary, and the selective destruction of sensitive materials. Upon termination of this Agreement, Licensee shall return or destroy all documents or materials embodying GTRC Proprietary Information.
- 8.3 Any disclosure of Proprietary Information by Licensee to potential sublicensees of the Technology shall be prohibited, unless such potential sublicensee has signed an agreement which imposes obligations of confidentiality and nonuse at least as restrictive as those imposed on Licensee hereunder.
- 8.4 Proprietary Information does not include information which:
- a. is published or is otherwise in the public domain through no fault of the receiving party; or
 - b. prior to disclosure hereunder, can be demonstrated by the receiving party to have been in its possession prior to receipt under this Agreement; or
 - c. is properly obtained by the receiving party without restriction from a third party; or
 - d. is independently developed by or for the receiving party without reliance, direct or indirect, on such information; or
 - e. is disclosed by the receiving party to a third party with the written approval of the disclosing party.
- 8.5 If Licensee or any approved sublicensee is required by any governmental agency, court or other quasijudicial or regulatory body to provide Proprietary Information received under this Agreement, Licensee or any approved sublicensee shall not be liable for such disclosure provided that the Licensee or any approved sublicensee, as promptly as reasonably possible, gives notice to GTRC of the requirement in order that GTRC may contest the requirement to provide such information, or seek an appropriate protective order or other remedy with respect to such disclosure.
- 8.6 Licensee expressly acknowledges and agrees that GTRC would be irreparably harmed by any breach of this Article 8, that monetary damages would not be an adequate remedy to compensate GTRC for any breach of this Article 8 and that injunctive relief, both on a preliminary and permanent basis, would be appropriate remedy to prevent or curtail any disclosure of GTRC Proprietary Information.

9. INITIAL DEVELOPMENT AND FULL USE OF TECHNOLOGY

- 9.1 As soon as reasonably practicable after the Effective Date of this Agreement, but not later than [_____] (_____) months after the Effective Date hereof, Licensee shall take reasonable steps to meet the requirements of the market by developing, marketing and offering for Sale Products in sufficient quantities to meet a reasonable commercial demand. Licensee agrees to meet the milestones set forth in Appendix A attached hereto. In the event that Licensee fails to meet the milestones set forth in Appendix A hereto, GTRC shall have the option in its sole discretion to terminate the license granted hereunder, to allow this Agreement to continue in full force and effect, or to convert the license granted hereunder to a nonexclusive license upon written notice to Licensee.
- 9.2 Should GTRC not receive at least [_____] U.S. Dollars (\$_____) in royalty payments from Licensee under the Agreement within [_____] (_____) months from the Effective Date of this Agreement and should GTRC not receive at least [_____] U.S. Dollars (\$[_____] in royalty payments during each twelve (12) month period thereafter, GTRC shall have the option in its sole discretion to terminate the license granted hereunder, to allow this Agreement to continue in full force and effect, or to convert the license granted hereunder to a nonexclusive license effective immediately upon written notice to Licensee.
- 9.3 Licensee shall provide written bi-annual reports within thirty (30) days of the end of each six (6) month period (starting six (6) months from the Effective Date) detailing the progress made to bring the Invention licensed hereunder to market. No further reports will be required after notification of the first Sale of a Product.

10. CONSULTING

- 10.1 Any use of GIT personnel as consultants shall be on a noninterfering basis with normal GIT activities. Licensee shall make independent arrangements with GIT to assure noninterference. Compensation and travel reimbursement are to be paid directly to consultants by Licensee. The relationship between Licensee and its consultants, including any GIT personnel, shall be outside the scope of this Agreement, except that such consulting agreements shall not under any circumstances grant Licensee rights to any GIT/GTRC intellectual property, or violate any GIT personnel's employment agreement with GIT.

11. PROTECTION OF INTELLECTUAL PROPERTY

- 11.1 GTRC, in consultation with Licensee, shall file any and all patent applications, trademark registrations or copyright registrations (hereinafter "Intellectual Property Protection"), domestic and/or foreign, in GTRC's name, which GTRC shall determine, in its sole discretion are necessary to protect the Invention and/or improvements to the Invention licensed hereunder. Licensee shall reimburse

GTRC for all out-of-pocket fees, costs and expenses paid or incurred by GTRC in filing Intellectual Property Protection herein. Notwithstanding the above, Licensee will have the right to file in its own name such applications and registrations on its own improvements, as provided in Paragraph 7.1 hereof.

