

NON-EXCLUSIVE LICENSE AGREEMENT

Re: LSU Disclosure # __ Entitled _____

This Non-Exclusive License Agreement (hereinafter called "Agreement"), to be effective as of the __ day of _____, 2006 (hereinafter called "Agreement Date"), is by and between the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (hereinafter called "LSU"), a public constitutional corporation, organized and existing under the laws of Louisiana ("LSU"), and _____, a corporation organized under the laws of _____ and having a principal place of business at _____, and its Affiliates (hereinafter, collectively referred to as "LICENSEE").

WHEREAS, LSU is the owner of the Subject Technology as defined below; and

WHEREAS, LSU is willing to grant a fee-bearing, worldwide, non-exclusive license to the Subject Technology to LICENSEE on the terms set forth herein; and

WHEREAS, LICENSEE desires to obtain said non-exclusive license under the Subject Technology.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto expressly agree as follows:

1. DEFINITIONS AS USED HEREIN

1.1 The term "Affiliates" shall mean any corporation, partnership, joint venture or other entity of which the common stock or other equity ownership thereof is fifty percent (50%) or more owned by LICENSEE.

1.2 The term "Developers" shall mean _____, employees of LSU.

1.3 The term "Party" shall mean either LICENSEE or LSU, and "Parties" shall mean LICENSEE and LSU.

NOTE: List specific Subject Technology that will be sent to LICENSEE.

1.4 The term "Subject Technology" shall mean [the technology, cell lines, biological materials, compounds, methods, documents, materials, tests and all confidential information] developed by the Developers as of the Agreement Date and supplied by LSU (as identified in Appendix A), together with any progeny, mutants or derivatives thereof supplied by LSU or created by LICENSEE

2. GRANT OF LICENSE

2.1 LSU hereby grants to LICENSEE a non-exclusive, worldwide right and license in and to the Subject Technology, to possess, maintain, and use solely for research purposes in research laboratories at LICENSEE. This grant does not include (i) the right to sell or offer to sell the Subject Technology, (ii) the right to sublicense the Subject Technology, or (iii) the right to file patent applications on the Subject Technology or for the use of the Subject Technology, without LSU's prior written approval, which approval shall be in LSU's sole discretion.

2.2 Rights under this Agreement may be subject to rights required to be granted to the Government of the United States of America pursuant to 35 USC Section 200-212, including a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject inventions throughout the world.

2.3 LICENSEE shall retain exclusive ownership of all research results ("Research Results") arising from its use of the Subject Technology under this Agreement including but not limited to, any data, know-how, technology, biological materials (except those considered a Subject Technology under Paragraph 1.4), discoveries and inventions. No express or implied license is granted to LSU for the use of any Research Results. LICENSEE shall be free to publish, for any purpose, any Research Results and shall have no obligation to supply any Research Results to LSU.

3. PAYMENTS AND REPORTS

3.1 As partial consideration for the rights conveyed by LSU under this Agreement, LICENSEE agrees to pay LSU an initial, non refundable, license execution fee of _____ dollars (\$XXX). Such payment shall be delivered to LSU upon execution of the Agreement.

3.2 In addition to the foregoing license execution fee, LICENSEE agrees to pay to LSU an annual non refundable maintenance fee of _____ dollars (\$XXX), which shall be due and payable on the first anniversary and on each subsequent anniversary of the Agreement Date.

3.3 Should LICENSEE fail to make any payment whatsoever due and payable to LSU hereunder, LSU may, at its sole option, terminate this Agreement as provided in Section 6.

3.4 All payments due hereunder shall be deemed received when funds are credited to LSU's bank account and shall be payable by check or wire transfer in United States dollars. No transfer, exchange, collection or other charges, including any wire transfer fees, shall be deducted from such payments. If payments are sent by check, they shall be sent to the address listed in Paragraph 10.1. If payments are sent by wire transfer, they shall be sent using the wiring instructions sent by LSU.

3.5 Late payments shall be subject to a charge of one and one-half percent (1.5%) per month, the interest being compounded annually, or two hundred fifty dollars (\$250.00), whichever is greater.

LICENSEE shall calculate the correct late payment charge, and shall add it to each such late payment. Said late payment charge and the payment and acceptance thereof shall not negate or waive the right of LSU to seek any other remedy, legal or equitable, to which it may be entitled because of the delinquency of any payment.

3.6 In the event of acquisition, merger, change of corporate name, or change of make-up, organization, or identity, LICENSEE shall notify LSU in writing within thirty (30) days of such event.

3.7 If LICENSEE does not qualify as a "small entity" as provided by the United States Patent and Trademark Office, LICENSEE must notify LSU immediately.

