

LICENSE AGREEMENT
FOR
TECHNOLOGY TRANSFER

BETWEEN

Logo of Firm / Company

M/s. Firm Name/Company Name

Address of Firm/Company

AND



National Institute of Food Technology Entrepreneurship and Management
Deemed to be University (De-novo Category) under section 3 of UGC Act, 1956 &
An Autonomous Institute under Ministry of Food Processing Industries, Govt. Of
India, NIFTEM Campus, Plot No 97 Sector-56, HSIIDC Industrial Estate
Kundli, Sonapat-131028

FOR THE LICENSING

OF

NAME OF TECHNOLOGY/TECHNICAL KNOW-

HOW.....

.....

DEVELOPED BY

NAME OF INVENTOR'S & AFFILIATION

Sr. No	Name of the Inventor	Designation	Department	Affiliation



National Institute of Food Technology Entrepreneurship and Management
Deemed to be University (De-novo Category) under section 3 of UGC Act, 1956 &
An Autonomous Institute under Ministry of Food Processing Industries, Govt. Of
India, NIFTEM Campus, Plot No 97 Sector-56, HSIIDC Industrial Estate
Kundli, Sonapat-131028

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National Institute of Food Technology Entrepreneurship and Management
Deemed to be University (De-novo Category) under section 3 of UGC Act, 1956 &
An Autonomus Institute under Ministry of Food Processing Industries, Govt. of India,
NIFTEM Campus, Plot No 97 Sector-56, HSIIDC Industrial Estate
Kundli, Sonapat-131028

AND

M/s. NAME OF FIRM / COMPANY

ADDRESS OF FIRM / COMPANY

LICENSE AGREEMENT

This LICENSE AGREEMENT is made this day of
..... **BETWEEN** National Institute of Food Technology Entrepreneurship and
Management (NIFTEM), an Autonomous institute conceptualized by Ministry of Food
Processing Industries (MoFPI), Government of India on persistent demand of the food
industry having its Registered Office at Plot No 97 Sector-56, HSIIDC Industrial Estate,
Kundli, Sonapat-131028, (hereinafter called 'The Licensor' which expression shall
include its successor-in-interest and assigns) of the **FIRST PARTY**,

AND

Name of Licensee S/o / D/o Shri carrying on business as **PROPRIETOR /
PROPRIETRIX** in the name and style of **M/s. NAME OF FIRM / COMPANY** having its
registered office at **ADDRESS OF FIRM** (hereinafter called 'The Licensee' which
expression shall include its successors-in-interest/business and permitted assigns) of
the **SECOND PARTY**. (THIS PARA FOR PROPRIETORSHIP / PARTNERSHIP / LLP
FIRMS).

BACKGROUND

M/s. Name of Company, an existing Company within the meaning of and registered under the Companies Act, 1956, (or Companies Act, 2013) having its registered office at **ADDRESS OF COMPANY** (hereinafter called 'The Licensee' which expression shall include its successors-in-interest/business and permitted assigns) of the **SECOND PARTY**. (THIS PARA FOR COMPANIES REGISTERED UNDER ROC)

AND WHEREAS the Licensor is an autonomous Institute established by Ministry of Food processing Industries, Government of India, with the objective, of teaching, research consultancy, skill development, Technology development, promotion, licensing and commercial exploitation of technology, know-how and inventions, including the technical and engineering know-how.

- A. The Licensor has the absolute ownership of the Technology developed/KNOW-HOW pertaining to the PROCESSES together with the intellectual property rights in the KNOW-HOW and the PROCESSES, for manufacture of the ARTICLE.
- B. The Licensor has agreed to grant to the Licensee a Non-exclusive, worldwide license for the life of the Licensed Patents, to commercialize the Licensed Patents upon the terms set out in this Agreement.

AND WHEREAS the Licensee, acknowledging and accepting such absolute ownership of the Licensor in the KNOW-HOW and further developments has approached the Licensor for license to use, exploit and practice the KNOW-HOW and the PROCESSES of manufacture of the ARTICLE and to sell and vend commercially ARTICLE (S) so manufactured.

AND WHEREAS the Licensor in furtherance of its objectives is agreeable to grant to the Licensee such License subject to covenants and conditions hereinafter contained.

1. DEFINITIONS AND INTERPRETATIONS

Subject to the context hereof, the following words and expressions shall be construed and interpreted, so as to have the following meanings.

1.1 Definitions

In this Agreement:

- A. **“ARTICLE”** shall mean the article or substance or product (described in Schedule-I hereto) produced, made or manufactured by use, exercise and/or practice of the technology developed/KNOW-HOW, wholly or partially, with the intent to sell and vend such article / substance / product commercially, and shall include any other article, substance or product which has as its component or part thereof the article made or manufactured by use/ exercise of the KNOW-HOW or which is an intermediate or derivative article, substance or product as well as modifications, developments, or improvements of any of them arising out of further development work.
- B. **“EFFECTIVE DATE”** shall mean the date of execution of this Agreement by all parties. In the event parties to this Agreement affix their signatures on different dates, the Effective Date shall mean the date on which the last of the executing parties affixes its signatures to the Agreement.
- C. **“COMMERCIALIZE”** in relation to the Licensed Patents, shall mean and include acts such as to use, make, manufacture, have made or manufactured, sell, advertise, promote, distribute, hire, supply or otherwise dispose of the Product, and to sublicense any third party to do the same for the purposes of selling or offering for sale the Product;
- D. **“IMPROVEMENTS”** shall mean all refinements, developments, and alterations of and in the KNOW-HOW and/or PROCESS and/or the ARTICLE capable of improving the technical economic and/or other characteristic(s) of any of them arising out of the further development work or otherwise and “development” shall also be construed accordingly.
 - i). In case of joint Improvements by Licensor and Licensee, on the basis of the inputs by either party or both parties, the intellectual property rights remains with the Licensor only. However, if the Licensee provides the inputs for further improvement, then a mutual agreement has to be signed by Licensor and Licensee, through which the Licensee can also have rights on the improvements done. The inventor has to assess the need and scope of the inputs provided and process the agreement for the same.

