



MASTER REAGENT AGREEMENT

between

EMORY UNIVERSITY

and

[INSERT COMPANY NAME]

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THIS MASTER REAGENT AGREEMENT is made and entered into as of _____, (the "Effective Date") by and between EMORY UNIVERSITY, a nonprofit Georgia corporation with offices located at 1599 Clifton Road NE, 4th Floor, Mailstop 1599/001/1AZ Atlanta, Georgia 30322, ("EMORY") and _____, a _____ corporation having a principal place of business located at _____ ("COMPANY").

WHEREAS, EMORY is the assignee of all right, title, and interest in research materials developed by employees of EMORY (the "Materials") and is responsible for the protection and commercial development of the same; and

WHEREAS, EMORY has developed certain Materials more specifically identified in Attachment A of the Individual License(s); and

WHEREAS, COMPANY wishes to obtain certain rights to pursue the development and commercialization of the Materials; and

WHEREAS, EMORY wants to have such Materials developed, commercialized, and made available in commerce for use by the public and wishes to grant COMPANY rights to pursue the same in accordance with the terms and conditions of the Agreement; and

WHEREAS, COMPANY represents that it has the necessary expertise and will, as appropriate, acquire the necessary resources to fully develop and commercialize the Materials; and

NOW, THEREFORE, for and in consideration of the mutual covenants and the premises herein contained, the parties, intending to be legally bound, hereby agree as follows.

ARTICLE 1. EFFECT

1.1 From time to time, EMORY may determine, at its sole discretion, to offer to COMPANY licenses to certain Materials. In order to benefit both parties by reducing the transaction costs of negotiating such licenses, EMORY and COMPANY hereby agree that certain licensing offers for Materials made to COMPANY by EMORY during the term of this Master Agreement shall be subject to the terms and conditions of an Individual License, as defined herein, which will make specific reference to the existence of this Master Agreement, and which will be negotiated between the parties in each instance; and EMORY and COMPANY further agree that each and every term and condition set forth in Articles 2 through 15 of this Master Agreement will be deemed incorporated into each Individual License by reference. EMORY and COMPANY hereby agree that the terms and conditions attached to each and

every Individual License and those of this Master Agreement, whenever possible, will be construed not to be in conflict; and if such construction is not possible, the terms and conditions set forth in this Master Agreement shall control unless the Individual License expressly states that overriding a particular conflicting term of the Master Agreement is the mutual intention of the parties.

1.2 This Master Agreement shall remain in force unless otherwise terminated by operation of law or by mutual agreement as set forth below. Individual Licenses which were executed during the term of this Master Agreement shall remain in force until the date specified in an Individual License or until terminated by one or both of the parties in accordance with Article 10 hereunder.

1.3 The terms and conditions of Articles 2 through 15 of this Master Agreement shall have no force or effect independent of an Individual License into which it is incorporated by reference.

ARTICLE 2. DEFINITIONS

The following terms as used herein shall have the following meaning:

2.1 "Affiliate" shall mean any corporation or non-corporate business entity which controls, is controlled by, or is under common control with a party to this Agreement. A corporation or non-corporate business entity shall be regarded as in control of another corporation if it owns, or directly or indirectly controls, at least fifty (50%) percent of the voting stock of the other corporation, or (i) in the absence of the ownership of at least fifty (50%) percent of the voting stock of a corporation or (ii) in the case of a non-corporate business entity, or non-profit corporation, if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or non-corporate business entity, as applicable.

2.2 "Agreement", "Master Agreement" or "License Agreement" shall mean this Agreement, including all Appendices and any Individual License(s) referencing this Agreement.

2.4 "Dollars" shall mean United States dollars.

2.5 "Field of Use" shall have the meaning set forth in the Individual License, but in all cases is limited to the field of non-clinical research, which expressly excludes any use involving the administration of Materials and/or Licensed Products to humans.

2.6 "Indemnitees" shall mean the Inventors and EMORY, its directors, officers, employees and students, and their heirs, executors, administrators, successors and legal representatives.

2.7 "Individual License" shall mean a research materials license for a specified Material that (i) incorporates by reference this Master Agreement, (ii) includes information which describes with

particularity the Materials, including the names of the Inventors, and the name and chemical and/or biological identity of each Material, and the corresponding Licensed Technology, and (iii) include such payment terms as have been mutually agreed to by the parties. An Individual License may describe and cover multiple Materials and the corresponding Licensed Technology, or may be limited to a single Material and to the corresponding Licensed Technology.