- 11.2 If future patent, trademark or copyright protection is obtained for the Invention and/or improvements to the Invention included under this Agreement, Licensee shall cooperate with GTRC in enforcing or policing such protection as provided in Article 12 herein and by taking all reasonably appropriate measures including marking trade secrets and other Proprietary Information as required and taking other reasonable measures as mutually agreed to by GTRC and Licensee.
- 11.3 If, at any time during the term of this Agreement, Licensee elects to abandon its right in any pending Intellectual Property Protection or any patent, trademark or copyright issued thereon, either domestic or foreign, it shall notify GTRC of that decision at least two (2) months prior to any deadline for filing any response or taking any other action necessary to maintain any such Intellectual Property Protection. Thereafter, GTRC shall have the right and option to take over the sole and exclusive responsibility for the prosecution of any such Intellectual Property Protection and/or the maintenance of any such patent, trademark or copyright solely at GTRC's expense and in such an event Licensee shall immediately forfeit all rights, including all intellectual property rights, of Licensee in and to the Technology granted under this Agreement, and such rights shall immediately revert to GTRC. In the event that Licensee fails to reimburse GTRC timely for any out-of-pocket fees, costs and expenses paid or incurred by GTRC in connection with the filing for Intellectual Property Protection herein, GTRC shall have in its sole discretion the option to abandon any applications or registrations. No action taken by GTRC or election by Licensee not to act under this Paragraph 11.3 shall relieve Licensee of any obligations owed by Licensee to GTRC which arose prior to the date of GTRC's action hereunder or Licensee's election not to act.

12. NOTICE OF INFRINGEMENT AND ENFORCEMENT OF RIGHTS

- 12.1 Immediately upon Licensee's learning of any infringement, misappropriation or other unauthorized use of GTRC's Proprietary Information, and/or Patents, copyrights or trademarks pertaining to GTRC's Technology licensed hereunder (hereinafter "Intellectual Property Rights"), Licensee shall promptly inform GTRC. If Licensee or GTRC decides to pursue enforcement of GTRC's Intellectual Property Rights, such party shall notify the other party.
- 12.2 If Licensee and GTRC agree to jointly pursue enforcement of GTRC's Intellectual Property Rights, then the parties hereto shall share equally all costs, fees and/or

expenses incurred in connection with enforcement of GTRC's Intellectual Property Rights, provided only that GTRC's maximum exposure for such costs, fees and expenses shall be the amount of royalties paid and/or payable to GTRC by Licensee hereunder. Any payments accruing from such action to enforce GTRC's Intellectual Property Rights shall be paid to Licensee and GTRC in proportion to the parties' respective contributions to all costs, fees and/or expenses incurred in such action.

- 12.3 In the event that either party shall determine, for any reason, that it does not choose to pursue enforcement of GTRC's Intellectual Property Rights, then that party shall promptly notify the other party of such decision. The party choosing to pursue enforcement of GTRC's Intellectual Property Rights may then proceed with such enforcement action solely at its own expense and any and all recoveries shall be awarded solely and exclusively to that party.
- 12.4 In the event that GTRC chooses to enforce its Intellectual Property Rights and Licensee chooses to not participate in such enforcement action, Licensee, nevertheless, agrees to cooperate in the prosecution of such action by making available to GTRC records, information, evidence and testimony by employees of Licensee relevant to the substantial infringement of the Intellectual Property Rights.

13. INDEMNITY

- 13.1 Licensee hereby indemnifies and holds harmless GTRC, GIT, and the Board of Regents of the University System of Georgia, and their employees, officers, board members and agents (hereinafter "Indemnitees") from and against all claims, suits, liabilities, damages, costs, fees, including, without limitation, attorneys' fees, expenses or losses arising out of or resulting from Licensee's performance of this Agreement, including, but not limited to, any third-party claims against Indemnitees for patent, copyright, and/or trademark infringement and/or patent interference, any claims based on negligence, omission, or misconduct of Licensee, any permitted sublicensee or any employees, agents or representatives of Licensee, and any claims based on death or injury to any person and damage to any property arising from the possession, use or operation of Products produced or Sold by Licensee or its sublicensees or their customers in any manner whatsoever.

14. DISCLAIMER, WARRANTY AND LIMITATION OF LIABILITY

14.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GTRC DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE TECHNOLOGY, INCLUDING ITS CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE AND NONINFRINGEMENT.

14.2 IN NO EVENT SHALL GTRC BE LIABLE FOR ANY USE BY LICENSEE OF THE TECHNOLOGY OR ANY LOSS, CLAIM, DAMAGE OR LIABILITY, OF WHATSOEVER KIND OR NATURE, WHICH MAY ARISE FROM OR IN CONNECTION WITH LICENSEE'S PERFORMANCE UNDER THIS AGREEMENT.

14.3 GTRC SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. GTRC'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND THE LICENSE GRANTED HEREIN SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY GTRC FROM LICENSEE UNDER THIS AGREEMENT.