- E. “KNOW-HOW”** shall mean the technology, technical know-how, the technical knowledge, information and data (described in Schedule–II hereto).
- F. “PROCESS(ES)”** shall mean the process, method or manner of manufacture of production of the ARTICLE by use, exercise and practice of the KNOW-HOW and shall include any improvements, developments or modifications thereof.
- G. “PLANT”** shall mean a factory, facility, works or premises set up or used for any of the purposes of this License.
- H. “CONFIDENTIAL INFORMATION”** shall mean a fact, data, an opinion, a secret, an idea, a process, a methodology, know how, a model, a formulation communicated by one Licensor (disclosing party) to Licensee(recipient or person nominated by Licensee) and at the time of communication identified as Confidential Information by the Discloser; and includes copies of the Confidential Information, whether such copies are tangible copies, or stored by any electronic or computer assisted medium, including disk, diskette, or tape or stored in any other manner whatsoever; but does not include any of the above that:
- i). is in the Public Domain by use and / or publication at the time of its disclosure by the disclosing party; or
 - ii). was already in possession of the recipient prior to receipt from the disclosing party; or
 - iii). is properly obtained by the recipient from a third party with a valid right to disclose such information and such third party is not under a confidentiality obligation to the disclosing party; or
 - iv). was disclosed to any third party on a non-confidential basis prior to execution of this Agreement; or
 - v). was developed by any of the Parties, as established by acceptable written record or agreement, independently of the disclosure of information by the disclosing party; or
 - vi). is required by public authority by law or decree;
- I. “INTELLECTUAL PROPERTY” or IP** shall mean patents, rights to inventions, copyright and related rights, moral rights, rights in designs, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other

intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), divisional, continuations, continuations-in-part, reissues, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, and shall include without limitation, the Technology and the Licensed Patents;

J. "LICENSED PATENTS" shall mean:

- i). Indian Patent Application No. 1252/DEL/2009;
- ii). PCT patent application PCT/IN2010/000409; and
- iii). all Intellectual Property (anywhere in the world) based on, claiming priority from, or corresponding to the inventions disclosed in, Indian Patent Application No. 1252/DEL/2009 and PCT/IN2010/00409;

K. "MILESTONES" shall mean collectively, the Sub-License Restriction Milestone and Patent Expenses Milestone and any other milestone as defined in Schedule 3;

L. "PRODUCT" shall mean each product:

- i). the manufacture, use, or sale of which would in absence of this Agreement, constitute infringement of the Licensed Patents; or
- ii). that otherwise incorporates any part of the Technology;

M. "PROPOSED PUBLICATION" shall mean:

- i). a manuscript or abstract intended for publication; or
- ii). a paper or abstract intended to be orally presented, or
- iii). any posters or other form of presentation, that relates to any matter concerning the Licensed Patents or Technology;

N. "PUBLIC DOMAIN" shall mean the general store of knowledge that is publically available, or that is known or generally available and ascertainable by members of the community;

O. Recipient shall mean a party to this agreement to whom Confidential Information is disclosed;

P. "ROYALTY PERIOD" shall mean each consecutive period ending on 31st March from 1st April respectively each year;

- Q. “SUB-LICENSE AGREEMENT OR SUB-LICENSE”** shall mean an agreement between the Licensee and any party granting a sub-license to Commercialize the Licensed Patents;
- R. “SUB-LICENSEE”** shall mean a person to whom the Licensee grants a Sub-License to Commercialize the Licensed Patents;
- S. “SUB-LICENSE FEES”** shall mean:
- i). lump sum or other periodic payments; and
 - ii). royalty payments, received from a Sub-Licensee, in accordance with clause 6.2 herein below;
- T. “DISCLOSER”** means a party to this Agreement which discloses Confidential Information to any other party;
- U. “EX FACTORY PRICE” shall** mean the actual invoiced price of the Product being Commercialized , less, taxes such as GST, sales tax, services tax, use and turnover taxes, import, export and excise duties, custom duties and any applicable levies;
- V. “CONDITION SUBSEQUENT”** shall have the meaning provided in Section 2; Condition Subsequent Period shall mean the time period up to achievement or satisfaction of the Condition Subsequent, and which shall in no event extend beyond 12 months from the Effective Date;

1.2 Interpretation

- a). A reference to a party to this Agreement includes a reference to that party's executor, administrator, successors, permitted assigns, and trustee in bankruptcy, all of whom, respectively, are bound by the provisions of this Agreement.
- b). Headings in this Agreement are inserted for guidance only, and shall not affect the meaning and interpretation of the remaining provisions of this Agreement.
- c). Words in this Agreement importing the singular number or plural number shall include the plural number and singular number respectively.
- d). Words in this Agreement importing persons include all persons, entities and associations, including companies, bodies corporate, statutory bodies, partnerships, and joint venturers.
- e). Where a word or phrase is given a particular meaning in this Agreement, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

- f). Where a party to this Agreement is more than one person the covenants and obligations on their part contained in this Agreement are binding upon each of them jointly and severally.
- g). The word “including” is not a word of limitation.
- h). A reference to any statute is a reference to that statute, as amended and in force from time to time.
- i). A reference to this Agreement shall mean this Agreement including all its schedules, and any amendments thereof, effected by the Parties from time to time in accordance with this Agreement.

