



This draft is dated the **X** day of **X**, 20**X**, and is solely for purposes of negotiation. No contract shall exist until a final, written agreement is signed by an authorized representative of the WSU's Office of Commercialization and an authorized representative of Licensee. This draft shall expire on **X**, 20**X**.

LICENSE
WSU OC #: X
AGR #: X

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This License ("**License**") is made effective the **X** day of **X**, 20**X**, ("**Effective Date**") by and between the Washington State University ("**WSU**"), an institution of higher education and an agency of the state of Washington through its Office of Commercialization ("**WSU-OC**") having an office at Lighty 280/286 PO Box 641060, Pullman WA 99164 USA and **X** ("**Licensee**"), a corporation organized and existing under the laws of **X** and having a principal office at **X**.

WHEREAS, WSU owns certain inventions that are described in the “Licensed Patents” defined below, and WSU is willing to grant a license to Licensee under any one or all of the Licensed Patents and Licensee desires a license under all of them;

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

SECTION 1. DEFINITIONS

1.1. “**Licensed Patents**” shall refer to and mean all of the following WSU intellectual property:

1.1.1. the United States [PATENT(S)/PATENT APPLICATION(S)] entitled “X,” filed in the United States Patent Office on X, and assigned [REGISTRATION NUMBER/SERIAL NUMBER] X, and all United States patents and foreign patents and patent applications based on this U.S. application;

1.1.2. all divisionals and continuations both U.S. and foreign; and

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

1.1.4. to the extent that the following contain one or more claims directed to the invention or inventions claimed in US Patent Application(s) with Serial Number(s) 60/X: continuations-in-part, all divisionals and continuations of these continuations-in-part, all patents issuing from such continuations-in-part, divisionals, and continuations; and any reissues, reexaminations, and extensions of all such patents. Licensed Patents shall *not* include these continuations-in-part, divisionals, continuation, reissues, reexaminations and extensions to the extent that they contain one or more claims directed to new matter which is not the subject matter of a claim in USPA SN 60/X.

1.2. “**Licensed Know-how** and **Licensed Biological Materials**” mean the following materials, also described in Appendices X:

1.2.1. “**Licensed Know-how**” shall mean the following WSU intellectual property: X.

1.2.2. All information, know-how, and materials contained in WSU Case Number X and described in Appendix X, herein.

1.2.3. “**Licensed Biological Materials**” shall mean the following WSU intellectual property as provided in Appendix X, herein and covered by the Material Transfer Agreement of Appendix X herein.

1.3. “**Licensed Product**” and “**Licensed Process**” shall mean:

1.3.1. In the case of a Licensed Product, any product or part or combination thereof developed and/or sold by or on behalf of Licensee, its Affiliates or Sublicensees which:

1.3.1.1. is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents in any country in which any product is made, used or sold; or

1.3.1.2. is manufactured, synthesized, derived or produced by using a process or product that is

covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents in any country in which any such process is used or in which any such product is used or sold.

1.3.1.3. is covered in whole or in part by a method of use claim which is an issued, unexpired claim or a pending claim, contained in the Licensed Patents in any country in which the product is made, used, tolled, leased, or sold in whole or in part for the covered use as defined by the Licensed Field either directly or indirectly or in which any such product is sold for the covered use either directly or indirectly.

1.3.2. In the case of a Licensed Process, any process including method of use as defined by the Licensed Field that is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Licensed Patents in any country in which such process is practiced either directly or indirectly, either alone or in a combination form.

1.4. "**Selling Price**" shall mean, in the case of Licensed Products and/or Licensed Processes that are sold by Licensee or its Affiliates and/or Sublicensees, the invoice price of Licensed Products and/or Licensed Processes (regardless of uncollectible accounts) less any outbound transportation costs paid or allowed; allowances and credits because of returns, or sales taxes. The "Selling Price" for a Licensed Product or Licensed Process that is transferred to a third party for promotional purposes without charge or at a discount shall be the average price of that type of Licensed Product and/or Licensed Process during the applicable calendar quarter. The "Selling Price" for a Licensed Product and/or Licensed Process that is produced for a third party or sold to a third party under a per sale contract and/or lump sum contract will be the per sale contract price or the lumpsum contract price, as the case may be, or any consideration or service fees received for product provided or services performed less any outbound transportation costs paid or allowed; allowances and credits because of returns, or sales taxes.

1.5. "**Development Plan**" shall mean a written report summarizing the development activities that are to be undertaken by the Licensee to bring Licensed Products to the market. The Development Plan is attached as Appendix A.

1.6. "**Development Report**" shall mean a written account of Licensee's progress under the Development Plan having at least the information specified on Appendix B to this License, and shall be sent to the address specified on Appendix B.

1.7. "**Licensed Field**" shall be limited to the field of **X**.

1.8. "**Licensed Territory**" shall be limited to **X**.

1.9. "**Sublicense**" means any exchange for value, any transfer of rights, including assignment, to Licensed Patents, Licensed know-How and/or Licensed Biological Materials for any consideration, including but not limited to cash, promissory notes, equity, upfront payments, milestone payments, royalties, manufacturing contracts, distribution contracts, sponsored research contracts, option agreements, research use licenses, any collaborative arrangements, partnerships, or joint ventures, received or entered into by Licensee with respect to any transfer of any right, including but not limited to assignment, whether present, future or contingent, to make, manufacture, use, practice, distribute, lease, toll, or otherwise sell any aspect of the Technology or Licensed Products and Licensed Processes to any third party ("**Sublicensee**").

- 1.10. “*Affiliate*” means any corporation or other business entity controlled by or in common control of the Licensee. “Control” as used herein shall mean the ownership directly or indirectly of at least fifty percent (50%), or the maximum interest permitted by local law, of the voting stock of a corporation; or a fifty percent (50%) or greater interest in the income of such corporation or other business entity; or the ability otherwise of the Licensee to secure that the affairs of such corporation or other business entity are managed in accordance with its wishes.
- 1.11. “*Best Efforts*” means, with respect to a given objective, the efforts that a reasonable person in the position of the promisor would use to achieve the goal in light of its capabilities; except that an obligation to use Best Efforts under this License does not require the promisor to (i) take any actions that, individually or in the aggregate, have a material and adverse effect on the promisor; (ii) disregard its own interests; (iii) take any actions that would, individually or in the aggregate, cause the promisor to incur costs, or suffer any other detriment, out of reasonable proportion to the benefits to the promisor under this License; (iv) take any action that would violate any law or order to which promisor is subject; or (v) initiate any litigation or arbitration.