4. TRANSFER OF SUBJECT TECHNOLOGY

4.1 Upon receipt of the license fee described in Paragraph 3.1, LSU shall, within thirty (30) days thereof, provide LICENSEE with reasonable quantities of the Subject Technology as described in Appendix A. Any tangible biological materials furnished to LICENSEE by LSU shall be used solely for internal scientific research of LICENSEE and shall not be sold or transferred to any location other than the laboratories of its scientific staff, without LSU's prior consent.

4.2 No biological materials furnished to LICENSEE by LSU shall be used in humans.

4.3 Such Subject Technology shall be sent to the address below, via _____ overnight courier using LICENSEE's courier account number _____.

Company Scientist
Company Name
Address
City, State, Zip

Phone _____
E-Mail _____

5. TERM AND EXPIRATION

Unless earlier terminated as hereinafter provided, if LICENSEE makes timely fee payments hereunder for a period of ten (10) years from the Agreement Date, LICENSEE shall be granted a fully paid non-exclusive license to the Subject Technology.

6. TERMINATION

6.1 In the event of default or failure by LICENSEE to perform any of the terms, covenants or provisions of this Agreement, LICENSEE shall have thirty (30) days after the giving of written

notice of such default by LSU to correct such default. If such default is not corrected within the said thirty (30) day period, LSU shall have the right, at its option, to cancel and terminate this Agreement. The failure of LSU to exercise such right of termination, for nonpayment of fees or otherwise, shall not be deemed to be a waiver of any right LSU might have, nor shall such failure preclude LSU from exercising or enforcing said right upon any subsequent failure by LICENSEE.

6.2 LSU shall have the right, at its option, to cancel and terminate this Agreement in the event that LICENSEE shall (i) become involved in insolvency, dissolution, bankruptcy or receivership proceedings affecting the operation of its business or (ii) make an assignment of all or substantially all of its assets for the benefit of creditors, or in the event that (iii) a receiver or trustee is appointed for LICENSEE and LICENSEE shall, after the expiration of thirty (30) days following any of the events enumerated above, have been unable to secure a dismissal, stay or other suspension of such proceedings.

6.3 LICENSEE shall have the right to terminate this Agreement by giving written notice thereof to LSU no later than sixty (60) days prior to any anniversary of the Agreement Date, such notice to be effective as of the impending anniversary date. Following the effective date of such termination notice, LICENSEE shall have no further obligation for payment of licensing fees hereunder. For clarification, if LICENSEE provides written notice of termination to LSU fifty-nine (59) or fewer days prior to the anniversary of the Agreement Date, LICENSEE shall be obligated to pay the annual maintenance fee for such anniversary date per Paragraph 3.2, even though such payment would occur after the notice of termination.

6.4 In the event of any termination of this Agreement, all rights to the Subject Technology shall revert to LSU. At the date of any termination of this Agreement, LICENSEE shall immediately cease using the Subject Technology and LICENSEE shall immediately destroy the Subject Technology and send to LSU a written affirmation of such destruction signed by an officer of LICENSEE.

6.5 In the event this Agreement is terminated pursuant to this Section 6, or expires as provided for in Section 5, LSU is under no obligation to refund any payments made by LICENSEE to LSU prior to the effective date of such termination or expiration.

6.6 No termination of this Agreement shall constitute a termination or a waiver of any rights of either Party against the other Party accruing at or prior to the time of such termination. The obligations of Sections 9, 11 and 12 shall survive termination of this Agreement.

7. ASSIGNABILITY

This Agreement may not be assigned.

8. GOVERNMENTAL COMPLIANCE

LICENSEE shall at all times during the term of this Agreement and for so long as it shall use the Subject Technology comply with all laws that may control the import, export, manufacture, use and other commercial exploitation of the Subject Technology or any other activity undertaken pursuant to this Agreement.

9. ARBITRATION

9.1 In the event of a controversy or claim arising out of or relating to this Agreement, the Subject Technology, or the breach, validity, or termination of this Agreement, the parties shall first negotiate in good faith for a period of sixty days to try to resolve the controversy or claim. If the controversy or claim is unresolved after these negotiations, the parties shall then make good-faith efforts for sixty days to mediate the controversy or claim in Baton Rouge, Louisiana, before a mediator selected by the International Institute for Conflict Prevention and Resolution (New York, New York) (“CPR”), under CPR’s Mediation Procedure then in effect. If the controversy or claim is unresolved after mediation, on the written demand of either party any controversy arising out of or relating to this Agreement or to the breach, termination, or validity of this Agreement shall be settled by binding arbitration in Baton Rouge, Louisiana in accordance with CPR’s Rules for Non-Administered Arbitration of Patent and Trade Secret Disputes then in effect, before a single arbitrator. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. All applicable statutes of limitation and defenses based on the passage of time shall be tolled while the procedures described in this Paragraph 13.2 are pending. LSU and LICENSEE shall each take such action, if any, required to effectuate this tolling. Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement. Otherwise, any controversy arising under or relating to this Agreement, or the breach, termination, or validity of this Agreement, may be adjudicated only in a court, state or federal, having jurisdiction over the subject matter and including Baton Rouge, Louisiana within its territorial district. Both parties consent to the jurisdiction and venue of such a court. A party's right to demand arbitration of a particular dispute arising under or related to this Agreement, or the breach, termination, or validity of this Agreement, shall be waived if that party either: (1) brings a lawsuit over that controversy or claim against the other party in any state or federal court; or (2) does not make a written demand for mediation, arbitration, or both within 60 days of service of process on that party of a summons or complaint from the other party instituting such a lawsuit in a state or federal court of competent jurisdiction.