2. CONDITION SUBSEQUENT

2.1 Agreement binding upon execution for Condition Subsequent Period

- i). Subject to Clause 2.8 below, this Agreement is binding upon the parties from the Effective Date, but only for the Conditions Subsequent Period.
- ii). Subject to Clause 2.8 below each party will perform its obligations under this Agreement within the Conditions Subsequent Period.

2.2 Best endeavours to satisfy Condition Subsequent

The Licensee shall use its best endeavors to ensure that the Condition Subsequent is met within the Conditions Subsequent Period.

2.3 No warranty as to Condition Subsequent being met

No party makes any warranty nor any representation as to whether the Condition Subsequent will be met or is capable of being met within the Conditions Subsequent Period.

2.4 No liability if Condition Subsequent is not met

No party shall have any liability to the other in the event the Condition Subsequent is not met, for any reason whatsoever.

2.5 No obligation to meet

Where the Condition Subsequent or extensions thereto confers a discretion upon a party, that party:

- i). is not obliged to exercise that discretion in any particular way;

- ii). may exercise that discretion in any way that that party chooses and
- iii). is not obliged to waive the Condition Subsequent.

2.5 Extension of Condition Subsequent Period

The Licensor may upon written request from the Licensee may extend the Condition Subsequent Period, by providing at least 30 days written notice to the Licensee, and in that case, the Condition Subsequent Period shall include that extended period so notified.

2.6 Termination in relation to Conditions Subsequent

The Licensor may terminate this Agreement if the Condition Subsequent is neither met nor waived by the Licensor, within the Conditions Subsequent Period (including such extensions as may be granted), after having provided at least a 90 day period (commencing upon receipt of written notice by the Licensee) to the Company to remedy non-fulfilment of the Condition Subsequent.

2.7 Parties discharged

- a). Subject to Clause 2.7 (b) below, the parties would stand discharged from any further obligations under this Agreement, in the event of termination pursuant to clause 2.6.
- b). Notwithstanding the provisions of Clause 2.1 (a) and (b), and any termination of this Agreement in accordance with terms of clause 2.6, parties shall continue to be bound by the following clauses:
 - (i) 1: Definitions and Interpretation
 - (ii) 6: Financial Terms, in as much as they relate to the Products derived from the Licensed Patent the Company has on hand at the date of termination
 - (iii) 10: No Warranties
 - (iv) 11: Entire Agreement
 - (v) 8: Termination Generally
 - (vi) 17: General Covenants

2.8 Agreement unconditional

This Agreement becomes unconditional and shall continue to be binding up to the date of expiry of the last to expire patent among the Licensed Patents, if the Condition Subsequent is met during the Condition Subsequent Period.

3. GRANT OF LICENSE

In consideration of the payment of **Rs..... (RUPEES IN WORDS ONLY)** **(based on mutual agreement of the Licensor and the Licensee)** by the Licensee to the Licensor by way of Lumpsum Premium and royalty hereinafter provided and in further consideration of due and faithful observance and performance by the Licensee of the covenants and conditions here-in-after contained, the Licensor hereby grants to the Licensee the License to use and practice the KNOW-HOW and the PROCESSES to commercialize the ARTICLE and to sell and vend the article commercially on the terms and conditions herein provided.

3.1 Duration of the License

This license shall come into force on the EFFECTIVE DATE and subject to covenants and conditions herein contained, will remain in force for a period of **YEARS** from the effective date or for a period of **YEARS** commencing from the accrual of the Licensee's obligation to pay Royalty to the Licensor, in terms of Clause 5 (ii) hereof, whichever is longer.

3.2 Grant of License conditions

- a). Subject to the terms of this Agreement, the Licensor grants to the Licensee a Non-exclusive, worldwide, revocable license to commercialize the Licensed Patents in the Territory. Any revocation of such license shall be in accordance with Clause 3.2(b) below. The License granted under this clause shall commence on the Effective Date and shall extend upto expiration of statutory term of the last to expire patent among the Licensed Patents.
- b). Non-performance: In the event the Licensee fails to meet the Condition Subsequent within twenty four months from the Effective Date, and is also unable to commercialize the Product within two years from the date of this Agreement,

the Licensor shall be free to revoke the license granted under Clause 3.1(a) and to license the technology to any other party.

3.3 Reservation of right to research

Without prejudice to any provision in this Agreement, the Licensor may grant a license to any not-for-profit organization in India, permitting it to make or use the Product solely for non-commercial purposes, provided the Licensor shall ensure that the not-for-profit organization shall not in any way Commercialize or use the Licensed Patents so as to compete with or adversely affect the business of the Licensee.

4. GRANT OF SUB-LICENSES

4.1 Prior to Sub-License Restriction Milestone – grant of sub-licenses with prior written consent

- a). Until the Licensee achieves the Sub-License Restriction Milestone, the Company shall not enter into a Sub-License Agreement with any person authorizing such person to commercialize the Licensed Patents, without obtaining the prior written consent of the Licensor, which consent shall not unreasonably be withheld.
- b). Marketing/Distribution Agreements

The parties agree that the Licensee shall be permitted to identify partners for marketing and distribution of the Product, and may enter into agreements with such partners even prior to achieving the Sub-license restriction milestone, provided that the scope of such agreements shall be limited solely to marketing and distribution of the Product, and shall not in any manner be construed to comprise a sub-license of any Intellectual Property in the Technology.

4.2 Information about Sub-Licensees and sub-licenses

- a). The Licensor may request information from the Licensee information regarding any marketing/distribution agreements entered into with third parties, including all reasonable information concerning the identity, structure, business activities, financial standing of parties to such marketing/distribution agreements, and commercial terms of such agreements, and the Licensee must use its best efforts to supply that information.