SECTION 2. GRANT

2.1. License

- 2.1.1. WSU hereby grants to Licensee an [NON/EXCLUSIVE] license, [limited to the Licensed Field and the Licensed Territory], under the Licensed Patents to make, use and sell the [Licensed Products and/or Licensed Processes], as well as a non-exclusive know-how license to enable the practice of the Licensed Patents limited to the Licensed Field and Licensed Territory. WSU reserves to itself the right to make, use and sell Licensed Products and/or Licensed Processes under the Licensed Patents for research purposes, including research for any sponsors.
- 2.1.2. WSU also reserves the right to license the technology, for non-commercial purposes and without further right of sublicense, to other non-profit institutions and/or for humanitarian use, subject to Licensee’s prior written approval, which shall not be unreasonably withheld.

2.2. Sublicense

- 2.2.1. Licensee may grant written, Sublicenses to third parties [within the Licensed Field and Licensed Territory]. Any agreement granting a Sublicense shall state that the Sublicense will terminate if this License is terminated. Sublicensee shall have the option to sign and enter into a separate license on the same terms as this License within thirty (30) days of the termination of this License. Licensee shall have the same responsibility for the activities of any Sublicensee as if the activities were directly those of Licensee.
- 2.2.2. Sublicenses granted by Licensee under Section 2.2.1., Licensee shall pay to WSU or its designee an amount equal to what Licensee would have been required to pay to WSU had Licensee sold the amount of Licensed Products sold by such Sublicensee. In addition, if Licensee receives any fees, minimum royalties, or other payments in consideration for any rights granted under a Sublicense, and such payments are not based directly upon the amount or value of Licensed Products sold by the Sublicensee, then Licensee shall pay WSU fifty percent (50 %) of such payments in the manner specified in Section 3.5. Licensee shall not receive from Sublicensees anything of value in lieu of

cash payments in consideration for any Sublicense under this License without the express prior written permission of WSU. Licensee shall provide WSU with a copy of each Sublicense within thirty (30) days of the execution of the Sublicense.

2.3. License to WSU

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

SECTION 3. CONSIDERATION

3.1. Development

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

3.1.2. Licensee agrees that the first commercial sale of products to the retail customer shall occur on or before **X** or this License shall terminate pursuant to **Term and Termination Section 8.3** of this License. For the avoidance of doubt, any sale made to Licensee or its Affiliates will not be considered a commercial sale under this License.

3.1.3. Licensee agrees to allow WSU to sit in as a board observer during the meetings of Licensee’s Board of Directors (Board). For the avoidance of doubt, this board observer is not empowered with any rights associated with a regular board member. If for any reason such rights of observation are terminated or abandoned, then Licensee agrees that within one month following the end of each six (6) month period ending on June 30 and December 31 thereafter, it will supply WSU with a written report summarizing the activities related to this License for the preceding six (6) month period.

3.2. License Issue Fee and Equity Rights

3.2.1. License Issue Fee

3.2.1.1. Licensee agrees to pay to WSU a License Issue Fee of [SPELL OUT DOLLAR VALUE] \$ X within ninety (90) days of the Effective Date.

3.2.2. License Maintenance Fee

3.2.2.1. In addition to the License Issue Fee, Licensee agrees to pay an annual Maintenance Fee of [SPELL OUT DOLLAR VALUE] (\$X), payable on each anniversary of the Effective Date of this License until the first commercial sale [of a Licensed Product or Licensed Process] at which time the annual Maintenance Fee is no longer due and is replaced by the Annual Minimum Royalties as specified in Section 3.4.1.

3.2.3. Equity Rights

3.2.3.1. WSU Equity Rights: In lieu of fully equitable License Issue Fee, Licensee agrees to grant to WSU a founder's equity stake in [COMPANY NAME] of X Percent (X%) that is non-dilutive until such time when Licensee's valuation reaches \$ 6 MM. [COMPANY NAME] will ensure that upon sale or merger of [COMPANY NAME], the new owner or majority owner assumes the same license, equity, royalty and other obligations as X has and will have under its agreement with WSU.

3.2.4. Observer Rights

3.2.4.1. WSU shall have the right to designate one (1) representative of WSU to serve as a non-voting observer ("*Observer*"), subject to the limitations specified herein.

3.2.4.2. WSU shall have such right:

- (i) for so long as WSU owns all shares of equity that it obtained pursuant to the terms of this License by and between the Licensee and WSU; and
- (ii) Observer shall only serve as a non-voting observer of the Board; provided that prior to commencing service as an Observer and from time to time thereafter and promptly upon any change in circumstance or at the request of the Licensee, each Observer shall disclose to the Licensee (which disclosure shall be in writing if the Licensee so requests) any conflicts of interest such Observer may have with respect to the Licensee and any relationship such Observer may have with any party engaged in any business activity that is in competition, directly or indirectly, with the products or services being developed, offered, marketed, sold or licensed by the Licensee. WSU may remove its Observer or appoint an Observer if a vacancy in such position occurs for any reason by delivery of a written notice to the Secretary of the Licensee. For purposes of applying the provisions of this Section 3.2.4.1, WSU shall be entitled to only one (1) Observer.