2.8 "Inventors" means those employees of Emory expressly identified in the Individual License.

2.9 "Licensed Patents" shall mean the patent applications identified in the Individual License, if applicable, together with any and all substitutions, extensions, divisionals, continuations, continuations-in-part (to the extent that the claimed subject matter of such continuations-in-part are disclosed and enabled in the parent Licensed Patent patent application and are not obligated to a third party), and foreign counterparts of such patent applications, and patents which issue thereon anywhere in the world, including reexamined and reissued patents.

2.10 "Licensed Product(s)" shall mean any product in the Field of Use (including the Materials themselves) that embodies, contains, comprises, uses, is used or made through the use of, or was in whole or in part derived from the Licensed Technology.

2.11 "Licensed Technology" shall mean the information and trade secrets relevant to the making and use of the Materials, all formulations, designs, technical information, know-how, knowledge, data, specifications, test results and other information, whether or not patented or patentable ("Know-How"), which are known, learned, invented, or developed by the Inventors as of the Execution Date to the extent that (i) such Know-How is required for the manufacture, use, development, testing, marketing (including, but not limited to, peptide sequences or epitopes), export, import, offer for sale, or sale of any Licensed Product and (ii) EMORY possesses the right to license the use of such Know-How to COMPANY for commercial purposes.

2.12 "Licensed Territory" means the world.

2.13 "Net Selling Price" of Licensed Products shall mean the gross selling price paid by a purchaser of a Licensed Product to COMPANY or an Affiliate of COMPANY, or any other party authorized by COMPANY to sell Licensed Products less the following discounts: (a) customary trade, quantity and cash discounts actually allowed and taken; (b) credits actually given for rejected or returned Licensed Products; (c) freight and insurance costs, if separately itemized on the invoice paid by the purchaser; and (d) excise taxes and customs duties included in the invoiced amount. Where a Sale is deemed consummated by a gift, use, or other disposition of Licensed Products for other than a selling price stated in cash, the term "Net Selling Price" shall mean the average gross selling price billed by

COMPANY in consideration of the Sale of comparable Licensed Products during the three (3) month period immediately preceding such Sale, without reduction of any kind. If no Sales of Licensed Products have occurred in the preceding three (3) months, then the parties shall, in good faith, negotiate the cash value of such Sale. In the event that the parties cannot agree on the Net Selling Price within thirty (30) days of beginning such negotiations, the Net Selling Price shall be determined by a mutually agreeable qualified appraiser. Notwithstanding the foregoing in this Section 1.13, amounts received by COMPANY or its Affiliates for the Sale of Licensed Products among COMPANY and its Affiliates for resale shall not be included in the computation of Net Selling Price hereunder.

2.14 "Sale" or "Sold" shall mean the sale, transfer, exchange, or other disposition of Licensed Products, whether by gift or otherwise, by COMPANY, its Affiliates, or any third party authorized by COMPANY to make such sale, transfer, exchange or disposition including, but not limited to, the use of Licensed Products by COMPANY, or any other person or entity authorized to use Licensed Products by COMPANY. Sales of Licensed Products shall be deemed consummated upon the first to occur of: (a) receipt of payment from the purchaser; (b) delivery of Licensed Products to the purchaser or a common carrier; (c) release of Licensed Products from consignment; (d) if deemed Sold by use, when first put to such use; or (e) if otherwise transferred, exchanged, or disposed of, whether by gift or otherwise, when such transfer, exchange, gift, or other disposition occurs.

ARTICLE 3. GRANT OF LICENSE

3.1 **License.** EMORY hereby grants COMPANY and its Affiliates a license, the level of exclusivity of which is stated with particularity in the Individual License, under its rights in and to the Materials and Licensed Technology to make, sell, offer to sell, and import the Licensed Products, but only in the Field of Use and without the right to sublicense, for the term of this Master Agreement, unless sooner terminated according to the conditions and terms hereof.