- b). The Licensee must provide to the Licensor a copy of each marketing/distribution agreement.

4.3 After Sub-License Restriction Milestone - grant of sub-licenses without consent

- a). After the Licensee achieves the Sub-License Restriction Milestone, the Company may enter into a Sub-License Agreement with any person to commercialize the Licensed Patent, without any the requirement for consent of the Licensor.
- b). The Company shall provide to the Licensor a copy of any Sub-License Agreement executed under Clause 4.3(a).

5. COVENANTS

The License hereby granted is and shall always be strictly non-exclusive in its nature and the LICENSOR may at its discretion grant to any other person a License or permission to use and practice the KNOW-HOW in any manner and at any time.

- i). The Licensee shall not use and practice the KNOW-HOW and/or the PROCESS for manufacture of the ARTICLE outside the PLANT without the prior written consent of the Licensor.
- ii). This License shall extend to the whole of India, only for the purpose of the manufacture and sale of the ARTICLE. The ARTICLE may, however, be exported under intimation to Licensor within 30 days of acceptance of each export order.
- iii). The Licensee shall not any time disclose the KNOW-HOW and/or the PROCESS to any third party or person, without prior written consent of the Licensor and shall take all possible precaution against any such disclosure.
- iv). The Licensee shall not assign, transfer, encumber, mortgage, charge or sub-license or part with possession of the KNOW-HOW and/or PROCESS, wholly or partially, without the prior written consent of the Licensor.
- v). The Licensee shall not at any time hereafter deny or dispute the legality, validity or enforceability of this License or any of its obligations hereunder.
- vi). The Licensee shall not at any time hereafter claim any independent, exclusive or any other right to the KNOW-HOW and/or PROCESS, including the absolute property of the Licensor.
- vii). The Licensee shall have the right to continue manufacture of the Articles in accordance with the KNOW-HOW and the benefits of all technical information and

experience acquired by it in terms of this License Agreement after expiry of its validity, only after the RENEWAL of validity of this License Agreement on the terms and conditions as may be decided by the licensor. Without the renewal of the license agreement the Licensee shall not have the right to continue manufacturing and sale of the Article under the process know-how.

- viii). The Licensee shall not represent or threaten to pass off the KNOW-HOW/PROCESS as its own technology or KNOW-HOW or invention.
- ix). It will not be open to the Licensee to claim any exemption from or reduction in the payment of royalty accruing under Clause 6 on the plea of having used their own know-how or having effected any improvement upon the said KNOW-HOW / PROCESS or on the plea that the articles to be manufactured under the said KNOW-HOW / PROCESS have been manufactured by using a different process and the Licensee shall be liable for the payment of the royalties for all the articles manufactured by them and covered by this agreement irrespective of any plea whether the same have been manufactured by the said KNOW-HOW / PROCESS or otherwise.
- x). The covenants contained in this Clause 5 shall survive the expiry and or termination of this License Agreement.
- xi). Any amendments made in the license Agreement for technology transfer by NIFTEM from time to time will be applicable to the present agreement also. and in in that case clause 15 will not be applicable.
- xii). The company/person/individual/Start up any individual interested in the technology transfer or know how has to sign a Non- Disclosure agreement as in Schedule 4.

6. PAYMENT OBLIGATIONS

In consideration of the License hereby granted to, the Licensee shall pay to the Licensor:

- i). Lumpsum Premium of Rs. _____ (Rupees in Words Only) on or before the execution of these presents. However, due to some reason specified, it should never be delayed by one month from Effective date.
- ii). Royalty @ % on the ex-factory sale price of the ARTICLE, on the first day of April every year regularly and punctually and in any event not later than the

first day of May immediately following, in every such year. PROVIDED that the liability of the Licensee to pay royalty under and in terms of this sub-clause (ii) shall accrue upon the commencement of the manufacture of the ARTICLE for commercial purposes at the PLANT including for any usage of the article by the Licensee and shall continue for a minimum period of **YEARS** from such commencement.

- iii). Goods and Service Tax @ as applicable at that time and/or any increase/change made by the Government of India, from time to time on the Premium and Royalty payable by Licensee to the Licensor. Interest @ 18% per annum will be levied on all overdue amounts (including any interest in arrears) from the due dates of payments till realization/recovery of such amounts by the Licensor. Provided that interest on interest in arrear shall not be charged until the expiry of the period of 30 days from the dates of payment becoming due.
- iv). The interest enumerated in sub paragraph (iv) herein above shall be adjusted first by the Licensor against payment received from the Licensee and the residual amount shall then be adjusted against the royalties due.

6.1 Royalty Sharing

- i). The royalty sharing would be as per the Policy for Consultancy Assignment by faculty as per F. No. N/S/K/ADV/99/1348 point 5.1 for profit sharing. i.e. The Royalty will be shared in the ratio of 60:40 where by 60% of surplus calculated after deducting all the overhead costs of NIFTEM (if any) is taken by inventors and 40% is retained by NIFTEM.
- ii). The inventors share would be equally divided among them. However if the inventor is not willing to take the royalty share he can submit the same in writing. Then the remaining amount would be shared equally among the other inventors except the one not willing to take the royalty.
- iii). The royalty amount is first to be directly paid in the account of NIFTEM and then the share of the faculty after deducting the income tax will be paid by the institute.

EXPLANATION:

For the purposes of computation of royalty:

“The manufacture of the ARTICLE” shall mean deem to commence or take place when such ARTICLE is in a marketable/consumable/ usable state (including the ARTICLE in storage or ready for the Licensee’s own use or otherwise).