15. REPRESENTATIONS

15.1 GTRC represents that it has full right, power and authority to enter into this Agreement and to grant all of the right and interest in the Patent and Invention.

15.2 GTRC represents that it has no actual knowledge, at the time of execution of this Agreement, that the Invention infringes any U.S. or foreign patent or copyright rights owned or controlled by any third party. And while GTRC may have searched and reviewed some prior art to determine whether or not to apply for a letter patent but not for patentability of the Technology, and would be willing to share the results of such searches with Licensee upon Licensee's written request, Licensee understands and acknowledges that it is Licensee's sole responsibility to perform their own prior art searches.

- 15.3 GTRC represents that it has no actual knowledge, at the time of execution of this Agreement, that any third party would infringe any patent claims of the Invention, now pending.
- 15.4 Licensee represents and warrants that it currently has insurance that covers all contractually assumed liabilities, including any liabilities assumed under this Agreement.
- 15.5 Licensee represents and warrants that any Products made or Sold pursuant to this Agreement shall comply with all applicable federal and state law regulations, including but not limited to regulations of the Food and Drug Administration, the Environmental Protection Agency and their state equivalents.

16. TRADEMARK

- 16.1 Except for the purposes of identifying the Invention or Know-how, no right, title, interest or license to any trademark or service mark, is granted to Licensee.

17. INSURANCE

- 17.1 Licensee shall during the term of this Agreement maintain in full force and effect insurance policies for product liability and contractually assumed liabilities in the amount of [_____] U.S. Dollars (\$[____]) and shall each year provide to GTRC evidence of such policies. If requested by GTRC, such insurance policies shall name GTRC as an additional insured.

18. RELATIONSHIP BETWEEN GTRC AND LICENSEE

- 18.1 GTRC and Licensee are and shall remain independent contractors and nothing herein shall create a partnership or joint venture between GTRC and Licensee.

19. MARKING OF PRODUCTS

- 19.1 Licensee shall, at its own cost, suitably mark or cause to be marked all containers and packages of any Product manufactured and Sold pursuant to this Agreement and shall fix or cause to be fixed on some conspicuous part of every such Product where appropriate, a stamped plate or other method of marking containing the following "manufactured under license from Georgia Tech Research Corporation, U.S.A." and the relevant U.S. Patent Number or Patent Pending, whichever is appropriate.

20. ADVERTISING, PUBLICITY AND PUBLICATIONS

- 20.1 Except as otherwise provided herein, Licensee shall not use the names of Georgia Tech Research Corporation, the Georgia Institute of Technology, Georgia Tech, the Georgia Tech Foundation or any of their respective affiliates or divisions in any advertisement or sales materials without the prior written consent of GTRC.
- 20.2 In any publication (including advertisements, sales and trade literature and instruction manuals) relating to the Invention used pursuant to this Agreement, Licensee shall, where practical, give due credit to GTRC, as owner and licensor and in the case of professional journals, trade publications and editorials to [____], as Inventor(s) of the Invention.
- 20.3 GTRC, the Inventor(s), and Licensee shall have the right to publish papers and other scholarly materials on the Invention or Know-how in the appropriate literature. Such publication shall in no event disclose proprietary or confidential information of the other party. GTRC and GIT may catalog and place such publications in the GIT library. Licensee and GTRC shall be provided copies of such materials related to the Invention or Know-how prior to publication, and shall have sixty (60) days from receipt thereof to review the materials and require changes for purposes of protecting such information.

21. TERM AND TERMINATION

- 21.1 This Agreement shall commence on the Effective Date of this Agreement and shall continue until the expiration of the last expiring patent covering any of the Invention or Know-how licensed hereunder. Notwithstanding the foregoing, the obligations of the parties under Articles 5, 6, 8, 12, 13, 14, 20 and 21 shall survive any termination of this Agreement.
- 21.2 In the event of the breach of a material obligation hereunder by either party, other than a failure by Licensee to pay amounts due under this Agreement the non-breaching party shall inform the alleged breaching party of said breach in writing. The alleged breaching party shall have thirty (30) days from the date of said notification during which time to cure the breach. In the event the alleged breaching party does not cure the breach within thirty (30) days, the non-breaching party may terminate the Agreement upon written notification to the alleged breaching party. In the event GTRC terminates the Agreement, all right, title and interest in any discovery or improvement in connection with the Invention or Know-how owned by Licensee as provided in Paragraph 7.1 hereof shall automatically be assigned, transferred and conveyed to GTRC with out any action by Licensee or GTRC.