3.2 **Government Rights.** The license granted in Section 3.1 above may be conditional upon and subject to the U.S. Government licenses and other rights retained by the United States in inventions developed by nonprofit institutions with the support of federal funds. These rights are set forth in 35 USC §201 et seq. and 37 CFR 401 et seq., which may be amended from time to time by the Congress of the United States or through administrative procedures. If the United States government should take action which renders it impossible or impractical for EMORY to grant the rights and license granted herein to COMPANY under this Master Agreement or otherwise perform EMORY's obligations under this Master Agreement, EMORY or COMPANY may terminate this Master Agreement immediately by notice to the other party.

3.3 Retained License. The license granted in Section 3.1 above is further conditional upon and subject to a right and license retained by EMORY, on behalf of itself and EMORY research collaborators, to make, use, and transfer Licensed Products and practice Licensed Technology for research and educational purposes.

3.4 No Implied License. The license and rights granted in this Master Agreement shall not be construed to confer any rights upon COMPANY by implication, estoppel, or otherwise as to any technology not specifically identified in this Master Agreement as Material or Licensed Technology.

ARTICLE 4. CONSIDERATION FOR LICENSE

4.1 License Fee. In consideration for the license granted hereunder, during the term of this Master Agreement COMPANY shall pay to EMORY the payments the running royalties on Sales of each Licensed Products and other consideration as set forth in the Individual License.

4.2 Tax Payments. All payments made to EMORY under this Article 4 of this Master Agreement shall be made free and clear of any tax, withholding or other governmental charge or levy (other than taxes imposed on the net income of EMORY), all such non-excluded amounts being "Taxes." Should the COMPANY be obligated by law to withhold any Taxes on such payments, the payment due hereunder shall be increased such that after the withholding of the appropriate amount EMORY receives the amount that would have been paid but for the Taxes withheld. Should EMORY be obligated to pay such Taxes, and such Taxes were not satisfied by way of withholding, COMPANY shall promptly reimburse EMORY for such payment, in an amount such that after the payment of the Taxes, EMORY has received the same amount that it would have received had such Taxes not been payable.

ARTICLE 5. REPORTS AND ACCOUNTING

5.1 Royalty Reports. During the term of this Agreement, COMPANY shall furnish, or cause to be furnished to EMORY, written reports governing each of COMPANY and COMPANY'S Affiliates fiscal quarters showing:

(i) the gross selling price and the number of units of all Licensed Products (identified by product number/name) Sold by COMPANY and its Affiliates, in each country of the Licensed Territory during the reporting period, together with the calculations of Net Selling Price in accordance with Section 2.13; and

- (ii) the royalties payable in Dollars, which shall have accrued hereunder in respect to such Sales; and
- (iii) the exchange rates, if any, in determining the amount of Dollars; and
- (iv) the occurrence of any event triggering any other payment in accordance with the provisions of the Individual License.

Reports shall be made quarterly, being due within thirty (30) days of the close of every COMPANY fiscal quarter. COMPANY shall keep accurate records in sufficient detail to enable royalties and other payments payable hereunder to be determined. COMPANY shall be responsible for all royalties and late payments that are due to EMORY that have not been paid by COMPANY'S Affiliates.

5.2 Records. During the term of this Agreement and for a period of three (3) years thereafter, COMPANY shall keep at its principal place of business true and accurate records of all Sales in accordance with generally accepted accounting principles in the respective country where such Sales occur and in such form and manner so that all royalties owed to EMORY may be readily and accurately determined. COMPANY shall furnish EMORY copies of such records upon EMORY's request, which shall not be made more often than once in each COMPANY fiscal year.

5.3 Right to Audit. EMORY shall have the right, upon prior notice to COMPANY, not more than once in each COMPANY fiscal year and once in the calendar year immediately following termination of the Agreement, through an independent certified public accountant selected by EMORY, to have access during normal business hours of COMPANY as may be reasonably necessary to examine the records of COMPANY to include, but not be limited to, invoice registers, sales analysis reports, original invoices, inventory records, price lists, distributor agreements, accounting general ledgers, and tax returns, in order to verify the accuracy of the of the calculation of any payment due under this Agreement. If such independent public accountant's report shows any underpayment of royalties by COMPANY or its Affiliates, within thirty (30) days after COMPANY'S receipt of such report, COMPANY shall remit to EMORY:

- (i) the amount of such underpayment; and
- (ii) if such underpayment exceeds five (5%) percent of the total royalties owed for the fiscal year then being reviewed, the reasonably necessary fees and expenses of such independent public accountant performing the audit. Otherwise, EMORY's accountant's fees and expenses shall be borne by EMORY.