- v). “Ex-factory sale price” shall deem to be the total price from time to time declared to, and accepted by, the authority under the Central Goods and Services Tax Act, 2017, or any other authority of the Government of India, or, in the absence of such declaration, as published/communicated to the trade or the public in this behalf; the price relevant for the purpose of sub-clause (ii) of Clause 6 is deemed to be the highest price so declared/ published/ communicated during the six month period for which the royalty is to be calculated (without any deduction being made there from on account of any discount or rebate whatever).
- vi). All payments due under due under this Clause 6 shall be made within 30 days from the stipulated dates and without any deduction, withholding or adjustment except to the extent required by law.
- vii). The Royalty Returns shall be accompanied by Goods and Service Tax (GST) Returns for the period(s) under consideration.

7. REPRESENTATIONS AND UNDERTAKINGS

7.1. Representations by Licensor:

The Licensor shall within 180 days from the EFFECTIVE DATE disclose or cause to be disclosed, or provide or cause to be provided, as the case may be, to the Licensee, the information, data and documents concerning the KNOW-HOW and the related process provided that such information, data or documentation may be so disclosed/provided by the Licensor to the Licensee in different lots/installments but sufficient to enable the Licensee to use them for this purpose of the License.

- (i) The Licensor shall at the request of the Licensee, demonstrate or cause to be demonstrated, as it considers appropriate, the working of the KNOW-HOW on the scale at which it has been developed.
 - a). The Licensor shall disclose to Licensee in documented form to the maximum extent possible any improvements, developments or modifications if any made by the Research Institute to the KNOW-HOW or the PROCESS or the ARTICLE

by the Licensor for the benefit of the Licensee as integral part of the KNOW-HOW and/or the PROCESS.

- b). The Licensor may, at the request and at the cost of the Licensee train or arrange to be trained the owner(s) and/or the authorized employees of the Licensee possessing the requisite qualifications and experience as required at the Research Institute.
- c). The Licensor may at the request of the Licensee provide any further or other technical assistance to the Licensee for effective and expeditious implementation of this License upon mutually agreed terms and conditions.

7.2 Representations by Licensee:

- (i) The Licensee shall during the continuance of the License and otherwise observe and perform the covenants and conditions of this License diligently and faithfully and to the satisfaction of the Licensor.
- (ii) The Licensee shall promptly disclose and provide to Licensor in documented form to the maximum extent possible, all improvements, developments and modifications in regard to the KNOW-HOW and/or PROCESS and/or ARTICLE or related or incidental to any of them. Any such improvements, developments and modifications such constitute an integral part of the KNOW-HOW and/or PROCESS and shall as such belong to the Licensor absolutely.
- (iii) The Licensee shall not keep the sale price of the Article unusually high.
- (iv) The Licensee shall always keep and maintain at its usual place of business, separate books of accounts relating to the royalties in such form and containing such information and particulars as may be required by the Licensor for all or any of the purposes of this License, including Clause 5 hereof.
- (v) The Licensee shall at all reasonable times, produce the books of accounts so maintained and all other relevant books of accounts, vouchers, documents, receipts and connected papers, if any, to the Licensor, its attorneys or duly authorized agent(s) and will permit the Licensor, its

attorneys or duly authorized agent(s) to inspect the same, take copies of extracts there from and the Licensee shall give full information as may be required by the Licensor for determination of the amount of royalties payable hereunder as aforesaid.

- (vi) The Licensee shall, before first day of April every year deliver to the Licensor, its attorneys or duly authorized agents, a true and complete statement of the ARTICLE manufactured, stored and marketed or used for its own purposes by the Licensee and ex-factory sale price of the ARTICLE during the period for which the royalties are payable to the Licensor, as well as a statement of calculations of the estimated royalties. All such statements shall be duly certified by the Auditor of the Licensee and their validity shall be proven and substantiated if so required by the Licensor.

EXPLANATION:

Sale price for the articles used for own use or consumption by the Licensee shall be highest ex-factory price of the article if any sold or the price it would fetch if so sold in the market in the absence of merchant sale.

- (vii) The Licensee shall permit the Licensor, its attorneys its duly authorized agents and its authorized representative(s) at all convenient times to enter into and upon the PLANT or any other premises of the Licensee in which the ARTICLE is stored or sold under this License for the purpose of inspection of the ARTICLE, the method of its manufacture and the manner of use and practice of the KNOW-HOW and/or the PROCESS so that it may be ensured that the provisions of this License are being complied with by the Licensee.
- (viii) The Licensee shall at its own cost affix a label or plate or inscribe in a conspicuous manner upon every article, box or packet containing the ARTICLE its components and spares the legend or inscription “**KNOW HOW/TECHNOLOGY DEVELOPED BY “NATIONAL INSTITUTE OF FOOD TECHNOLOGY ENTREPRENEURSHIP AND MANAGEMENT”**” and similarly, every advertisement, publicity material / customer literature / hoardings etc. in respect of the ARTICLE shall include the same legend in bold letters as aforesaid, at a conspicuous place in such advertisements/

publicity material / customer literature, hoardings etc. In case the Licensee puts any advertisement in any form which includes any notice, circular, label, wrapper, or other document and any announcement made orally or by any means of producing or transmitting light, sound or smoke, in respect to the Article / Product licensed as per this license agreement, the Licensee shall ensure compliance of all such Indian Laws, Rules and Regulations and Guidelines issued by the Supreme Court / High Courts / Subordinate Courts of India from time to time and there should not be any exaggerated claims in the advertisement. Under no circumstances for violation of any such Laws, Rules, Regulations and Guidelines as above mentioned by the Licensee, the Licensor or the Research Institute shall be held responsible.