3.2.4.3. Procedures and Limitations.

3.2.4.3.1. The Licensee or the applicable members of the Board will give WSU oral or written notice of each meeting of the Board (whether annual or special) at the same time and in the same manner as oral or written notice is given to the applicable members of the Board. Notwithstanding the foregoing, if an Observer attends (or, in the case of a telephonic meeting, listens by telephone to) any such meeting of the Board, then such Observer shall be deemed to have had proper notice of such meeting. Notwithstanding anything contained herein to the contrary, the failure of an Observer to be given notice of a meeting of the Board pursuant to the immediately preceding two sentences or to attend such meeting shall not in any way affect the authority of the Board to have or to adopt resolutions at such meeting or the legitimacy of any actions taken by the Board at such meeting. Subject to the foregoing, the Licensee will permit the Observer to attend (or, in the case of a telephonic meeting, to listen by telephone to) each meeting of the Board as non-voting observer. The Licensee shall provide the Observer all written materials and other information (including copies of meeting minutes) given to the members of the Board in connection with any such meeting at the same time as such information is delivered to the members of the Board and, if an Observer does not attend (or, in the case of a telephonic meeting, does not listen by telephone to) a meeting of the Board, such Observer will be entitled, upon request, to receive the written minutes or an oral summary of the meeting from the Secretary of the Licensee. Prior to attending or listening to any meeting of the Board or obtaining any documents or summaries of such meetings, each Observer shall agree in writing to be bound by the same duties of confidentiality, good faith and loyalty as if such Observer were a member of the Board. If the Licensee takes any action by written consent of the Board in lieu of a meeting of the Board, then the Licensee shall give prompt written notice of such action to the Observer. In all cases where notice, meeting materials or minutes would otherwise be required to be delivered to an Observer or where an Observer would be permitted to attend a meeting under this Section 3.2, the Licensee reserves the right not to provide notice, meeting materials or minutes relating to and to exclude the Observer from any meeting or portion thereof if the Board determines in good faith that the delivery of such information or attendance at such meeting by such Observer would result in disclosure of trade secrets or other material confidential information to such Observer, present an actual or potential conflict of interest between such Observer and the Licensee, would adversely affect the attorney-client privilege between the Licensee and its counsel or would otherwise be materially injurious to the Licensee in such circumstances. Observer shall be solely responsible for maintaining current phone and fax numbers, and mailing and electronic mail instructions on file with the Licensee.

3.3. Royalty

3.3.1. In addition to the Section 3.2.3 WSU Equity, Licensee and its Affiliates agrees to pay to WSU or its designee, as earned royalties a royalty calculated as a percentage of the Selling Price in accordance with the terms and conditions of this License. The royalty is deemed earned as of the earlier of the date the Licensed Product and/or Licensed Process is actually sold and paid for, the date an invoice is sent by Licensee or its Sublicensee(s), or the date a Licensed Product and/or Licensed Process is transferred to a third party for any promotional reasons. The royalty shall

remain fixed while this License is in effect at a rate of X percent (X%) of the Selling Price for the life of this License.

3.4. Other Payments

3.4.1. Licensee agrees to pay WSU or its designee Minimum Royalty payments, as follows:

Payment	Year
\$	
\$	
\$	
\$	
\$	

and every year thereafter on the same date, for the life of this License.

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

3.4.2. Licensee agrees to pay WSU or its designee milestone payments, as follows:

Payment	Due Date	Event
\$		
\$		
\$		
\$		
\$		

3.5. Accounting Payments

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

3.5.2. Except as otherwise directed, all amounts owing to WSU under this License shall be paid in U.S.

dollars to WSU or its designee at the address provided in Section 14.1. All royalties owing with respect to Selling Prices stated in currencies other than U.S. dollars shall be converted at the rate shown in the Federal Reserve Noon Valuation - Value of Foreign Currencies on the day preceding the payment.

3.5.3. A full accounting showing how any amounts payable to WSU under License Issue Fee and Equity Rights, Royalty, and Other Payments have been calculated shall be submitted to WSU on the date of each such payment. Such accounting shall be on a per-country and product line, model or trade name basis and shall be summarized on the form shown in Appendix C of this License. In the event no payment is owed to WSU because the amount of Minimum Royalties paid has not been exceeded or otherwise, an accounting demonstrating that fact shall be supplied to WSU.

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

SECTION 4. CERTAIN WARRANTIES OF WSU

4.1. WSU warrants that, except as otherwise provided under Section 16 of this License with respect to U.S. Government interests, it is the owner of the Licensed Patents or otherwise has the right to grant the licenses granted to Licensee in this License. However, nothing in this License shall be construed as:

4.1.1. a warranty or representation by WSU as to the validity or scope of any right included in the Licensed Patents;

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

4.1.3. an obligation to bring or prosecute actions or suits against third parties for infringement of Licensed Patents;

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

4.1.5. a warranty or representation by WSU that it will not grant licenses to others to make, use or sell products not covered by the claims of the Licensed Patents that may be similar and/or compete with products made or sold by Licensee or its Sublicensee(s).

4.2. WSU MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO USE, SALE, OR OTHER DISPOSITION BY LICENSEE, ITS SUBLICONSEE(S) OR THEIR VENDEES OR OTHER TRANSFEREES OF PRODUCT INCORPORATING OR MADE BY USE OF INVENTIONS LICENSED UNDER THIS LICENSE.

SECTION 5. DUE DILIGENCE

- 5.1. Licensee shall, directly or through its Affiliates and Sublicensees, use its Best Efforts to bring at least one Licensed Product or Licensed Process to market through a thorough, vigorous and diligent program.
- 5.2. On or before **X**, Licensee shall deliver to WSU a Development Plan showing the amount of money, number and kind of personnel, and time budgeted and planned for each phase of development of the Licensed Products and Licensed Processes. WSU will maintain the confidentiality of the Development Plan and not disclose the Development Plan to a third party without Licensee's prior written consent.
- 5.3. In addition, Licensee, and/or any of Licensee's permitted sublicensees, shall use Best Efforts to achieve the following objectives within the specified time frames:
 - 5.3.1. **[ADD AS NEEDED]**
 - 5.3.2. For the purposes of this Section 5.3, development of a prototype does not guarantee successful development of a commercial product. The intent of the prototype milestones is to determine whether a commercial product is viable.
 - 5.3.3. Failure of Licensee (directly or through its Affiliates and Sublicensees) to use Best Efforts to meet these objectives within the specified time frame shall constitute grounds for termination by WSU under Section 8 below. Diligence obligations shall be tested beginning on the due date of the first Annual Progress Report. In order to verify compliance, Licensee shall comply with any reasonable request for further information by WSU and shall permit, upon reasonable advance notice, an in-plant inspection during regular business hours by WSU or its designee beginning on the first anniversary of the Effective Date, and thereafter permit in-plant inspections by WSU at regular intervals with at least twelve (12) months between each such inspection; provided that such in-plant inspections do not interfere with Licensee's regular business operations. WSU and its designee will maintain the confidentiality of all information provided by Licensee in response to WSU's request and not disclose such information to a third party without Licensee's prior written consent.
- 5.4. Licensee agrees to provide, within thirty (30) days of the Effective Date, all the documents pertaining to the company formation, including but not limited to, the Articles of Incorporation, the by-laws, stock purchase agreements, the shareholder agreement and others. Failure to provide the documents within the specified timeframe would be grounds to allow WSU OC to seek legal help in obtaining those documents. Licensee shall reimburse the costs including attorney's fees.