ARTICLE 6. PAYMENTS

6.1 Payment Due Dates. Royalties and fees payable to EMORY as a result of activities occurring during the period covered by each royalty report provided for under Article 4 of this Agreement shall be due and payable on the date such royalty report is due. Payments of royalties in whole or in part may be made in advance of such due date. All other payments required under this Agreement, if not specified otherwise in this Agreement, shall be payable within thirty (30) days of the due date for each payment. All payments due to EMORY under this Agreement shall be made in person or via the United States mail or private carrier to the following address:

Emory University
Attn: Director, Office of Technology Transfer
1599 Clifton Road, 4th Floor
Mailstop 1599/001/1AZ
Atlanta, Georgia 30322
Facsimile: (404) 727-1271
Email: ott-legal@emory.edu

Any payment in excess of one hundred thousand (\$100,000.00) dollars or originating outside of the United States shall be made by wire transfer to an account of EMORY designated by EMORY from time to time and royalty reports shall be sent by facsimile or express courier to the Director, Office of Technology Transfer on the same date.

6.2 Currency Conversion. Except as hereinafter provided in this Section 5.2, all royalties shall be paid in Dollars. If any Licensed Products are Sold for consideration other than Dollars, the Net Selling price of such Licensed Products shall first be determined in the foreign currency of the country in which such Licensed Products are Sold and then converted to Dollars at a ninety (90)-day trailing average published by the Wall Street Journal (U.S. edition) for conversion of the foreign currency into Dollars on the last day of the quarter for which such payment is due.

6.3 Interest. Royalties and other payments required to be paid by COMPANY pursuant to this Agreement shall, if overdue, bear interest until payment at a per annum rate of ten percent (10%). The payment of such interest shall not foreclose EMORY from exercising any other rights it may have because any payment is overdue.

ARTICLE 7. DILIGENCE AND COMMERCIALIZATION

7.1 Diligence and Commercialization. COMPANY shall use its best efforts, either directly or through Affiliates, throughout the term of this Agreement to bring Licensed Products to market through a thorough, vigorous, and diligent program for exploitation of the right and license granted in this Agreement to COMPANY and to create, supply, and service in the Licensed Territory as extensive a market as reasonably possible. For purposes of this Agreement, “best efforts” shall mean that COMPANY shall use reasonable efforts consistent with those used by comparable life science companies in the United States in research and development projects for methods or compositions deemed to have commercial value comparable to the Licensed Products.

ARTICLE 8. LIMITED WARRANTY AND EXCLUSION OF WARRANTIES

8.1 Limited Warranty. EMORY represents and warrants that it has the right and authority to enter into this Agreement and that, to the best of its knowledge, neither the execution of this Agreement nor the performance of its obligations hereunder will constitute a breach of the terms and provisions of any other agreement to which EMORY is a party. EMORY makes no representation whatsoever that Materials or Licensed Technology may be exploited by COMPANY or its Affiliates without infringing other patents.

8.2 Merchantability and Exclusion of Warranties. COMPANY possesses the necessary expertise and skill in the technical areas pertaining to the Licensed Patents, Licensed Products, and Licensed Technology to make, and has made, its own evaluation of the capabilities, safety, utility, and commercial application of the Materials, Licensed Products and Licensed Technology. ACCORDINGLY, EMORY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE MATERIALS, LICENSED TECHNOLOGY, OR LICENSED PRODUCTS AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER IMPLIED WARRANTIES WITH RESPECT TO THE CAPABILITIES, SAFETY, UTILITY, OR COMMERCIAL APPLICATION OF THE MATERIALS, LICENSED TECHNOLOGY OR LICENSED PRODUCTS.

ARTICLE 9. DAMAGES, INDEMNIFICATION AND INSURANCE

9.1 No Liability. EMORY shall not be liable to COMPANY or COMPANY'S Affiliates, or customers of COMPANY or COMPANY'S Affiliates, for compensatory, special, incidental, indirect,

consequential, or exemplary damages resulting from the manufacture, testing, design, labeling, use, or sale of Licensed Products.