- (ix) The Licensee shall notify to the Licensor the change, if any, in its Registered Office / PLANT within 15 days of such change and shall also notify the change in the constitution of the Licensee within the aforesaid stipulated period.
- (x) The Licensee shall not in its own name or in the name of any third party, file any Patent Application for the grant of Patent of the KNOW-HOW hereby licensed and shall also not oppose at any time any Patent Application made by the Licensor or Research Institute either jointly or severally.
- (xi) The Licensee shall, in token of his being satisfied of the PROCESS, sign a certificate after successful demonstration of the PROCESS at the Research Institute.
- (xii) The Licensee shall permit authorized representative of the Licensor/the Research Institute to photograph the plant provided no PROCESS DETAILS or trade secrets are revealed in these photographs.
- (xiii) The Licensee shall permit authorized representative(s) of the Licensor/ Research Laboratory/New Licensee on Licensor's recommendation to visit the plant of the Licensee and photograph the plant provided no PROCESS DETAILS or trade secrets are revealed in these photographs.

8. TERMINATION OF LICENSE AGREEMENT

8.1 Termination by Licensor

The Licensor may terminate this License forthwith on the occurrence of all or any of the following events:

- (i) The Licensee fails to pay the Licensor any of the amounts due and payable to it hereunder, including the royalties.
- (ii) The Licensee commits any breach of other covenants and conditions to be observed and performed by the Licensee under this License and fails to rectify such breach within 15 days from its occurrence.
- (iii) The Licensee enters into composition with its creditors or any proceeding for its liquidation or for appointment of a Receiver or for Attachment of its assets/properties is threatened or initiated in any Court of Law.
- (iv) The Licensee fails to obtain and maintain the necessary permissions and sanctions from the appropriate authorities.
- (v) The Licensee fails to commence manufacture of the ARTICLE in its PLANT / FACTORY (as per the mutual agreement on case basis) from the EFFECTIVE DATE or in event the Licensee is unable to set up production within stipulated period viz., due to unavoidable circumstances and causes beyond the control of the Licensee, the Licensee shall make a request in writing for extension of time limit before the expiry of the date, giving detailed reasons. This request will be carefully examined and considered by the Licensor and then decided on by the Licensor. The decision of the Licensor in this regard shall be final and binding on the Licensee.
- (vi) The Licensee suspends or discontinues manufacture of the ARTICLE for a period exceeding four months without obtaining prior written permission or extension in this regard from the Licensor.
- (vii) The Licensee represents or threatens to pass off the KNOW-HOW / PROCESS (ES) and sells and vends the ARTICLE accordingly.
- (viii) The Licensee fails to maintain quality of the product as per specifications of the Licensor or any applicable specifications as the case may be.

8.2 Termination by Licensee

The Licensee may also request to Licensor to terminate this license agreement by giving one month notice and specifying the reasons thereof provided that pending royalty amount together with overdue interest, if any, due and payable till the date of notice by the Licensee to the Licensor is fully paid and furnished an undertaking that the Licensee shall not use and practice the KNOW-HOW / PROCESS including any improvements, developments and modifications or incidental to any of them.

- (i). Upon termination of the License as herein provided, the Licensee shall cease to have any right to use and practice of the KNOW-HOW and the PROCESS (ES) and shall return to the Licensor or its nominee all information data or documentation within such time as may be specified by the Licensor provided that such termination shall not in any event, discharge the Licensee of its obligations and liabilities under and in terms of Clause 5 and Clause 6 (ii) hereof.

C. Nothing in this Clause 8 shall annul or abridge other rights and remedies of the Licensor under this License Agreement or in law.

9. WAIVER

Any indulgence shown by the Licensor to the Licensee in any manner shall not constitute waiver of its rights and remedies against the Licensee. The Waiver, if any, by the Licensor, of any right of the Licensor or of any breach by Licensee of any term, condition or obligation of the License shall not in any event be construed as a waiver of any subsequent right or remedy or breach as the case may be or of any other right or remedy or breach of the same or different nature.

- i). None of the parties hereto shall be construed as an agent or representative of the other party.
- ii). The Licensee hereby waives any requirement of warranties and guarantees, in terms hereof, or arising by law or in contract or tort or otherwise, including any implied warranty or guarantee as regards the quality or merchantability of the ARTICLE or fitness, utility or the workability of the KNOW-HOW and/or the PROCESS for any purpose whatsoever.

10. NOTICES

- i). All notices required to be served on the Licensee under the terms of this License shall be deemed to be duly served if the same shall have been delivered to, left with or posted by Registered / Speed Post Mail to the Licensee at its last known place of business or the Registered Office.
- ii). All notices required to be served on the Licensor under the terms of this License shall be deemed to be duly served if the same shall have been delivered to, left with or posted by Registered / Speed Post Mail to the Licensor at its last known place of business or the Registered Office.

11. ENTIRE AGREEMENT

This License shall be sole repository of the terms agreed to between the parties and no amendment thereof shall take effect and will be binding on the Licensor unless such amendment is authorized by the Registrar of the Licensor and is recorded in writing and signed by both Licensee and the Licensor. The Application or request letter for acquiring License from the Licensor shall form a part of this License Agreement.

12. SAVING PROVISIONS

Notwithstanding anything herein contained, the Licensor shall always have the right to disclose and provide to the Central Government or its authorized representative, agency or undertaking, the KNOW-HOW and/or the relative PROCESS, to use and practice the same for the purpose of experimentation and/or further research or development thereof, with the right to sell and vend the ARTICLE in such manner as the Central Government may, in its judgment decide, for "Government purposes", or otherwise in public interest.

- i). The rights of the Licensor hereunder are cumulative and not mutually exclusive.