SECTION 6. RECORD KEEPING

- 6.1. Licensee and its Sublicensee(s) shall keep books and records sufficient to verify the accuracy and completeness of Licensee's and its Sublicensee(s)'s accounting referred to above, including without limitation inventory, purchase and invoice records, manufacturing records, sales analysis, general ledgers, financial statements, and tax returns relating to the Licensed Products and/or Licensed Processes. Such books and records shall be preserved for a period not less than six years after they are created, both during and after the term of this License.
- 6.2. Licensee and its Sublicensee(s) shall take all steps necessary so that WSU may, within thirty (30) days of its request, review and copy all of the books and records at a single U.S. location to verify the

accuracy of Licensee's and its Sublicensee(s)'s accounting. Such review may be performed by any authorized employee of WSU as well as by any attorney or registered CPA designated by WSU, upon reasonable notice and during regular business hours.

- 6.3. If a royalty payment deficiency is determined, Licensee and its Sublicensee(s) shall pay the royalty deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts as described in Section 3.5.1.
- 6.4. If a royalty payment deficiency for a calendar year exceeds five percent (5%) of the royalties paid for that year, then Licensee and its Sublicensee(s) shall be responsible for paying WSU's out-of-pocket expenses incurred with respect to such review.

SECTION 7. PATENT PROSECUTION

- 7.1. WSU shall diligently prosecute and maintain the Licensed Patents using counsel of its choice. WSU shall provide Licensee with copies of relevant documentation so that Licensee may be informed and apprised of the continuing prosecution of Licensed Patents, and Licensee agrees to keep such information confidential.
- 7.2. Licensee shall be responsible for and pay all past and future costs and expenses received by WSU for the preparation, filing, prosecution, issuance, and maintenance of the Licensed Patents within thirty (30) days of receipt of an invoice from WSU. It shall be the responsibility of Licensee to keep WSU fully apprised of the "small entity" status of Licensee with respect to the U.S. patent laws and with respect to the patent laws of any other countries, if applicable, and to inform WSU of any changes in such status, within thirty days of any such change.

SECTION 8. TERM AND TERMINATION

- 8.1. The term of this license shall begin on the Effective Date of this License and continue until the earlier of the date that (a) no Licensed Patent remains an enforceable patent or no Licensed Know-How or Biological Materials continue to be used in making the Licensed Product or Licensed Process or (b) the payment of earned royalties under Section 3.3, once begun, ceases for two (2) calendar quarters.
- 8.2. Either Party may terminate this License at any time by giving at least ninety (90) days written and unambiguous notice of such termination to the other Party. Such a notice shall be accompanied by a statement of the reasons for termination.
- 8.3. WSU may terminate this License by giving Licensee at least ninety (90) days written notice if the date of first commercial sale does not occur on or before the date specified in Section 3.1.2.
- 8.4. If Licensee at any time defaults in the timely payment of any monies due to WSU or the timely submission to WSU of any Development Report and/or Development Plan as required by Sections 3.1 and 5.2, fails to actively pursue the Development Plan, or commits any breach of any other covenant herein contained, and Licensee fails to remedy any such breach or default within ninety (90) days after written notice thereof by WSU, WSU may, at its option, terminate this License by giving thirty (30) days' notice of termination to Licensee.
- 8.5. In the event that Licensee contests (e.g., in a press release, public announcement, filing, request for

inter partes review, post grant review, reexamination request, claim, counterclaim, or similar process or procedure) the validity, enforceability, allowance, issuance, or reissuance of any of the Licensed Patents or Trademarks or assists (directly or indirectly) any third party in doing the same (each of which and collectively will be referred to as “**Challenge**”), WSU may, upon sending notice to Licensee, terminate, effective immediately (notwithstanding any other provision of this License to the contrary), the licenses granted to Licensee under this License. If any administrative or judicial Challenge is unsuccessful, Licensee must pay WSU’s costs, expenses, and reasonable attorneys’ fees incurred in said administrative or judicial challenge.

- 8.6. WSU shall have the right to terminate immediately this License if a substantial portion of the asset or an interest of at least twenty five percent (25%) of the share capital or voting rights or sufficient change of Control of Licensee is transferred, directly or indirectly, to a third party without prior written notice being given to WSU.
- 8.7. This License immediately terminates without notice, in the event one or more of the following occurs:
 - 8.7.1. Licensee makes an assignment for the benefit of creditors or admits in writing its inability generally to pay or is generally not paying its debts as such debts become due;
 - 8.7.2. Any decree or order for relief is entered against Licensee under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or similar law;
 - 8.7.3. Licensee petitions or applies to any tribunal for, or consents to the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official of such other party or any substantial part of its assets, or commences a voluntary case under the bankruptcy law of any jurisdiction;
 - 8.7.4. Any such petition or application is filed, or any such proceedings are commenced against Licensee and Licensee by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, and such order, judgment or decree remains unstayed and in effect for more than sixty (60) days; or
 - 8.7.5. Any order, judgment or decree is entered in any proceedings against Licensee decreeing the dissolution of such other party and such order, judgment or decree remains unstayed and in effect for more than sixty (60) days.
- 8.8. Upon the termination of this License, Licensee shall remain obligated to provide an accounting for and to pay royalties earned under Section 3.3 up to the date of the termination.
- 8.9. Upon the termination of this License, excluding expiration, Licensee agrees to promptly return to the WSU all materials covered by the Licensed Patents and Licensed Biological Materials (as described in Appendix D and Appendix E) or to destroy all such materials and to deliver a notarized document certifying that all such materials have been destroyed and that any Licensed Know-How will no longer be used.
- 8.10. Termination of this License shall not relieve Licensee of any obligation to pay WSU the fee set

forth in Section 3 or set forth in any other portion of this License, nor of any obligation with respect to the confidential information or materials covered by this License. Articles on Certain Warranties of WSU, Record Keeping, Patent Prosecution, Term and Termination, Product Liability and Conduct of Business, Export Control, Use of Names and Confidentiality, Miscellaneous, and Unites States Government Interests shall survive termination.