9.2 Indemnification. COMPANY shall defend, indemnify, and hold harmless the Indemnitees, from and against any and all claims, demands, loss, liability, expense, or damage (including investigative costs, court costs and attorneys' fees) Indemnitees may suffer, pay, or incur as a result of claims, demands or actions against any of the Indemnitees arising or alleged to arise by reason of, or in connection with, any and all personal injury (including death) and property damage caused or contributed to, in whole or in part, by COMPANY'S or COMPANY'S Affiliates, contractors, agents, or manufacture, testing, design, use, Sale, or labeling of any Licensed Products.

9.3 Insurance. Without limiting COMPANY's indemnity obligation under the preceding paragraph, COMPANY shall, prior to Sale of any Licensed Product, cause to be in force, an "occurrence based type" or a "claims made type" liability insurance policy which:

- (i) insures EMORY Indemnitees for all claims, damages, and actions mentioned in this Agreement;
- (ii) includes a contractual endorsement providing coverage for all liability which may be incurred by Indemnitees in connection with this Agreement, including that identified in Section 9.2; and
- (iii) provides Indemnitees product liability coverage in an amount no less than one million dollars (\$1,000,000) per occurrence or per claim made.

9.4 Notification. COMPANY shall notify EMORY prior to its first commercial Sale of any Licensed Product, of all insurance coverage and other assets available to COMPANY to meet COMPANY'S obligations under Sections 9.3 and 9.4 of this Agreement.

9.5 Notice of Claims. COMPANY shall promptly notify EMORY of all claims involving the Indemnitees and shall advise EMORY of the policy amounts that might be needed to defend and pay any such claims. EMORY shall promptly notify COMPANY of any and all claims brought to its attention relating to COMPANY's indemnity obligations under this Agreement.

ARTICLE 10. CONFIDENTIALITY

10.1 Treatment of Confidential Information. Except as otherwise provided hereunder, during the term of this Agreement and for a period of five (5) years thereafter:

(i) COMPANY and its Affiliates shall retain in confidence and use only for purposes of this Agreement, any written information and data supplied by EMORY to COMPANY under this Agreement and marked as proprietary;

(ii) EMORY shall retain in confidence and use only for purposes of this Agreement any written information and data supplied by COMPANY or on behalf of COMPANY to EMORY and marked as proprietary under this Agreement.

For purposes of this Agreement, all such information and data which a party is obligated to retain in confidence shall be called "Information."

10.2 Right to Disclose. To the extent that it is reasonably necessary to fulfill its obligations or exercise its rights under this Agreement, or any rights which survive termination or expiration hereof, each party may disclose Information to its Affiliates, consultants and outside contractors, on condition that such entities or persons agree:

(i) to keep the Information confidential for at least the same time periods and to the same extent as each party is required to keep the Information confidential;

(ii) to use the Information only for such purposes as such parties are authorized to use the Information.

Each party or its Affiliates may disclose Information to the government or other regulatory authorities to the extent that such disclosure is (a) reasonably necessary for the prosecution and enforcement of patents to obtain authorization to commercially market Licensed Products, provided that such party is otherwise entitled to engage in such activities under this Agreement or (b) is otherwise legally required to make such disclosure.

10.3 Release from Restrictions. The obligation not to disclose Information shall not apply to any part of such Information that:

(i) is or becomes patented, published, or otherwise part of the public domain, other than by unauthorized acts of the party obligated not to disclose such Information; (for purposes of this Article 10 the "receiving party") or its Affiliates in contravention of this Agreement; or

(ii) is disclosed to the receiving party or its Affiliates by a third party provided that such Information was not obtained by such third party directly or indirectly from the other party under this Agreement; or

(iii) prior to disclosure under this Agreement, was already in the possession of the receiving party, its Affiliates, provided that such Information was not obtained directly or indirectly from the other party under this Agreement; or

(iv) results from research and development by the receiving party or its Affiliates, independent of disclosures from the other party of this Agreement, provided that the persons developing such information have not had exposure to the information received from the disclosing party; or

(v) is required by law to be disclosed by the receiving party, provided that the receiving party uses its best efforts to notify the other party immediately upon learning of such requirement in order to give the other party reasonable opportunity to oppose such requirement; or

(vi) COMPANY and EMORY agree in writing may be disclosed.

ARTICLE 11. TERM AND TERMINATION

11.1 The parties may mutually agree to terminate this Master Agreement before the end of its term by execution of a written memorandum declaring the Master Agreement terminated. If not otherwise terminated or extended by mutual written agreement of the Parties, the Master Agreement shall expire twenty (20) years from the Effective Date.