13. ARBITRATION AND JURISDICTION

If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this license agreement including the rights or liabilities or any claim or demand of any party against other or in regard to any other matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this license agreement, such disputes or differences shall be settled under the Rules of Delhi International Arbitration Centre, New Delhi by Sole Arbitrator (preferably Vice Chancellor,

NIFTEM) to be appointed out of the Panel of Arbitrators of Delhi International Arbitration Centre (DAC) with the consent of both the parties failing which the aggrieved party shall approach to the Court of Competent Jurisdiction for the appointment of Sole Arbitrator in accordance with the Arbitration & Conciliation Act, 1996 (as amended / modified from time to time) and rules framed thereunder for the time being in force (the Act) and the reference to arbitration shall be deemed to be submission within the meaning of the Act.

- (i). If however, the Licensee does not make any claim or demand or raise any dispute or difference in terms of this Clause within one year from the date on which such claim or demand arises, the Licensee shall be deemed to have waived and abandoned such claim or demand or the right to raise such dispute or difference against the Licensor.

14. INFRINGEMENT IN CASE OF NON-EXCLUSIVE LICENSE

14.1 Infringement of Intellectual Property

If either party learns or believes that:

- (a) any unauthorized person has unauthorisedly possessed itself of any part of Technology falling within the KNOW- HOW; or
- (b) any person has made any improper or unauthorised use of the Technology falling within the KNOW- HOW; or
- (c) any unauthorised person is doing anything in contravention or infringement of rights that attach to and arise from the KNOW- HOW, that party must immediately report full particulars to the other.

14.2 Parties to consider acting jointly in relation to infringements

As soon as practicable:

- (a) after receipt of the information referred to in Clause 14.1; or
 - (b) after any challenge in any manner to the KNOW- HOW is made by any person;
- the parties must confer and decide what course should be taken.

14.3 Parties decide to act jointly

If the parties agree that they shall jointly proceed with instituting or defending any proceedings concerning the Licensed Patents, and in that event:

- i). they shall jointly give all necessary instructions to legal representatives and can share the expenditure equally for Non-Exclusive license only;
- ii). In case of Exclusive license to licensee and in the event that the parties shall be unable to agree upon the instructions to give to legal representatives, those instructions shall be given by the Licensee decision in this regard shall be final and binding on all the parties;
- iii). In case of Exclusive license to licensee, the Licensee shall solely be responsible for all legal fees, costs and disbursements in relation to such proceedings; and
- iv). after payment of all legal expenses, the Licensee shall share with the Licensor any damages or other monies that be awarded as per the royalty terms applicable.

14.4 No other warranties

The Licensee acknowledges that the Licensor has not made and does not make any warranty or representation whatsoever as to:

- i). the safety of the KNOW-HOW;
- ii). the Commercialization of the KNOW-HOW;
- iii). the marketability of the KNOW-HOW;
- iv). the profits or revenues that may result from the Commercialization of the KNOW-HOW;
- v). the commercialization prospects or success of any part of the KNOW-HOW;
- vi). whether any patent application may be granted or not granted, or granted with the claims sought, or any reduced claims;
- vii). whether any patent granted may be declared invalid or cease to be registered;
- viii). and in all such respects, the Licensee relies upon its own due diligence, its own inquiries, and its own judgment.

14.5 Indemnity

To the full extent permitted by law, the Licensor and its officers, employees, sub-contractors and agents will not be liable to the other for any special, indirect or consequential damages, including consequential financial loss arising out of the Commercialization or use of the Licensed Patents, or any Products derived from the Licensed Patents.

15. VARIATION

- i). No variation to this Agreement shall be binding upon the parties unless that variation is in writing, and is signed by all the parties to this Agreement.

IN WITNESS WHEREOF the Licensor and the Licensee have executed these presents this day, month and year first above written.

FOR AND ON BEHALF OF THE LICENSOR

SIGNED BY

Dr. J. S. Rana Registrar, NIFTEM	Any one Inventor of the Technology/Know how Department of _____, NIFTEM

AND

FOR AND BEHALF OF THE LICENSEE

SIGNED BY

Shri. Name of Licensee (NAME OF LICENSEE) Proprietor, M/s. Name of Firm / Company

In the presence of following Witnesses:

Name and Signature of the Witness 1	
Occupation	
Address	

Name and Signature of the Witness 2	
Occupation	
Address	

SCHEDULE - I

NAME OF THE PRODUCT/PROCESS/TECHNOLOGY: "NAME OF TECHNICAL KNOW-HOW"

DEVELOPED BY: National Institute of Food Technology Entrepreneurship & Management, Kundli

()
Company Secretary

(NAME OF LICENSEE)
Proprietor/Authorized Signatory

SCHEDULE – II

Process know-how manual for “NAME OF TECHNICAL KNOW-HOW” as developed by National Institute of Food Technology Entrepreneurship & Management, Kundli
Consisting of:

- (i) LABORATORY SCALE PROCESS DATA
- (ii) DETAILED DESCRIPTION OF THE PROCESS AS DEVELOPED AT THE RESEARCH INSTITUTE
- (iii) GENERAL RECOMMENDATION FOR PLANT AND EQUIPMENT REQUIRED AND LAYOUT OF THE PLANT
- (iv) DEMONSTRATION OF THE PROCESS AT THE RESEARCH INSTITUTE AT THE SCALE IT HAS DEVELOPED
- (v) ALL FILED PATENT APPLICATIONS, GRANTED PATENTS, PENDING APPLICATIONS AND ALL OTHER APPLICATIONS BASED ON, CLAIMING PRIORITY FROM OR CORESSPONDING TO THESE PATENTS COVERING OR DESCRIBING THE TECHNOLOGY OR KNOW HOW.

1. Training of representatives of the Licensee possessing prescribed qualifications and experience as suggested by the Licensor, at time and place convenient to the Licensor.