- 21.3 Licensee shall, within ten (10) days of expiration or termination of this Agreement for any reason, deliver to GTRC all written documentation in the possession of Licensee which contains Proprietary Information pertaining to the Invention or Know-how. Licensee shall also certify in writing that all documentation in its possession containing GTRC Proprietary Information has been delivered to GTRC.
- 21.4 In the event that Licensee becomes bankrupt or insolvent and/or if the business of Licensee is placed in the hands of a receiver, assignee or trustee for the benefit of creditors, whether by the voluntary act of Licensee or otherwise, then (1) Licensee shall immediately notify GTRC, (2) the license granted under this Agreement shall automatically become non-exclusive effective immediately upon the giving of such notice, (3) all right, title and interest in any discovery or improvement in connection with the technology owned by Licensee as provided in Paragraph 7.1 hereof shall automatically be assigned, transferred and conveyed to GTRC without any action by Licensee or GTRC, and (4) GTRC shall have the right to terminate this Agreement by giving written notice to Licensee. If this Agreement is terminated by GTRC, termination shall be effective immediately upon GTRC's giving written notice to Licensee.
- 21.5 In the event that Licensee fails to pay GTRC any amounts due within sixty (60) days of the due date under Articles 3, 4, 5, or 11 above, GTRC shall have the right, in its sole discretion, either to terminate this Agreement immediately upon giving written notice to Licensee, or to unilaterally change the license set forth in Article 2 above to a non-exclusive license immediately upon giving written notice to Licensee. Any such action shall not release Licensee from any obligations of Licensee to GTRC which arose or accrued prior to the date such action is taken. In the event GTRC exercises its rights hereunder, all right, title and interest in any discovery or improvement in connection with the Invention owned by Licensee as provided in Paragraph 7.1 hereof shall automatically be assigned, transferred and conveyed to GTRC without any action by Licensee or GTRC.

22. NOTICES

- 22.1 All notices required or permitted under this Agreement shall be in writing and shall be delivered personally, by courier, by facsimile transmission or sent by certified registered mail to Licensee or GTRC at the addresses set forth below:

GTRC:

GEORGIA TECH RESEARCH CORPORATION
Georgia Institute of Technology
505 Tenth Street

Atlanta, Georgia 30332-0415
Attn: Director, Technology Licensing

LICENSEE:

COMPANY

Attn:

23. **WAIVER**

23.1 Waiver by either party of any term or provision of this Agreement shall not constitute a continuing waiver thereof nor of any further or additional rights such party may hold under this Agreement.

24. **SEVERABILITY**

24.1 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

25. **GOVERNING LAW**

25.1 This Agreement shall be construed in accordance with the substantive laws of the State of Georgia, U.S.A. (without giving effect to any provisions thereof concerning choice of law).

26. **ENTIRE AGREEMENT**

26.1 This Agreement is the complete and exclusive statement between the parties relating to the subject matter hereof, and supersedes all prior understandings, communications, or representations, either oral or written, between the parties. This License Agreement may not be modified or altered except by a written instrument duly executed by Licensee and GTRC.

27. **CUMULATIVE RIGHTS**

27.1 Unless expressly stated to the contrary elsewhere in this Agreement, all rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative and not restrictive of those given by law.

28. **HEADINGS**

28.1 Article and Paragraph headings have been inserted herein for convenience of reference only and shall in no way modify or restrict any of the terms or provisions of this Agreement.

29. ASSIGNMENT

29.1 Subject to this Paragraph, the License is personal to Licensee and may be assigned on the sale of substantially all of the business or assets of the product line using the Invention. In the event that Licensee seeks to assign this Agreement, Licensee shall pay an assignment fee to GTRC of _____ dollars (\$_____ U.S.). It is expressly understood by the parties that the License may be assigned to the Georgia Institute of Technology or the Board of Regents of the University System of the State of Georgia. Except as otherwise agreed herein, this Agreement may not be assigned by either party without the prior written consent of the other.

30. SUCCESSORS AND ASSIGNS

30.1 This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but nothing contained herein shall be deemed to permit assignment by either party except as otherwise permitted in this Agreement.

31. INTERPRETATION

31.1 In the interpretation of this Agreement, words importing the singular or plural number shall be deemed to import the plural and singular number respectively, words denoting gender shall include all genders and references to persons shall include corporations or other bodies and vice versa.

32. FORCE MAJEURE

32.1 Neither party shall be held in breach of this Agreement because of acts or omissions caused by any act of God or other cause beyond the control of the parties, including, but not limited to, fire, floods, labor disputes, or other unforeseen circumstances.

IN WITNESS WHEREOF, the parties have set their hands and seals and duly executed this Agreement effective as of the date first above written.

GEORGIA TECH RESEARCH CORPORATION

COMPANY

By: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

By: _____

Typed Name: _____

Title: _____

Date: _____

Typed Name: _____

Title: _____

Date: _____

APPENDIX A
MILESTONES