11.2 Termination by EMORY. Subject to Section 11.4 herein, EMORY shall have the right to terminate this Agreement upon the occurrence of any one or more of the following:

(i) failure of COMPANY to make any payment required pursuant to this Agreement when due; or

(ii) lack of diligence as set forth in Article 7 herein; or

(iii) failure of COMPANY to render reports to EMORY as required by this Agreement; or

(iv) the insolvency of COMPANY or the institution of any proceeding by COMPANY under any bankruptcy, insolvency, or moratorium law; or

(v) any assignment by COMPANY of substantially all of its assets for the benefit of creditors or placement of COMPANY'S assets in the hands of a trustee or a receiver unless the receivership or trust is dissolved within thirty (30) days thereafter; or

(viii) a decision by COMPANY or COMPANY'S assignee of rights under this Agreement to quit the business of developing or selling Licensed Products; or

(ix) the breach by COMPANY of any other material term of this Agreement.

11.3 Notice of Bankruptcy. LICENSEE must inform EMORY of its intention to file a voluntary petition in bankruptcy or of another's intention to file an involuntary petition in bankruptcy to be received at least thirty (30) days prior to filing such a petition. A party's filing without conforming to this requirement shall be deemed a material, pre-petition incurable breach.

11.4 Exercise. EMORY may exercise its right of termination by giving COMPANY or its trustees, receivers, or assigns thirty (30) days' prior written notice of EMORY's election to terminate. Upon the expiration of such period, this Agreement shall automatically terminate unless COMPANY has removed the condition of termination. Such notice and termination shall not prejudice EMORY's right to receive royalties or other sums due hereunder and shall not prejudice any cause of action or claim of EMORY accrued or to accrue on account of any breach or default by COMPANY.

11.5 Failure to Enforce. The failure of EMORY, at any time, or for any period of time, to enforce any of the provisions of this Agreement, shall not be construed as a waiver of such provisions or as a waiver of the right of EMORY thereafter to enforce each and every such provision of this Agreement.

11.6 Termination by COMPANY. COMPANY shall have the right to terminate this Agreement at its sole discretion upon ninety (90) days written notice to EMORY.

11.7 Post-Termination Treatment. Upon termination of this Agreement, COMPANY shall cease manufacturing, processing, producing, using, importing, or selling Licensed Products; provided, however, if COMPANY continues to possess Materials or Licensed Product, it may: (a) sell to Third Parties the remaining Licensed Products which is fully manufactured and in COMPANY's normal inventory at the date of termination in the ordinary course of business for a period of three (3) months if (i) all monetary obligations of COMPANY to EMORY have been satisfied and (ii) royalties on such Sales are paid to EMORY in the amounts and in the manner provided in this Agreement, provided that COMPANY notifies EMORY of such intent to sell remaining Licensed Products and EMORY authorizes such Sale in writing; and/or (b) transfer to EMORY any remaining Materials or Licensed Products in its possession. In the event that COMPANY elects to sell the remaining Licensed Products in its possession, it shall comply with all applicable provisions of this Master Agreement, including Articles 4 and 5. COMPANY shall provide EMORY within thirty (30) days following date of termination a written notice of how COMPANY intends to dispose of such Materials and Licensed Products.

11.8 Effect. If this Agreement is terminated for any reason whatsoever, COMPANY shall return, or at EMORY's direction, destroy, all plans, drawings, papers, notes, data, writings, and other documents, samples, organisms, biological materials, models, and other tangible materials pertaining to the Materials or Licensed Technology supplied to COMPANY by EMORY, retaining one archival paper

copy in its corporate legal department as required so that compliance with any continuing obligations may be determined. Any termination of this Master Agreement shall not affect the rights and obligations accruing prior to the effective date of such termination.

ARTICLE 12. ASSIGNMENT

COMPANY may grant, transfer, convey, or otherwise assign any or all of its rights and obligations under this Agreement in conjunction with the transfer of all, or substantially all, of the business interests of COMPANY to which this Agreement relates. EMORY's written consent, which shall not be unreasonably withheld, shall be required prior to any other assignment of COMPANY'S rights or obligations under this Agreement. This Agreement shall be assignable by EMORY to any other nonprofit corporation which promotes the research purposes of EMORY.