- 8.11. Upon expiration or termination of this License for any reason, Licensee shall have no right to a refund of any portion of payments already made to WSU.
- 8.12. If Licensee at any time commits any material breach of any covenant in this License including, but not limited to, (1) a failure to use its Best Efforts to establish and actively and diligently pursue a Development Plan to the end that the inventions of the Licensed Patents will be utilized to provide Licensed Products and/or Licensed Processes for sale in the retail market within the Licensed Field; and (2) a failure to use Best Efforts to achieve the objectives specified in Section 5.3 within the specified time frames; WSU may, at its option, terminate this License by giving thirty (30) days' notice of termination to Licensee.

SECTION 9. ASSIGNABILITY

- 9.1. Neither this License, nor the Licensed Patents may be transferred, assigned, or pledged by Licensee, nor shall Licensee grant any security interest in this License or the Licensed Patent, except with the prior written consent of WSU. Notwithstanding the foregoing, without WSU's consent, Licensee may assign this License to any of its Affiliates, to a successor of Licensee's business to which this License pertains, to a purchaser of all or substantially all of Licensee's assets; or incident to an acquisition, merger, sale of Licensee or the like at any time during the term of this License. WSU will be notified of any such permitted assignment by Licensee and a copy of such assignment shall be delivered to WSU within thirty (30) days of the execution of the same. It is agreed that Licensee will ensure that upon a sale or merger of Licensee, the successor entity (for example, the new owner or majority owner) agrees in writing to be bound by the terms and conditions of this License (including the obligations of Licensee hereunder).
- 9.2. All parties to this License understand and agree that WSU's rights and obligations under this License may be freely assigned to an agent that provides intellectually property management services to WSU without further notice to Licensee. Such assignment or license shall be binding upon the undersigned parties and inure to the benefit of such assignee.

SECTION 10. ENFORCEMENT

- 10.1. WSU intends to protect Licensed Patents against infringers or otherwise act to eliminate infringement when, in WSU's sole judgment, such action may be reasonably necessary, proper, and justified. In the event that Licensee believes there is infringement of any Licensed Patent under this License that is to Licensee's substantial detriment, Licensee shall provide WSU with notification and reasonable evidence of such infringement. Should WSU decide not to pursue any infringement action within thirty (30) days of such notification, Licensee shall then have the right to pursue such actions at its own cost. The decision by WSU to not pursue any specific case of infringement does not waive its first right to pursue future infringement actions.
- 10.2. The parties agree to cooperate in the conduct or defense of any claim or suit challenging any

intellectual property rights which may arise from this License so long as (1) such intellectual property arises from the work as set forth in the statement of work appended to this License, (2) WSU or its assignee determines that such intellectual property qualifies for legal protection, (3) WSU or its assignee desires to obtain or perfect its rights to such legal protection, and (4) WSU, its assignee or an authorized licensee does affirmatively attempt to obtain or perfect WSU's or its assignee's rights, title, and interest in such intellectual property. Except as set forth in above, WSU makes no warranty, express or implied, regarding any invention, writing or tangible rendition of research results, including but not limited to any implied warranties of merchantability or fitness for a particular purpose.

10.3. The Licensee agrees that the below referenced IP was generated using an amazon catalyst award.

“X”

Licensee will agree, and will require its Sublicensee(s) to agree, to not assert by way of litigation or any other proceeding any claims against Amazon (defined below) and its affiliates with respect to any activities undertaken, as shown in Appendix X. “Amazon” shall mean herein as the Amazon Fulfillment Service, Inc. a Delaware corporation.

SECTION 11. PRODUCT LIABILITY; CONDUCT OF BUSINESS

11.1. Licensee, its Affiliates and its Sublicensee(s) shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold WSU, WSU Regents, WSU employees, and the inventors of the Licensed Patents harmless against all claims, demands, or causes of actions, arising out of the death of or injury to any person or persons, claims of any damage to property caused by, arising out of, or resulting from the exercise or practice of the License granted to Licensee or any Sublicensee hereunder, including but not limited to legal expenses and reasonable attorney's fees. Notwithstanding the above, WSU at all times reserves the right to retain counsel of its own to defend WSU's, and the inventor's interests.

11.2. Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing the products subject to this License and that such insurance coverage lists WSU, and the inventors of the Licensed Patents as additional insureds. Within [SPELL OUT THE NUMBER OF DAYS] (X) days after the execution of this License and thereafter annually between January 1 and January 31 of each year, Licensee will present evidence to WSU, that the coverage is being maintained with WSU, and its inventors listed as additional insureds. In addition, Licensee shall provide WSU with at least thirty (30) days prior written notice of any change in or cancellation of the insurance coverage.

SECTION 12. USE OF NAMES AND CONFIDENTIALITY

12.1. Licensee, its Affiliates and its Sublicensee(s) shall not use WSU's name, the name of any inventor of Licensed Patents governed by this License, in any sales promotion, advertising, or any other form of publicity without the prior written approval of WSU. This License is covered by the Mutual Confidential Disclosure Agreement of Appendix F attached to this License.

SECTION 13. MISCELLANEOUS

13.1. This License is made in Pullman, Washington, and shall be construed and interpreted in accordance with the law of the State of Washington, United States of America, without regard to any presumption or rule requiring construction or interpretation against the Party drafting or causing any

instrument to be drafted. By its execution and delivery of this License, Licensee hereby accepts the jurisdiction of a court of competent jurisdiction sitting in the State of Washington in any legal action or proceeding relating to this License. No right or remedy conferred upon or reserved to the Parties pursuant to this License is exclusive of any other right or remedy provided or permitted at law or in equity. Each Party acknowledges that any violation or threatened violation of this License would cause irreparable injury and that money alone would not be adequate to redress such injury. If any provisions of this License are or shall come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the Parties or this License, those provisions shall be deemed automatically severed and deleted, if such severance and deletion is allowed by relevant law, and the remaining terms and conditions of this License shall remain in full force and effect. The Parties agree to substitute new terms as similar in effect to the severed or deleted terms as may be allowed under the applicable laws and regulations. The Parties hereto are independent contractors and not joint ventures or partners.