10. ADDRESSES

10.1 All payments shall be made payable to “LSU _____” and shall be sent to the address below, and shall reference the applicable **Disclosure numbers** listed on the front page of the Agreement.

LSU Tax ID #:
Name, Address, Phone nos.

10.2 For questions about payments, LSU can contact LICENSEE at the address below:

Title
Name
Address

Telephone No. _____
Facsimile No. _____
E-Mail _____

10.3 All notices, reports or other communication pursuant to this Agreement shall be sent to such Party via (i) United States Postal Service postage prepaid, (ii) overnight courier, or (iii) facsimile transmission, addressed to it at its address set forth below or as it shall designate by written notice given to the other Party. Notice shall be sufficiently made, or given and received (a) on the date of mailing or (b) when a facsimile printer reflects transmission.

In the case of LSU:
Title
Name
Address

Telephone No.
Facsimile No.
E-Mail

In the case of LICENSEE:
Title
Name
Address

Telephone No. _____
Facsimile No. _____
E-Mail _____

10.4 Each such report, notice or other communication shall include the applicable **Disclosure numbers** listed on the front page of the Agreement.

11. **INDEMNITY, INSURANCE & WARRANTIES**

11.1 **INDEMNITY.**

(i) Each Party shall notify the other of any claim, lawsuit or other proceeding related to the Subject Technology. LICENSEE agrees that it will

defend, indemnify and hold harmless LSU, its board members, faculty members, scientists, researchers, employees, students, and agents and each of them (the "Indemnified Parties"), from and against any and all claims, causes of action, lawsuits or other proceedings (the "LSU Claims") filed or otherwise instituted against any of the Indemnified Parties related directly or indirectly to or arising out of the design, process, manufacture or use of the Subject Technology, or any other embodiment of the Subject Technology, by LICENSEE, its employees, agents and persons accessing the Subject Technology through LICENSEE even though such LSU Claims and the costs (including, but not limited to, the payment of all reasonable attorneys' fees and costs of litigation or other defense) related thereto result in whole or in part from the negligence of any of the Indemnified Parties or are based upon doctrines of strict liability or product liability. LICENSEE will also assume responsibility for all costs and expenses related to such LSU Claims for which it is obligated to indemnify the Indemnified Parties pursuant to this Paragraph 11.1, including, but not limited to, the payment of all reasonable attorneys' fees and costs of litigation or other defense.

(ii) LICENSEE further agrees not to settle any Claim against an Indemnified Party without the Indemnified Party's written consent which consent shall not be unreasonably withheld. LICENSEE further agrees to keep the Indemnified Parties fully apprised of the LSU claims.

11.2 **INSURANCE.** LICENSEE warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in using the Subject Technology under this Agreement, and that such insurance coverage is sufficient to cover the Indemnified Parties. Annually between January 1 and January 31 of each year of this Agreement, LICENSEE shall provide LSU with written evidence that sufficient coverage is being maintained.

11.3 **DISCLAIMER OF WARRANTY.** LICENSEE ACKNOWLEDGES THAT THE SUBJECT TECHNOLOGY IS EXPERIMENTAL IN NATURE AND HAS NOT BEEN FULLY CHARACTERIZED. LSU MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS OR MERCHANTABILITY, REGARDING OR WITH RESPECT TO THE SUBJECT TECHNOLOGY AND LSU MAKES NO WARRANTIES OR

REPRESENTATIONS, EXPRESS OR IMPLIED, OF THE PATENTABILITY OF THE SUBJECT TECHNOLOGY OR OF THE ENFORCEABILITY OF ANY PATENTS ISSUING THEREUPON, IF ANY, OR THAT THE SUBJECT TECHNOLOGY IS OR SHALL BE FREE FROM INFRINGEMENT OF ANY PATENT OR OTHER RIGHTS OF THIRD PARTIES. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS CONFERRING BY IMPLICATION, ESTOPPEL OR OTHERWISE ANY LICENSE OR RIGHTS UNDER ANY PATENTS OF LSU.