ARTICLE 13. ARBITRATION

Any dispute related to this License Agreement shall be settled by arbitration. Arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association by three arbitrators, one to be appointed by EMORY, one to be appointed by COMPANY, and one to be appointed by the two arbitrators appointed by EMORY and COMPANY. Arbitration shall take place in Atlanta, Georgia, and the decision of the arbitrators shall be enforceable, but not appealable, in any court of competent jurisdiction. The fees and expenses incurred in connection with such arbitration shall be borne by the party initiating the arbitration proceeding (or equally by both parties if both parties jointly initiate such proceeding) subject to reimbursement by the party which does not prevail in such proceeding promptly upon the termination thereof in the event that the party initiating such proceeding is the prevailing party.

ARTICLE 14. MISCELLANEOUS

14.1 **Export Controls.** COMPANY acknowledges that Materials, Licensed Products, and Licensed Technology may be subject to United States laws and regulations controlling the export of technical data, biological materials, chemical compositions, computer software, laboratory prototypes, and other commodities and that EMORY's obligations under this Agreement are contingent upon compliance with applicable United States export laws and regulations. The transfer of technical data and commodities may require a license from the cognizant agency of the United States government or written assurances by COMPANY that COMPANY shall not export data or commodities to certain foreign countries without the prior approval of certain United States agencies. EMORY neither represents that an export license shall not be required nor that, if required, such export license shall issue.

14.2 **Legal Compliance.** COMPANY shall comply with all laws and regulations relating to its manufacture, processing, production, use, importation, Sale, labeling, or other distribution of Materials, Licensed Products, and Licensed Technology and shall not take any action which would cause EMORY or COMPANY to violate any laws or regulations.

14.3 **Independent Contractor.** COMPANY'S relationship to EMORY shall be that of a licensee only. COMPANY shall not be the agent of EMORY and shall have no authority to act for, or on behalf of, EMORY in any matter. Persons retained by COMPANY as employees or agents shall not, by reason thereof, be deemed to be employees or agents of EMORY.

14.4 **Patent Marking.** COMPANY shall mark Licensed Products Sold in the United States with United States patent numbers if applicable. Licensed Products manufactured or Sold in other countries shall be marked in compliance with the intellectual property laws in force in such foreign countries.

14.5 **Use of Names.** COMPANY shall obtain the prior written approval of EMORY or the Inventors prior to making use of their names for any commercial purpose, except as required by law. As an exception to the foregoing, both COMPANY and EMORY shall have the right to publicize the existence of this Agreement; however, neither COMPANY nor EMORY shall disclose the terms and conditions of this Agreement without the other party's consent, except as required by law.

14.6 **Place of Execution.** This Agreement and any subsequent modifications or amendments hereto shall be deemed to have been executed in the State of Georgia, U.S.A.

14.7 **Governing Law.** This Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the parties hereunder, shall be construed under and governed by the laws of the State of Georgia and the United States of America. Only courts in the State of Georgia,

U.S.A., shall have jurisdiction to hear and decide any controversy or claim between the parties arising under or relating to this Agreement.

14.8 Entire Agreement. This Agreement constitutes the entire agreement between EMORY and COMPANY with respect to the subject matter hereof and shall not be modified, amended or terminated, except as herein provided or except by another agreement in writing executed by the parties hereto.

14.9 Survival. Articles 8, 9, 10, 11.7, and 11.8 shall survive termination of this Agreement for any reason.

14.10 Severability. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid, or unenforceable. If any provision or portion of any provision of this Agreement, not essential to the commercial purpose of this Agreement, shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions, or portions thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision which shall implement the commercial purpose of the illegal, invalid, or unenforceable provision. In the event that any provision essential to the commercial purpose of this Agreement is held to be illegal, invalid or unenforceable and cannot be replaced by a valid provision which will implement the commercial purpose of this Agreement, this Agreement and the rights granted herein shall terminate.

14.11 Force Majeure. Any delays in or failure of performance of any party to this Agreement, shall not constitute a default hereunder, or give rise to any claim for damages, if and to the extent caused by occurrences beyond the control of the party affected, including, but not limited to, acts of God, strikes or other concerted acts of workmen, civil disturbances, fires, floods, explosions, riots, war, rebellion, sabotage, acts of governmental authority, or failure of governmental authority to issue licenses or approvals which may be required.