- 13.2. Licensee shall insure that it, its Affiliates and its Sublicensee(s) apply patent markings that meet all requirements of U.S. law, 35 U.S.C. §287, with respect to all Licensed Products subject to this License. Licensee agrees to comply with the requirements of U.S. law 35 U.S.C. § 200-212 with respect to inventions funded by the U.S. government.
- 13.3. Except as otherwise expressly provided herein, this License, with all of the attachments hereto, constitutes the full understanding between the Parties with reference to the subject matter hereof, and no statements or agreements by or between the Parties made prior to or at the signing hereof, whether orally or in writing, shall vary or modify the written terms of this License. All attachments referred to in this License shall be attached hereto and are incorporated herein by reference. The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this License shall not constitute a waiver of that right or excuse a similar failure to perform any such term or condition by the other Party. Neither Party shall claim any amendment, modification, or release from any provisions of this License by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other Party, and specifically states that it is an amendment to this License.
- 13.4. In the event Licensee contests the validity of any Licensed Patent, Licensee shall continue to pay royalties with respect to that patent as if such contest were not underway until the patent is finally adjudicated invalid or unenforceable by a court of last resort; provided, however, notwithstanding any such final adjudication of invalidity or unenforceability, the full royalty payment due under this License shall continue to be paid on any Licensed Product incorporating or based on Licensed Process or on any Licensed Patent which has not been finally adjudicated invalid or unenforceable by a court of last resort; and further provided Licensee shall have no recourse against WSU for any royalties paid or due to be paid prior to such final adjudication.
- 13.5. Licensee shall not encumber or otherwise grant a security interest in any of the rights granted hereunder to any third party.

SECTION 14. CONFLICT OF INTEREST

- 14.1. Licensee understands that all employees of WSU are required to be in compliance with all the applicable policies and procedures of WSU, including but not limited to conflict of interest. Additionally, if any employees of WSU are to become owners, officers, directors, employees and/or

board members of Licensee, Licensee understands and agrees to use commercially reasonable efforts to promptly notify WSU. Thereafter, WSU will use its best efforts to ensure that such owners, officers, directors, employees and/or board members provide to the WSU Office of Commercialization and/or appropriate authority/unit of WSU notice of such intended ownership, role as an officer or director, employment or board membership. Licensee agrees to not hire any current WSU employees, who have contributed to the Licensed Patents, Licensed Products or intellectual property covered by an option or license to Licensee at the time of hire, during the term of this License, without having previously submitted written notice to the WSU Office of Commercialization.

14.2. Licensee further understands that WSU may terminate the license if WSU determines that such owners, officers, directors, employees and/or board members of Licensee are not in compliance with WSU Executive Policy 27 (“**EP 27**”) and state of Washington RCW 42.52 at anytime during their employment or participation with the Licensee in any of the above mentioned roles. This termination will become effective 100 days after such determination by WSU to allow the impacted WSU employees to become compliant with WSU EP 27 and state of Washington RCW 42.52.

14.3. Licensee understands that the non-compliance with WSU EP 27 and state of Washington RCW 42.52 may be cured by submission of a conflict of interest (“**COI**”) management plan application by such owners, officers, directors, employees and/or board members of Licensee to WSU COI committee within seven (7) days of WSU determination and adoption of a COI management plan within 90 days following the application submission.

SECTION 15. NOTICES

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

15.2.

Washington State University
Office of Commercialization
Attn: Assistant Vice President
Lighty 280/286
PO Box 641060
Pullman, WA 99164
Email: commercialization@wsu.edu
Phone: 509-335-5526

15.3.

Licensee

Attn:

Email:

Phone:

SECTION 16. CONTRACT FORMATION AND AUTHORITY

- 16.1. No agreement between the parties shall exist unless the duly authorized representatives of Licensee and of WSU-OC have signed this document within thirty (30) days of the Effective Date written on the first page of this License.
- 16.2. WSU and Licensee hereby warrant and represent that the persons signing this License have authority to execute this License on behalf of the party for whom they have signed.
- 16.3. This License may be executed simultaneously in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. PDF files containing signatures shall be considered original for all purposes. It shall not be necessary in making proof of this document or any counterpart hereof to produce or account for any of the other counterparts.

SECTION 17. U.S. GOVERNMENT INTERESTS AND DOMESTIC MANUFACTURE

- 17.1. It is understood that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any of the inventions of the Licensed Patents were conceived or first reduced to practice, the United States Government is entitled, under the provisions of 35 U.S.C. §202-212 and applicable regulations of Title 37 of the Code of Federal Regulations, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the inventions of such Licensed Patents for governmental purposes. Any grant to Licensee in this License shall be subject to such right. [Agency] Grant No. X relates to Licensed Patents.
- 17.2. Licensee agrees that Licensed Products will be manufactured substantially in the United States as required under 35 U.S.C. §204.

SECTION 18. EXPORT CONTROLS

- 18.1. It is understood that WSU is subject to the United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), and that the obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by Licensee that Licensee shall not export data or commodities to certain foreign countries without prior approval of such cognizant agency. WSU neither represents that such export license shall be required nor that, if required, such export license shall be issued.

SECTION 19. GOVERNING LAW

- 19.1. This License will be governed by the laws of the State of Washington, including the rights associated with breach, indemnification, injunctive relief, and/or untimely or wrongful disclosure of proprietary information, but excluding Washington State's choice of law provisions.
- 19.2. As an educational institution of the state of Washington, WSU is subject to Washington State laws and regulations including the Washington Public Disclosure Act, RCW 42.56 et seq.

(<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56>). If a Public Disclosure Act request is made to view Licensee's confidential information, and the WSU's Public Records Officer either determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, WSU will notify Licensee of the request and the date that such records will be released to the requester unless Licensee obtains a court order enjoining that disclosure by or before that date. If Licensee fails to obtain a court order enjoining disclosure, WSU will release the requested confidential information on the date specified. WSU's Public Records Officer (PRO) reserves the right to change the date of such release as the PRO deems necessary and in the public interest.

[SIGNATURE PAGE FOLLOWS]

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

WASHINGTON STATE UNIVERSITY LICENSEE

Signature _____

Signature _____

Name: Sita S. Pappu

Name: _____

Title: Assistant Vice President, Office of Commercialization

Title: _____

Date: _____

Date: _____

APPENDIX A
DEVELOPMENT PLAN

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

I. Development Program

A. Development activities to be undertaken

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

- 1.
- 2.
- 3.
- 4.

B. Estimated total development time

II. Governmental Approval

A. Types of submissions required

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

III. Proposed Market Approach

IV. Competitive Information

A. Potential competitors

B. Potential competitive devices/compositions

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

D. Anticipated date of product launch

Total Length: approximately 2-3 pages

APPENDIX B **DEVELOPMENT REPORT**

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

- A. Date Development Plan Initiated and Time Period Covered by this Report.
- B. Development Report (4-8 paragraphs).
 - 1. Activities completed since last report including the object and parameters of the development, when initiated, when completed and the results.
 - 2. Activities currently under investigation, i.e., ongoing activities including object and parameters of such activities, when initiated, and projected date of completion.
- C. Future Development Activities (4-8 paragraphs).
 - 1. Activities to be undertaken before next report including, but not limited to, the type and object of any studies conducted and their projected starting and completion dates.
 - 2. Estimated total development time remaining before a product will be commercialized.
- D. Changes to Initial Development Plan (2-4 paragraphs).
 - 1. Reasons for change.
 - 2. Variables that may cause additional changes.
- E. Items to be Provided if Applicable:
 - 1. Information relating to Licensed Products that has become publicly available, e.g., published articles, competing products, patents, etc.
 - 2. Development work being performed by third parties, other than Licensee, to include name of third party, reasons for use of third party, planned future uses of third parties including reasons why and type of work.
 - 3. Update of competitive information trends in industry, government compliance (if applicable) and market plan.
 - 4. Information and copies of relevant materials evidencing the status of any patent applications or other protection relating to Licensed Products or the Licensed Patents.

PLEASE SEND DEVELOPMENT REPORTS TO:

Washington State University
Office of Commercialization
Attn: Assistant Vice President
Lighty 280/286 PO Box 641060
Pullman WA 99164

APPENDIX C
WSU ROYALTY REPORT

Licensee: _____ Agreement No.: _____

Inventor: _____ P#: **P** _____

Period Covered: From: ___/___/___ Through: ___/___/___

Prepared By: _____ Date: _____

Approved By: _____ Date: _____

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

Report Type: **Single Product Line Report:** _____

Multiproduct Summary Report. Page 1 of _____ Pages

Product Line Detail. Line: _____ Trade name: _____ Page: _____

Report Currency: **U. S. Dollars** Other _____

Country	Gross Sales	* Less: Allowances	Net Sales	Royalty Rate	Period Royalty Amount	
					This Year	Last Year
U.S.A.						
TOTAL:						

Total Royalty: _____ Conversion Rate: _____ Royalty in U.S. Dollars: \$ _____

The following royalty forecast is non-binding and for WSU's internal planning purposes only:

Royalty Forecast Under This License: Next Quarter: _____ Q2: _____ Q3: _____ Q4: _____

APPENDIX D
LICENSED PATENTS

APPENDIX E
LICENSED MATERIALS/BIOLOGICAL MATERIALS

APPENDIX F
MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

Pursuant to the License to which this Mutual Confidential Disclosure Agreement is attached (the “*License*”), WSU may directly or indirectly disclose to LICENSEE proprietary information relating to the Patent Rights (“*WSU Information*”), and LICENSEE may directly or indirectly disclose to WSU proprietary information relating to its use of the Patent Rights (“*LICENSEE Information*”). For the purposes of this Mutual Confidential Disclosure Agreement, WSU Information and LICENSEE Information is sometimes collectively identified as “*Information*.” The party receiving Information is referred to herein as the “*Receiving Party*,” and the party disclosing the Information is referred to herein as the “*Disclosing Party*.” In the event of any disclosure of Information, the parties agree as follows:

1. The Receiving Party shall hold Disclosing Party’s Information in confidence and use due care, not less than the standard of care applied in the industry, to prevent unauthorized or inadvertent disclosure of the Disclosing Party’s Information it receives and any misappropriation thereof. The Receiving Party further agrees that it will restrict disclosure of, and access to, the Disclosing Party’s Information it receives solely to those persons within its own organization having a need to know the Disclosing Party’s Information for the purposes of the License Agreement and that such persons will be advised of the obligations set forth in this Mutual Confidential Disclosure Agreement and be obligated in a like fashion. Prior to any disclosure of the Disclosing Party’s Information to persons outside of the Receiving Party for any reason, the Receiving Party must first obtain the Disclosing Party’s written approval for such disclosure.
2. Notwithstanding anything in the License, the obligations of confidentiality as delineated herein shall expire five (5) years from the later of the Effective Date of the License or the date of disclosure of the Information. Upon expiration or termination of the License, the Receiving Party will promptly destroy or return to the Disclosing Party all materials including the Disclosing Party’s Information, except that one copy of the Disclosing Party’s Information may be retained by the Receiving Party for legal archival purposes only.
3. Licensee will not use any of WSU Information for any purpose other than to conduct the Development Plan described in Appendix A in the License. WSU will not use Licensee Information for any purpose other than its own internal research purposes. Specifically, but without limitation, the Receiving Party will not use any of the Disclosing Party’s Information for the sale or commercialization of any products or services without first entering into a formal written agreement signed by the Disclosing Party permitting such sale or commercialization.
4. The confidentiality and use obligations set forth above apply to all or any part of any Information provided before or after the Effective Date of the License Agreement except to the extent that:
 - a. the Receiving Party can prove by clear and convincing written contemporaneous evidence that it possessed the Information prior to its receipt from the Disclosing Party, and the Receiving Party promptly so notifies the Disclosing Party in writing;
 - b. the Disclosing Party’s Information was already available to the public or became so through no fault or negligence of the Receiving Party;

- c. the Disclosing Party's Information is subsequently disclosed to the Receiving Party by a third party that has the right to disclose it to the Receiving Party free of any obligations of confidentiality;
 - d. the Receiving Party can prove by clear and convincing written contemporaneous evidence that it developed the Information independently and without benefit of the Disclosing Party's Information;
 - e. the Information is required to be disclosed by law or legal process, and reasonable notice in writing of the disclosure has been given to the Disclosing Party, and the Disclosing Party has been given an opportunity, reasonable under the circumstances, to seek protection of such Information;
 - f. the Parties reasonably ascertain non-disclosure of Information to create a risk to a trial subject or to public health and safety.
 - g. As an educational institution of the state of Washington, WSU is subject to Washington State laws and regulations including the Washington Public Disclosure Act, RCW 42.56 et seq. (<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56>). If a Public Disclosure Act request is made to view Company's Confidential CI, and the WSU's Public Records Officer either determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, WSU will notify Company of the request and the date that such records will be released to the requester unless Company obtains a court order enjoining that disclosure by or before that date. If Company fails to obtain a court order enjoining disclosure, WSU will release the requested CI on the date specified. WSU's Public Records Officer (PRO) reserves the right to change the date of such release as the PRO deems necessary and in the public interest.
5. Except as expressly provided in the License, neither the disclosure of the Disclosing Party's Information to the Receiving Party, the expiration of the period specified in section 2 of this Mutual Confidential Disclosure Agreement, nor the publication of any Information shall be construed to grant the Receiving Party either any implied or express license or any rights to obtain any implied or express license to the Information, any patents arising from or disclosed in the Information, or any other information or technology.