12. ADDITIONAL PROVISIONS

12.1 Use of LSU Name. LICENSEE agrees that it shall not use in any way the name of LSU or any logotypes or symbols associated with LSU or the names of any of the scientists or other researchers at LSU without the prior written consent of LSU.

12.2 Confidentiality. LICENSEE agrees to maintain the Subject Technology in confidence, and to use the same only in accordance with this Agreement. Such obligation of confidentiality shall not apply to information which LICENSEE can demonstrate: (i) was at the time of disclosure in the public domain; (ii) has come into the public domain after disclosure through no fault of LICENSEE; (iii) was known to LICENSEE prior to disclosure thereof by LSU; (iv) was lawfully disclosed to LICENSEE by a third party which was not under an obligation of confidence to LSU with respect thereto; (v) which LICENSEE can reasonably demonstrate was independently developed by LICENSEE without use of the Subject Technology; or (vi) which LICENSEE shall be compelled to disclose by law or legal process.

12.3 LSU's Disclaimers. Neither LSU, nor any of its faculty members, scientists, researchers, employees, students, board members, or agents assume any responsibility for the use of the Subject Technology by LICENSEE.

12.4 Independent Contractors. The Parties hereby acknowledge and agree that each is an independent contractor and that neither Party shall be considered to be the agent, representative, master or servant of the other Party for any purpose whatsoever, and that neither Party has any authority to enter into a contract, to assume any obligation or to give warranties or representations on behalf of the other Party. Nothing in this relationship shall be construed to create a relationship of joint venture, partnership, fiduciary or other similar relationship between the Parties.

12.5 Defense of Infringement Action. LSU shall not be liable for any losses incurred as the result of an action for infringement brought against LICENSEE as the result of LICENSEE's exercise of any right granted under this Agreement. The decision to defend or not defend shall be in LICENSEE's sole discretion.

12.6 Non-Waiver. The Parties covenant and agree that if a Party fails or neglects for any reason to take advantage of any of the terms provided for the termination of this Agreement or if a Party, having the right to declare this Agreement terminated, shall fail to do so, any such failure or neglect by such Party shall not be a waiver or be deemed or be construed to be a waiver of any cause for the termination of this Agreement subsequently arising, or as a waiver of any of the terms, covenants or conditions of this Agreement or of the performance thereof. None of the terms, covenants and conditions of this Agreement may be waived by a Party except by its written consent.

12.7 Reformation. The Parties hereby agree that neither Party intends to violate any public policy, statutory or common law, rule, regulation, treaty or decision of any government agency or executive body thereof of any country or community or association of countries, and that if any

word, sentence, paragraph or clause or combination thereof of this Agreement is found, by a court or executive body with judicial powers having jurisdiction over this Agreement or any of the Parties hereto, in a final, unappealable order to be in violation of any such provision in any country or community or association of countries, such words, sentences, paragraphs or clauses or combination shall be inoperative in such country or community or association of countries, and the remainder of this Agreement shall remain binding upon the Parties hereto.

12.8 Force Majeure. No liability hereunder shall result to a Party by reason of delay in performance caused by force majeure, that is circumstances beyond the reasonable control of the Party, including, without limitation, acts of God, fire, flood, war, terrorism, civil unrest, labor unrest, or shortage of or inability to obtain material or equipment.

12.9 Entire Agreement. The terms and conditions herein constitute the entire agreement between the Parties and shall supersede all previous agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof. No agreement of understanding bearing on this Agreement shall be binding upon either Party hereto unless it shall be in writing and signed by the duly authorized officer or representative of each of the Parties and shall expressly refer to this Agreement.

12.10. CREATE ACT: Inventorship of intellectual property generated through the use of Subject Technology will be determined according to U.S. Patent Laws. However, in the event that LICENSEE invokes the CREATE Act (pursuant to 35 U.S.C. §103(c)) without prior written consent from LSU, any patent obtained by LICENSEE by asserting that this MTA is a joint research agreement will be jointly owned by LSU and LICENSEE.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement in multiple originals by their duly authorized officers and representatives on the respective dates shown below, but effective as of the Agreement Date.

LICENSEE

BOARD OF SUPERVISORS OF LOUISIANA
STATE UNIVERISTY AND AGRICULTURAL
AND MECHANICAL COLLEGE

Name: _____

Name: _____

Title: _____

Title:

Date: _____

Date: _____

10/9/06 LICENSEE

Disclosure #

Appendix A
Subject Technology

List the technology, cell lines, biological materials, compounds, methods, documents, materials, tests and confidential information to be sent by LSU to LICENSEE, and attach the Disclosure for the technology.