14.12 Counterparts. This Agreement may be executed by facsimile and in counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument

ARTICLE 15. NOTICES

All notices, statements, and reports required to be given by one party to the other shall be in writing and shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail, postage prepaid, return receipt requested and addressed as follows:

If to EMORY:

Emory University
Office of Technology Transfer
1599 Clifton Road, 4th Floor
Mailstop 1599/001/1AZ
Atlanta, Georgia 30322
ATTN: Director
Facsimile: (404) 727-1271
Email: ott-legal@emory.edu

If to COMPANY:

[insert company name]

Such notices or other communications shall be effective upon receipt by an employee, agent, or representative of the receiving party authorized to receive notices or other communications sent or delivered in the manner set forth above. Either party hereto may change the address to which notices to such party are to be sent by giving notice to the other party at the address and in the manner provided above.

Any reports due hereunder, in addition to the manner set forth above, may be submitted by email or facsimile provided that acknowledgement by email or facsimile is received that such report has been received by the party to be notified.

IN WITNESS WHEREOF, EMORY and COMPANY have caused this Agreement to be signed by their duly authorized representatives as of the day and year indicated below.

EMORY UNIVERSITY

COMPANY

By: _____

By: _____

Name: Todd T. Sherer, Ph.D.

Name: [insert full name]

Title: Assoc. VP for Research & Exec. Director,
Office of Technology Transfer

Title: [insert title]

Date: _____

Date: [insert date]

LIC. __. __

APPENDIX A

INDIVIDUAL RESEARCH MATERIALS LICENSE

This Individual License, effective as of _____, (the "Effective Date") by and between Emory University (hereinafter "EMORY"), a nonprofit Georgia corporation with offices located at 1599 Clifton Road NE, 4th Floor, Mailstop 1599/001/1AZ Atlanta, Georgia 30322 and Company ("COMPANY"), a for-profit corporation of the state of _____ having its principal offices at _____.

WITNESSETH

WHEREAS, the Inventors, identified in Attachment A, are employees of EMORY and have developed certain research reagents as described in Attachment A ("Materials");

WHEREAS, Inventors have assigned the ownership rights to the Materials to EMORY;

WHEREAS, COMPANY wishes to obtain a license and EMORY is willing to grant such a license;

NOW, THEREFORE, in consideration of the premises set forth above and the mutual promises contained hereinafter the parties agree as follows:

The Provisions of the Master Reagent Agreement dated _____ are incorporated herein by reference. Terms of the Master Agreement are governed by the terms set forth in Attachment A attached hereto, and shall be applicable and effective with respect to this Individual License.

IN WITNESS WHEREOF, the parties have caused this Individual License to be executed in duplicate originals by their authorized representatives as of the date first above written.

EMORY UNIVERSITY

COMPANY

By: _____

By: _____

Name: Todd T. Sherer, Ph.D.

Name: [insert full name]

Title: Assoc. VP for Research & Exec. Director,
Office of Technology Transfer

Title: [insert title]

Date: _____

Date: [insert date]

Attachment A

Terms to be incorporated by reference into the Reagent Master Agreement

Key Terms and Definitions:

Effective Date	
Licensee	Company
Inventors	
Materials	
Level of Exclusivity	Non-Exclusive
Field	Non-clinical research reagent
Manufacture and Distribution Method	
Term	

Royalties, Payments and other consideration:

License Fee	
Royalty Rate	
Minimum Annual Royalty	
Shipping Costs	_____; Shipping charged to Company FedEx Acct. _____
Other	

Transfer of Material:

Quantity Shipped	e.g. X g or ml in initial shipment; X g or ml at request of Company subject to availability
Form of Material Transferred	
Selling Restrictions	

Diligence:

EMORY shall have the right to terminate this Agreement if within one year of COMPANY's receipt of Materials from EMORY, COMPANY fails to offer Licensed Products for Sale by including Licensed Products in COMPANYS's catalog or listing on COMPANY's website. COMPANY's failure to meet this condition shall be excused if EMORY fails to meet its own obligations hereunder or if there is a delay caused by circumstances beyond COMPANY's control, to include but not be limited to force majeure, infringement claims by third parties relating to the Materials and action or inaction by a federal or state agency whose approval is required for commercial Sale of Licensed Product.