APPENDIX G
MATERIAL TRANSFER AGREEMENT

Pursuant to the License (, the “*License*”) to which this Materials Transfer Agreement is attached (the “*MTA*”), WSU may provide Licensee with tangible research materials relating to the Patent Rights. In the event of any such transfer of materials to Licensee.

1. Research Materials. The following research material(s) were developed by (insert name of lead inventor), an employee of WSU (“*WSU*”), working either alone or together with other researchers at WSU and are the property of WSU:

"X"

The original research materials described above and any progeny, unmodified derivatives, and any part of the foregoing incorporated in modifications and other substances (“*Research Materials*”) are the property of WSU.

2. Purpose of Transfer and Restrictions. In order that Licensee may commercialize the technology associated with the Patent Rights described in the License, WSU agrees to permit Licensee to use the Research Materials solely for the purposes described in the Development Plan described in Appendix A.

Licensee will use the Research Materials only at its institutional facilities and only by Licensee’s employees who have the requisite scientific training and experience to safely handle the Research Materials.

Licensee will not transfer property rights appurtenant to the Research Materials or any results or new materials resulting therefrom without the prior written consent of WSU.

Licensee agrees not to transfer the Research Materials to any outside entity or to anyone who is not employed by Licensee without the prior written consent of WSU.

Licensee may disclose research results, information, or data resulting from Licensee’s use of the Research Materials only to Licensee’s employees, consultants, and subcontractors to whom it is necessary to provide such information for the purpose of commercializing the Patent Rights from WSU.

Licensee shall not incorporate or make part of any patent application the research results, information, or data resulting from Licensee’s use of the Research Materials except as permitted in the License to which this MTA is attached to.

Except as expressly provided herein or in the License, no right or license to the Research Materials is granted or implied as a result of the transfer of the Research Materials to Licensee.

3. Compliance. Licensee warrants that its use of Research Materials shall be in compliance with all applicable local, state, and federal procedures, rules, regulations, and laws.

4. Termination. Licensee shall cease all use of Research Materials upon termination or expiration of the License. Within fifteen (15) days thereafter, Licensee shall return to WSU or destroy (and certify same) all Research Materials in its possession or custody. Licensee’s obligations with respect to Research Materials shall survive termination or expiration of the License.

APPENDIX H
AMAZON NON-ASSERT

Licensee acknowledges that **X** IP was developed with funds from the Amazon Catalyst grant to WSU. Licensee also acknowledges that the **X** IP is subject to the below clause.

“WSU and Licensee hereby covenant not to assert (by way of litigation or any other proceeding anywhere in the world) any claims against Amazon and its affiliates for infringement or misappropriation of any Organization Technology with respect to any product, software or services used, made, duplicated, sold, or offered for sale, performed, displayed or otherwise disposed of or exploited by Amazon or any of its Affiliates or with respect to any activities undertaken in connection therewith. The foregoing covenant shall not extend to any Pre-Existing Work embodied within the Organization Technology, provided that to the extent any trade secrets or copyrights materials with the Organizational Technology that constitutes Pre-Existing Work is disclosed or made available to Amazon or its Affiliates as part of the Funding Agreement Regarding Amazon Organization at WSU (“*Disclosed Material*”), this covenant shall extend to such trade secrets or copyrighted materials in such Pre-Existing Work. For the avoidance of doubt, the above covenant does not create a license or any right under any patents owned by WSU covering such Pre-Existing Work disclosed as part of the Disclosed Material.”

Definitions as used in the Amazon Catalyst grant agreement to WSU:

“**Organization Technology**” means, with respect to a project, except for Pre-Existing Work,

(i) any and all technology and technical information, including without limitation all proposals; feedback; designs; data; inventions (whether or not patented or patentable); developments; results; discoveries; prototypes; embodiments; tools; invention disclosures; processes; procedures; methods; algorithms; routines; formulas; know-how; hardware; firmware; software; code (whether source, object or otherwise); drawings; layouts; schematics; Gerber files; layouts; configuration information; specifications; models; and other technical subject matter, created, conceived, discovered, developed or reduced to practice by or on behalf of WSU, an awardee or any of their respective personnel in the course of a performing work on a project and (ii) Intellectual Property and intellectual property rights in or to any of the foregoing.

“**Intellectual Property**” means: (a) works of authorship including, without limitation, computer programs, algorithms, routines, tools, utilities, interfaces, source code and executable code; (b) inventions (whether or not patentable), software, hardware, know-how, ideas, and technology; (c) information, whether proprietary and confidential or otherwise, including technical data and customer and supplier lists, trade secrets, know-how and techniques; (d) databases, data compilations, data collections and technical data; (e) processes, methods, designs (including industrial designs), devices, drawings, board layouts, prototypes, schematics, templates, reference boards, net lists, mask works, test methodologies and development tools.

“**Pre-Existing Work**” means any and all technology and technical information, including without limitation all quotes; proposals; feedback; designs; data; inventions (whether or not patented or patentable); developments; results; discoveries; prototypes; embodiments; tools; invention disclosures; processes; procedures; methods; algorithms; routines; formulas; know-how; improvements; derivatives; hardware; firmware; software; code (whether source, object or otherwise); drawings; layouts; schematics; Gerber files; layouts; configuration information; specifications; models; and other technical subject matter, created, conceived, discovered, developed or reduced to practice by or on behalf of a WSU or Amazon, any of their respective personnel, and in the case of and in the case of WSU, any awardee or its personnel, prior to the effective date of the project’s grant. For purposes of clarity, Pre-Existing Work excludes any Organization Technology previously created, conceived, discovered, developed or reduced to practice by or on behalf of WSU, an awardee or any of their respective personnel (e.g., in connection with any other project).

APPENDIX I
LICENSED KNOW-HOW