()
Company Secretary

(NAME OF LICENSEE)
Proprietor / Authorized Signatory

SCHEDULE - III

Milestones of the License Agreement (FI Device Technology)

Sub-License Restriction Milestone: Product commercially available in India within 36 months or receipt of EU approval within 40 months from execution of License

Milestone #	Milestone	Measurable parameters	Timelines*
Condition Subsequent	First Round of Investment- Rs 10,00, 000 raised either completely in a single step or in tranches Or Milestone 1 (whichever comes earlier)	Providing Statement of Independent Account of the Company with the said amount. + Supporting document showing grant of funds. Or Measurable parameters linked with Milestone 1 below	Within 18 months
Milestone 1	Product Development Completed for	-define	Within 24 months
Milestone 2	Pre-clinical and Clinical studies complete Generation of Quality and Regulatory data completed	-Successfully raising Second Round of Investment of Rs.20, 00,000/-either completely in a single step or in tranches. -Reports summarizing Pre-clinical and Clinical studies -Regulatory dossier.	Within 30 months
Milestone 3 (Sub-License Restriction Milestone)	Pilot launch in India or receipt of Approval for FSSAI, CE FDA etc. Marking, whichever is earlier.	Product commercially available in India. Receipt of formal communication from EU-regulatory agency	Pilot Launch in India within 36 months CE approval: Within 40 months

Agreement, whichever is earlier. **Condition Subsequent:** The Licensee receiving capital of at least [Rs10, 00,000] from an investor or completion of product development, within 18 months from execution of the License Agreement, whichever is earlier.

* Timelines are from the date of execution of the License Agreement.

SCHEDULE – IV

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into on this ___ day of _____ by and between _____, located at _____ (the" Disclosing Party", National Institute of Food Technology, Entrepreneurship and Management,(NIFTEM), and _____ with an address at _____ (the "Receiving Party").

The Receiving Party hereto desires to participate in discussions regarding _____ (the "Transaction"). During these discussions, Disclosing Party may share certain proprietary information with the Receiving Party. Therefore, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definition of Confidential Information.

(a) For purposes of this Agreement, "Confidential Information" means any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, in whatever medium provided, whether unmodified or modified by Receiving Party or its Representatives (as defined herein), whenever and however disclosed, including, but not limited to: (i) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies; (ii) plans for products or services, and customer or supplier lists; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (v) any other information that should reasonably be recognized as confidential information of the Disclosing Party; and (vi) any information generated by the Receiving Party or by its Representatives that contains, reflects, or is derived from any of the foregoing. Confidential Information

need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets.

(b) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: a) was lawfully possessed, as evidenced by the Receiving Party's records, by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (b) becomes rightfully known by the Receiving Party from a third-party source not under an obligation to Disclosing Party to maintain confidentiality; (c) is generally known by the public through no fault of or failure to act by the Receiving Party inconsistent with its obligations under this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and (e) is or has been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement, as evidenced by the Receiving Party's records, and without reference or access to any Confidential Information.

2. Disclosure of Confidential Information.

From time to time, the Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement, require such Representatives to be bound by written confidentiality restrictions no less stringent than those contained herein, and assume full liability for acts or omissions by its Representatives that are inconsistent with its obligations under this Agreement; (c)

keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein).

3. Use of Confidential Information.

The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

4. Compelled Disclosure of Confidential Information.

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided that the Receiving Party will disclose only that portion of the requested Confidential Information that, in the written opinion of its legal counsel, it is required to disclose. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to

disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

5. Term.

This Agreement shall remain in effect for a two-year term (subject to a one year extension if the parties are still discussing and considering the Transaction at the end of the second year). Notwithstanding the foregoing, the Receiving Party's duty to hold in confidence Confidential Information that was disclosed during term shall remain in effect indefinitely.

6. Remedies.

Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

7. Return of Confidential Information.

Receiving Party shall immediately return and redeliver to Disclosing Party all tangible material embodying any Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving therefrom, and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data, word processing,

or other types of files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its reasonable document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction).

8. Notice of Breach.

Receiving Party shall notify the Disclosing Party immediately upon discovery of, or suspicion of, (1) any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives; or (2) any actions by Receiving Party or its Representatives inconsistent with their respective obligations under this Agreement, Receiving Party shall cooperate with any and all efforts of the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

9. No Binding Agreement for Transaction.

The parties agree that neither party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement, except for the matters specifically agreed to herein. The parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to a Transaction at any time. This Agreement does not create a joint venture or partnership between the parties. If a Transaction goes forward, the non-disclosure provisions of any

applicable transaction documents entered into between the parties (or their respective affiliates) for the Transaction shall supersede this Agreement. In the event such provision is not provided for in said transaction documents, this Agreement shall control.

10. Warranty.

NO WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WHATSOEVER. The parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. The Disclosing Party shall have no liability to the Receiving Party (or any other person or entity) resulting from the use of the Disclosing Party's Confidential Information or any reliance on the accuracy or completeness thereof.

11. Miscellaneous.

(a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

(b) The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of _____ (state) applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of law's provisions thereof. The Federal and state courts located in _____ (state) shall have sole and exclusive jurisdiction over any disputes arising under, or in any way connected with or related to, the terms of this Agreement and Receiving Party: (i) consents to personal jurisdiction therein; and (ii) waives the right to raise *forum non conveniens* or any similar objection.

(c) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

(d) Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

(e) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

(f) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

(g) The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either party from: (i) developing, making or marketing products or services that are or may be competitive with the

products or services of the other; or (ii) providing products or services to others who compete with the other.

(h) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Disclosing Party

Receiving Party

By

Name:

Title:

By

Name:

Title:
