

PR 7

Office of the President
June 8, 2010

Members, Board of Trustees:

APPROVAL OF PATENT LICENSE AGREEMENT

Recommendation: that the Board of Trustees approve the draft attached license agreement between the University of Kentucky Research Foundation (UKRF) and Brockman-Hasting, LLC, a limited liability company which is owned in part by Board of Trustees member, E. Britt Brockman. The License Agreement grants patent rights for an implantable intraocular pressure sensor invented through the collaborative efforts of Dr. Brockman and University of Kentucky employees.

Background: Patent license agreements between UKRF and UK employees are regularly approved by the Vice President for Commercialization and Economic Development without any involvement of the Board. In this highly unusual case, this license agreement is with a member of the Board. For “purchasing” matters, Board members are prohibited from contracting with the University except under strict legal conditions. A Board member contracting with the University raises concerns of conflict of interest or an appearance of a conflict of interest. Governing Regulation I.D.2.1. provides a procedure for an exception whereby employees may contract with the University and avoid or manage any conflict of interest. It is logical that the same procedure should be applied to this situation. Pursuant to the procedure, the University Ethics Committee evaluates five criteria. If the evaluation determines that there is no conflict or that the conflict or the appearance of a conflict may be managed, the Ethics Committee makes a recommendation to the President. Based on an evaluation of the Ethics Committee’s recommendation, the President may make a recommendation that the Board approve the relationship.

In this case, the Ethics Committee has determined the following:

- that this patent license agreement is in the best interest of the University;
- that Dr. Brockman has taken all actions necessary to avoid any conflict of interest and any appearance of a conflict of interest;
- that this agreement is not subject to Kentucky Revised Statutes Chapter 45A;

- that this agreement does not present a conflict with Dr. Brockman's duties as a Trustee, and his recusing himself from this discussion and vote further minimizes any conflict; and
- that the nature of this contract and the nature of Dr. Brockamn's interest in this contract has been, and is being, fully disclosed to the University community, and to the University officials making the detailed decisions related to the contract.

A copy of University Ethic Committee's opinion and recommendation, as well as the draft License Agreement are attached.

Action taken: Approved Disapproved Other _____

May 19, 2010

MEMORANDUM

TO: Lee T. Todd, Jr., President
FROM: T. Lynn Williamson, University Ethics Committee, Chair
RE: RECOMMENDATION

FACTS:

Dr. E. Britt Brockman, a member of the UK Board of Trustees and three UK employees in the College of Engineering, are co-inventors on a recently disclosed invention. The University of Kentucky Research Foundation (UKRF) and Dr. Brockman have filed for a provisional patent regarding the invention, an implantable intraocular pressure sensor. Dr. Todd Hastings (one of the co-inventors) and Dr. Brockman have a patent pending and have formed Brockman-Hastings LLC (hereinafter LLC) to commercialize the invention. The LLC and UKRF have negotiated the draft terms of a patent license agreement.

APPLICABLE REGULATIONS:

Governing Regulation I.D.2.(I) Financial Advantage

“Members of the University community must exhibit personal integrity, honesty and responsibility in all actions. Official position or office shall not be used to obtain financial gain or benefits for oneself or members of one’s family or business associates. Any action that creates the appearance of impropriety should be avoided. Except as specifically approved by the Board, purchases and contracts shall not be made with an employee of the University of Kentucky for any item of supply, equipment, or service, nor may an employee have any interest, directly or indirectly, in any purchase made by the University of Kentucky....”

Further, at the end of “Financial Advantage,” there is a section whereby an exception for an unusual case concerning financial interest may be approved by the Board of Trustees. The language notes that one seeking approval of an

exception “under this section shall first make an application to the University Ethics Committee by submitting in writing a full disclosure of all aspects of his or her relationship with the contracting company or business. The Ethics Committee shall make a recommendation to the President, who shall forward to the Board the Committee’s recommendation together with his or her recommendation.”

The GR’s language permitting the exception continues, “In recommending approval of a contractual relationship, the Committee shall determine that:

- (i) the contractual relationship is in the best interest of the University;
- (ii) the employee has taken whatever actions are necessary to avoid any conflict of interest or any appearance of a conflict of interest;
- (iii) if the conflict is subject to the provision of KRS Chapter 45A, the employee’s contract shall be the lowest price bid or otherwise provides the best value to the University;
- (iv) the employee’s interest in the contract does not present a conflict with the employee performing his or her job; and,
- (v) the nature of the contract and the nature of the employee’s interest in the contract or business shall be fully disclosed to the University community by as broad communications as feasibly possible.

Action taken by the Board shall be in open session, by affirmative vote. The action item shall fully disclose the nature of the conflict, and the reasons for the action.”

Governing Regulation I. E.

E. Kentucky Ethics Statutes

1. Unless specifically approved by the Board, no employee of the University shall be directly or indirectly interested in any contract with the University for the sale of property, materials, supplies, equipment, or services, with the exception of compensation to the two (2) faculty members and the one (1) staff employee who are members of the Board of Trustees. (KRS 164.131)

2. No member of a board of trustees shall have an interest in any contract with a state university unless such contract shall have been subjected to competitive bidding in compliance with KRS Chapter 45A, unless such trustee shall have been the lowest bidder and unless such trustee shall have first notified in writing the remaining members of the board, and to the newspaper having the largest circulation in the county in which the state university is located, of his intention to bid on such contract. (KRS 45A.340 (7))

DISCUSSION:

The University's Governing Regulation I.D.1. and I.D.2 basically repeat Kentucky Revised Statutes. GR I.D.1 is language that repeats language in KRS Chapter 164.131(7), and GR I.D.2 repeats language in KRS Chapter 45A.340(7).

GR I.D.2 prohibits a "...member of a board of trustees..." from having "...an interest in any contract with a state university unless such contract shall have been subjected to competitive bidding in compliance with KRS Chapter 45A." It is obvious that the prohibition against a Board of Trustee member contracting with UK is a prohibition that addresses contracts which are subject to KRS Chapter 45A. Chapter 45A is the legislation that is known as the "Kentucky Model Procurement Code" and is, thus, the chapter that enumerates "...the law governing purchasing by the Commonwealth." Chapter 45A applies "...to every expenditure of public funds by the Commonwealth...." Since the proposed contract in this case is a contract to permit use of an invention made at the University, and is neither a contract for procurement/purchasing, nor a contract for the expenditure of public funds, it is the conclusion of the Ethics Committee that Governing Regulation I.E.2 is not applicable to this fact situation.

Using the exact language from KRS Chapter 164.131(7), GR I.E.1 prohibits an "employee" from having any direct or indirect interest in a contract with the University "...for the sale of property, material, supplies, equipment and services...." The statute clearly applies to "employees" whereby an employee might contract to sell and the University to purchase property, material, supplies, or services. The statute even enumerates an exception for employment contracts (sic) by the employee members of the Board (faculty and staff). Since the word "trustee" does not appear in subsection (7) and since Trustees are not employees, it also seems obvious that this regulation does not apply to members of the Board of Trustees. However, using the same analysis stated above, this statute still does not apply to the licensing of a invention made at the University.

GR I.D.2.(I) is generally applicable to "members of the University community." Earlier in this regulation (immediately following the title, "Code of Conduct") members of the University community are "...trustees, executive officers, faculty, staff, and other individuals employed by the University, those using University resources or facilities, and volunteers and representatives acting as agents of the University (collectively "University members")" Clearly, the term "University members" applies to members of the Board of Trustees.

Governing Regulation I.D.2 (I) begins by stating that all University Members are held to the standard of exhibiting "...personal integrity, honesty and responsibility...." Further it provides that a University member may not use one's "official position" to "obtain financial gain or benefits for oneself or members of one's family...."

The second half of this paragraph addresses the same issues as are addressed later in GR I.E., prohibiting an employee from having any direct or indirect

interest in a contract with the University, whereby University funds are expended. This prohibition generally does not prohibit employees from purchasing from the University as long as there is no possible conflict of interest or use of one's position to obtain financial gain or benefits. Thus, it is a regular course of business that employees are permitted, along with, and under the same conditions and pricing as the public, to purchase surplus equipment; also faculty inventors form start-up companies and regularly license technology from the University.

Further, the second half of this paragraph provides a procedure whereby an employee may seek an exception to the regulation and thus be a party to a contract with the University. The exception procedure mirrors language in KRS 164.367 whereby a board of trustees or regents may permit an employee to have an interest in a contract. Officials at UK sought this exception to the statute from members of the General Assembly after dealing with a couple of cases whereby research employees owned invented or patented products that could produce significant contracts/grants to the University.

The wording of the regulation appears to provide that there is a process for an exception for an employee having a contract with the University but not a process for other University members to seek an exception to the financial interest section of this Governing Regulation. It is the Ethics Committee's opinion that it is only logical that, if there is an exception process for employees, the same exception process should be available for other members of the University community who would otherwise be prohibited from proceeding with this relationship solely because the person's official position or office could be used or could appear to have been used to gain a financial advantage. Therefore, the Ethics Committee will use the exception criteria to recommend or not recommend an exception in this case. This Committee will review these five criteria and make a recommendation to President Todd.

1. The first criteria is that the contractual relationship is in the best interest of the University. Dr. Brockman had the initial concept for this invention. He could have taken his concept anywhere, including possible co-inventors at the University of Louisville where he went to Medical School and others in the city where he resides. The mission of UK's Office for Commercialization & Economic Development is to grow Kentucky's economy through the commercialization of UK research, university-industry partnerships, the development of new and existing businesses and the creation of jobs. The Ethics Committee believes that the concept of a partnership and patent license agreement in this case is consistent with the mission of this area of Research and clearly fits the concept of being in the best interest of the University.

2. The second criteria is that the University member (Trustee Brockman) has taken whatever actions are necessary to avoid any conflict of interest or any appearance of a conflict of interest. Dr. Leonard E. Heller, Vice President for

Commercialization and Economic Development, is responsible for the commercialization of UK research, university-industry partnerships, and the development of new and existing businesses. In his vice president role, Dr. Heller, in conjunction with the advice of others, is responsible for negotiating agreements such as this draft patent license agreement. Dr. Heller reports to the Ethics Committee that the rate in the LCC-UKRF agreement is the “market rate” and that this agreement is “mutually desirable”. Of course, Dr. Heller states that he was fully aware that he was negotiating an agreement with a member of the Board of Trustees; Dr. Heller reports that there was no influence and no impropriety or no appearance of influence or impropriety by the BOT member during the negotiation, that the transaction was above board, and that the agreement is similar to other such agreements that might be negotiated with any other member of the public. Furthermore, you, as President and Board members are well aware that the University (acting through its agent UKRF) routinely licenses inventions to faculty-based start-up companies. The Ethics Committee concludes that Trustee Brockman and UK officials have taken appropriate actions to avoid conflicts of interest and appearances of conflicts of interest and this situation is similar to the regular issuance of patent license agreements.

3. The third criteria is, if the conflict is subject to the provision of KRS Chapter 45A, the University member’s contract shall be the lowest price bid or otherwise provide the best value to the University. As noted earlier, the Committee has concluded that this contract is not one for procurement/purchase and is not subject to Chapter 45A.

4. The fourth criteria is that the employee’s interest in the contract does not present a conflict with the employee performing his or her job. Dr. Brockman is not an employee at the University. He serves as a trustee here at the University with fiduciary and other duties as a trustee. To avoid a conflict, the Ethics Committee recommends that Dr. Brockman recuse himself from all discussion of this recommendation for an exception with all other members of the Board as well from voting on this matter when it is on the Board’s agenda. With Dr. Brockman’s concurrence with this recommendation, the Committee believes that any conflict with his job duties is minimized.

5. The fifth and final criteria is that the nature of the contract and the nature of the University member’s interest in the contract or business shall be fully disclosed to the University community by as broad communications as feasibly possible. (a) This contract and the fact that a Board of Trustees member is involved will receive wide-spread notice as an agenda item at a Board meeting. (b) In addition to that notice, since Board meetings are subject to the Kentucky Open Meetings law, the media always covers the Board meetings (c) Actions, including the approval of this matter, taken by the Board are contained in the verbatim minutes that appear on the Board web site (www.uky.edu/Trustees). (d) The UK Public Relations Office has agreed it will issue a media release because, to the knowledge of all involved, this is the first time a Board member

has ever co-invented and patented an invention with University employees; Public Relation and the Committee believe this is a very news-worthy event. The Committee concludes that all of these actions will sufficiently and fully disclose Dr. Brockman's interest in this contract.

CONCLUSION and RECOMMENDATION:

It is the opinion of the Ethics Committee that the appropriate procedure for seeking an exception for a Board member contracting with the University is the criteria set forth in GR I.D.2.(I). Having reviewed this criteria and the facts of this case, this Committee concludes that Board Member Brockman has met the required criteria for an exception under the Governing Regulation, "Ethical Principles and Code of Conduct." This Committee recommends that you forward a recommendation to the Board of Trustees that they approve the requested contractual arrangement as per the attached draft terms of a patent license agreement.

Attachment

- C: Dr. E. Britt Brockman, Member, Board of Trustees
Dr. Len Heller, Vice President for Commercialization and Economic Development
Members of the Ethics Committee:
Jeannine Blackwell, Dean, The Graduate School and Associate Provost for Academic Administration
Judith Lesnaw, Professor, Biology Department, College of Arts & Sciences & University Senate Representative
David Melanson, Public Relations Office & Staff Senate Representative
Brett Short, Chief Compliance Officer, UK HealthCare
Jack Supplee, Director, Administrative & Fiscal Affairs, Office of the Vice President for Research, Associate Director & Secretary for UK Research Foundation
Kim Wilson, Associate Vice President for Human Resources
Joseph Reed, Senior Director, Internal Audit
Bill Harris, Director of Purchasing

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LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 2010, (the "Effective Date") by and between the University of Kentucky Research Foundation, a corporation duly organized and existing under the laws of the Commonwealth of Kentucky and having its principal office at Lexington, Kentucky, U.S.A. (hereinafter "UKRF"), and Brockman-Hastings, LLC, a limited liability company duly organized under the laws of Kentucky and having its principal office at 6003 Two Springs Lane, Louisville, Kentucky U.S.A. (hereinafter "LICENSEE").

WITNESSETH

WHEREAS, UKRF, jointly with E. Britt Brockman or his assigns, owns certain "Patent Rights" (as said term is later defined herein) relating to an implantable intraocular pressure sensor;

WHEREAS, UKRF desires to have the Patent Rights utilized in the public interest and is willing to grant a license of its rights in the Patent Rights; and

WHEREAS, LICENSEE has represented to UKRF that the LICENSEE has contacts in the ophthalmic industry which may be utilized to finalize a design of "Licensed Products" (as said term is later defined herein) embodying the Patent Rights and to jointly develop and commercialize Licensed Products in order for public utilization of the Patent Rights to occur; and

WHEREAS, LICENSEE desires to obtain a license under the Patent Rights upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE 1 - Definitions

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "LICENSEE" shall mean Brockman-Hastings, LLC and any subsidiary of Brockman-Hastings, LLC.

1.2 "Subsidiary" shall mean any corporation, company or other entity more than fifty percent (50%) of whose voting stock is owned or controlled directly or indirectly by Brockman-Hastings, LLC.

1.3 "Affiliate" shall mean any corporation, company or other entity in which Brockman-Hastings, LLC shall have an ownership or management interest.

1.4 "Patent Rights" shall mean all of UKRF's rights in patents and patent applications relating to an implantable intraocular pressure sensor such as described in the United States and Foreign pending patent applications set forth in Appendix A, attached hereto and made a part hereof, and including all applications claiming priority thereto or which are entitled to claim priority thereto (collectively, said patent applications being hereinafter referred to as the "Patent Rights Patent Applications"), and including all United States patents and Foreign patents issuing from any of the Patent Rights Patent Applications and issuing from any later-filed applications based upon any of said Patent Rights Patent Applications (collectively, said patents being hereinafter referred to as the "Patent Rights Patents"), and specifically including any continuations, continuations-in-part, divisions, reissues, reexaminations, extensions, and substitutes of any of the foregoing. For the avoidance of any doubt, the term "Patent Rights" includes the Patent Rights Patent Applications and the Patent Rights Patents.

1.5 "Licensed Product(s)" shall mean any product which:

(a) is covered in whole or in part by (i) a pending claim contained in a pending application included in the Patent Rights Patent Applications in the country in which the Licensed Product(s) is made, used, or

sold or (ii) a valid and unexpired claim contained in a any patent included in the Patent Rights Patents in the country in which the Licensed Product(s) is made, used, or sold; or

(b) is manufactured by using a process (hereinafter, a “Licensed Process”) which is covered by (i) a pending claim contained in a pending application included in the Patent Rights Patent Applications in the country in which the Licensed Process is used or (ii) a valid and unexpired claim contained in a patent included in the Patent Rights Patents in the country in which the Licensed Process is used.

1.5 “Territory” shall mean worldwide

1.6 “Field of Use” shall mean any purpose.

ARTICLE 2 - Grant

2.1 UKRF hereby grants to LICENSEE the exclusive right and license in the Territory and for the Field of Use, with the right to sublicense according to the provisions of this Article 2 herein, to make, have made, use, offer to sell, import, sell, and otherwise utilize the Licensed Products under the Patent Rights to the full end of the term for which the Patent Rights are granted unless sooner terminated as hereinafter provided. This grant is expressly subject to the rights of the U.S. Government, if any.

2.2 In order to establish a period of exclusivity for LICENSEE, UKRF hereby agrees that it shall not grant any other license to make, have made, use, offer to sell, sell, and otherwise utilize the Licensed Products during the period of time commencing with the Effective Date of this Agreement and terminating with the full end of the term of this Agreement, unless sooner terminated as hereinafter provided.

2.3 Subject to UKRF's prior approval, which shall not be unreasonably withheld, LICENSEE shall have the right to sublicense worldwide any of the rights, privileges, and license granted hereunder.

2.4 Notwithstanding the foregoing, on behalf of itself and its affiliates, UKRF reserves the right to use the Patent Rights and Licensed Products for internal research purposes.

2.5 LICENSEE agrees that any sublicenses granted by it shall include a contractual provision granting UKRF the right and ability to proceed directly against the sublicensee to require such sublicensee to comply with all terms of the sublicense agreement. LICENSEE further agrees to include the substance of ARTICLES 4, 5, 10, 12, 13 and 14 of this Agreement in all sublicense agreements.

2.6 LICENSEE agrees to forward to UKRF a copy of any and all fully executed sublicense agreements, and further agrees to forward to UKRF annually a copy of such reports received by LICENSEE from its sublicensees during the preceding twelve (12) month period under the sublicenses as shall be pertinent to a royalty accounting under said sublicense agreements.

ARTICLE 3 - Due Diligence

3.1 LICENSEE shall use commercially reasonable efforts to bring the Licensed Products to market through a thorough and diligent program for exploitation of the Patent Rights. At a minimum, LICENSEE shall:

(a) No later than September 1, 2010, contact the top three international ophthalmic companies that deal with intraocular implants with the intent to discuss joint development and commercialization of the Licensed Products;

(b) No later than April 15, 2010, and ongoing thereafter, actively pursue and finance legal efforts to file one or more United States Utility Patent applications for the Licensed Products; and

(c) No later than December 31, 2010, refine the physical design parameters of the Licensed Products based on feedback from industry contacts.

3.2 LICENSEE shall update its due diligence plan each year until a first commercial sale of a Licensed Product is achieved.

ARTICLE 4 - Royalties

4.1 For the rights, privileges, and license granted hereunder, LICENSEE shall pay to UKRF, in the manner hereinafter provided and according to the terms of Article 5 herein, to the end of the term of the Patent Rights or until this Agreement shall be terminated as hereinafter provided, the following:

(a) a royalty in the amount of three and 15/100 percent (3.15%) of the "Net Sales Price" (as said term is later defined herein) of the Licensed Products sold by LICENSEE or an Affiliate or Subsidiary or permitted sublicensees to unaffiliated third parties; and

(b) if LICENSEE receives any non-royalty sublicense consideration from its permitted sublicensees (hereinafter, "Non-Royalty Remuneration"), then LICENSEE shall pay to UKRF a fee equal to seventeen and one-half percent (17.5%) of said Non-Royalty Remuneration.

4.2 As used herein, the phrase "Net Sales Price" shall mean the invoice price to customers of LICENSEE or its Affiliate, Subsidiary, or permitted sublicensees, for the Licensed Products sold in the ordinary course of business, less the sum of the following:

- (a) Refunds actually allowed or taken for rejected or returned Licensed Products;
- (b) Discounts allowed in amounts customary in the trade;
- (c) Sales, excise, use, value-added, or other taxes, as well as tariff duties directly imposed and with reference to particular sales;
- (d) Customs, duties, and other imposts, to the extent included in the amounts invoiced;

- (f) Credits on account of retroactive price reductions, actually allowed or taken;
- (h) Cost of insurance, billed to and paid by the customer;
- (i) Cost of shipping and transportation, billed to and paid by the customer;
- (j) Rebates required by government rule, regulation, program, or fiat, to the extent that any such rebates may be paid or allowed by LICENSEE; and
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No deductions shall be made for commissions paid to individuals whether they are with independent sales agencies or regularly employed by LICENSEE and on its payroll, or for cost of collections. Licensed Products shall be considered "sold" when billed out or invoiced.

4.3 No multiple royalties shall be payable because the Licensed Products, their manufacture or sale, are or shall be covered by more than one patent application or patent licensed under this Agreement.

4.4 Royalty payments shall be paid in United States dollars in Lexington, Kentucky, or at such other place as UKRF may reasonably designate consistent with the laws and regulations controlling in any foreign country. Any withholding taxes which LICENSEE or any sublicensee shall be required by law to withhold on remittance of the royalty payments shall be deducted from royalty paid to UKRF. LICENSEE shall furnish UKRF the original copies of all official receipts for such taxes. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate prevailing at a first-class foreign exchange bank on the last business day of the calendar quarterly reporting period to which such royalty payments relate.

ARTICLE 5 - Reports and Records

5.1 LICENSEE shall keep full, true, and accurate records and books of account containing all particulars that may be necessary for the purpose of showing the amount payable to UKRF by way of royalty as aforesaid. Said books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. LICENSEE shall permit the reasonable inspection and copying of such records and books of account by UKRF Internal Audit Division and/or an independent certified public accountant retained by UKRF and/or an accountant employed by UKRF, no more frequent than once per calendar year, during regular business hours at LICENSEE's regular place of business, provided that UKRF shall give LICENSEE at least thirty (30) days' prior written notice of its election to inspect such records and books of account. Subject to the preceding sentence, said books and records and the supporting data shall be open at all reasonable times during the Term and for three (3) years following the end of the calendar year to which they pertain, to said inspection, for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement.

5.2 LICENSEE, within thirty (30) days after June 30 and December 31, of each year, shall deliver to UKRF true and accurate reports, giving such particulars of the business conducted by LICENSEE during the preceding six-month period under this Agreement as shall be pertinent to a royalty accounting hereunder. These shall include at least the following:

- (a) All Licensed Products manufactured and sold;
- (b) Total billings for Licensed Product sold;
- (c) Deductions applicable as provided in Section 4.2;
- (d) Total royalties due;
- (e) Names and addresses of all sublicensees of LICENSEE; and

(f) Annually, the LICENSEE's certified financial statements for the preceding twelve (12) months including, at a minimum, a balance sheet and an operating statement.

5.3 With each such report submitted, LICENSEE shall pay to UKRF the royalties due and payable under this Agreement. If no royalties shall be due, LICENSEE shall so report.

5.4 If not already provide pursuant to Section 5.2, if LICENSEE issues any other form of financial report, business plan, or other similar report that it issues publicly or to shareholders, it will provide a copy to UKRF within 30 days of issuance.

ARTICLE 6 - Patent Prosecution

6.1 During the term hereof, LICENSEE shall have the first right and option to file, maintain, and diligently prosecute, using counsel of its choice, any and all patent applications, domestic and/or foreign, that are part of the Patent Rights, at LICENSEE's sole expense. The filing, prosecution and maintenance of all Patent Rights shall be the primary responsibility of LICENSEE; provided, however, that LICENSEE shall have the obligation to provide all draft patent filings to UKRF, in advance, for its review and comment and shall consider all comments in good faith; provided, further, that UKRF shall be diligent in providing its comments to LICENSEE in a manner that is timely under the circumstances. LICENSEE shall select patent counsel reasonably acceptable to both parties, and ensure the counsel enters into a prosecution agreement that obligates it to provide all substantive patent prosecution materials with UKRF and to consider its comments, and to agree to advise UKRF if the parties' positions should become adverse for any reason.

6.2 If LICENSEE elects to abandon any or all of the patents or patent applications of the Patent Rights, or elects not to pursue the prosecution of the Patent Rights granted hereunder, it shall notify UKRF in writing at least sixty

(60) days prior to the effective date of such abandonment or such decision not to pursue protection. UKRF shall then have the absolute right to assume the maintenance and protection of the Patent Rights. UKRF shall have the right to license to third parties or otherwise use or sell any such abandoned or unpursued patent or patent application of the Patent Rights,.

ARTICLE 7 - Patent Infringement

7.1 LICENSEE shall inform UKRF promptly in writing of any alleged infringement of the Patent Rights by a third party and of any available evidence thereof.

7.2 During the term of this Agreement, UKRF shall have the right, but shall not be obligated, to prosecute at its own expense all infringements of the Patent Rights and, in furtherance of such right, LICENSEE hereby agrees that UKRF may include LICENSEE, if required by law, as a party plaintiff in any such suit, without expense to LICENSEE. The total cost of any such infringement action commenced or defended solely by UKRF shall be borne by UKRF. The balance of any recovery or damages for past infringements shall be divided with UKRF receiving 80% and LICENSEE receiving 20%.

7.3 If within six (6) months after having been notified of any alleged infringement, UKRF shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if UKRF shall notify LICENSEE at any time prior thereto of its intention not to bring suit against any alleged infringer in the Territory for the Field of Use, then, and in those events only, LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense any infringement of the Patent Rights in the Territory for the Field of Use, and LICENSEE may, for such purposes, if required by law, use the name of UKRF as party plaintiff; provided, however, that such right to bring such an infringement action shall remain in effect only for so long as the license granted herein remains

exclusive. No settlement, consent judgment, or other voluntary final disposition of the suit may be entered into without the consent of UKRF, which consent shall not unreasonably be withheld. LICENSEE shall indemnify UKRF against any order for costs that may be made against UKRF in such proceedings, so long as said order for costs is not based on any intentional or willfully negligent misconduct by UKRF.

7.4 In the event that LICENSEE shall undertake the enforcement and/or defense of the Patent Rights by litigation, LICENSEE may withhold the payments otherwise thereafter due UKRF under Article 4 hereunder and apply the same toward reimbursement of up to half of LICENSEE's expenses, including reasonable attorneys' fees, in connection therewith. Any recovery of damages by LICENSEE for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of LICENSEE relating to such suit, and next toward reimbursement of UKRF for any payments under Article 4 past due or withheld and applied pursuant to this Article 7. The balance remaining from any such recovery shall be divided with LICENSEE receiving 80% and UKRF receiving 20%.

7.5 In the event that a declaratory judgment action alleging invalidity or non-infringement of any of the Patent Rights shall be brought against LICENSEE, UKRF, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

7.6 In any infringement suit as either party may institute to enforce the Patent Rights pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

7.7 LICENSEE, during the exclusive period of this Agreement, shall have the sole right in accordance with the terms and conditions herein to

sublicense any alleged infringer in the Territory for the Field of Use for future use of the Patent Rights. Any upfront fees as part of such a sublicense shall be shared between LICENSEE and UKRF according to Section 4.1(b); other royalties shall be treated per Section 4.1(a)

ARTICLE 8 - Termination

8.1 If LICENSEE shall become bankrupt or insolvent, or shall file a petition in bankruptcy, or if the business of LICENSEE shall be placed in the hands of a receiver, assignee or trustee for the benefit of creditors, whether by the voluntary act of LICENSEE or otherwise, this Agreement shall automatically terminate.

8.2 Should LICENSEE fail in its payment to UKRF of royalties due in accordance with the terms of this Agreement, UKRF shall have the right to serve notice upon LICENSEE by certified mail at the address designated in Article 15, hereof, of its intention to terminate this Agreement within forty-five (45) days after receipt of said notice of termination unless LICENSEE shall pay to UKRF, within the forty-five (45) day period, all such royalties due and payable. Upon the expiration of the forty-five (45) day period, if LICENSEE shall not have paid all such royalties due and payable, the rights, privileges and license granted hereunder shall thereupon immediately terminate.

8.3 Upon any material breach or default of this Agreement by LICENSEE, other than those occurrences set out in Sections 8.1 and 8.2 hereinabove, which shall always take precedence in that order over any material breach or default referred to in this Section 8.3, UKRF shall have the right to terminate this Agreement and the rights, privileges, and license granted hereunder by ninety (90) days' notice by certified mail to LICENSEE. Such termination shall become effective unless LICENSEE shall have cured any such breach or default prior to the expiration of the ninety (90) day period from receipt of UKRF's notice of termination.

8.4 LICENSEE shall have the right to terminate this Agreement at any time on three (3) months' notice by certified mail to UKRF.

8.5 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination. LICENSEE and/or any sublicensee thereof may, however, after the effective date of such termination, sell all Licensed Products, and complete Licensed Products in the process of manufacture at the time of such termination and sell the same, provided that LICENSEE shall pay to UKRF the royalties thereon as required by Article 4 of this Agreement and shall submit the reports required by Article 5 hereof on the sales of Licensed Products.

ARTICLE 9 - Partial Termination

In the event LICENSEE fails to exploit the Licensed Product in a particular country within the Territory as specified in Article 3, UKRF shall have the right to terminate the rights, privileges, and license granted hereunder in the specified country by ninety (90) days' notice by certified mail to LICENSEE.

ARTICLE 10 - Product Liability

10.1 LICENSEE shall at all times during the term of this Agreement and thereafter, indemnify, defend, and hold University of Kentucky, UKRF, their trustees, officers, employees, and affiliates, harmless against all claims and expenses, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense, and liability of any kind whatsoever resulting from the production, manufacture, sales, use, consumption, or advertisement of the Licensed Products.

10.2 If Licensee sells any Licensed Products, Licensee will maintain product liability insurance, with an endorsement naming the University of

Kentucky Research Foundation, the University of Kentucky, its Board of Trustees, agents, officers, and employees as additional insureds covering liabilities for the production, manufacture, and/or sale of the Licensed Products. The policy of insurance shall contain a provision of non-cancellation except upon the provision of sixty (60) days' notice to the University of Kentucky. Policy limits shall be not less than \$1,000,000 per person per occurrence.

10.3 If LICENSEE sublicenses any of the rights, privileges, and licenses granted hereunder, LICENSEE shall require the sublicensee to provide UKRF evidence of such product liability insurance.

ARTICLE 11 - Warranties

11.1 UKRF represents as follows:

(a) to the best of its knowledge after diligent investigation, it has obtained valid and complete assignments from all inventors, with the exception of E. Britt Brockman, of all right, title, and interest in and to the Patent Rights;

(b) to the best of its knowledge after diligent investigation, no unnamed inventor can claim any rights in any of the Patent Rights;

(c) to the best of its knowledge after diligent investigation, no person affiliated with any patent or patent application of the Patent Rights has violated their duty of good faith and candor with, or participated in a fraud against, the United States Patent and Trademark Office with respect to the Patent Rights.

11.2 LICENSEE ACKNOWLEDGES THAT, WITH THE EXCEPTION OF THE REPRESENTATIONS AND WARRANTIES MADE BY UKRF AND SET FORTH IN SECTION 11.1 HEREIN, THE RIGHTS GRANTED ARE MADE AVAILABLE WITHOUT WARRANTY OF ANY KIND EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER INCLUDING NO WARRANTY AS TO CONFORMITY WITH

FROM TIME TO TIME.

11.3 LICENSEE FURTHER ACKNOWLEDGES THAT UKRF HAS NOT CONDUCTED NOR HAD CONDUCTED A PATENTABILITY OR INFRINGEMENT STUDY AND THUS MAKES NO CLAIMS OR WARRANTIES THAT THE LICENSED RIGHTS WILL NOT INFRINGE ANY THIRD PARTIES VALID PATENT RIGHTS.

ARTICLE 12 - Assignment

12.1 Neither party may assign this Agreement or any of its rights and obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed; provided, however, that LICENSEE may assign this Agreement without consent (i) to an Affiliate or Subsidiary or (ii) in connection with any merger, acquisition, consolidation, transfer by operation of law, or as part of a sale of all or substantially all of the LICENSEE's assets, equity, or business. In the case where Section 12.1(ii) applies, the acquiring party must agree to be bound by the obligations imposed on LICENSEE in this Agreement in the same manner. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Any attempt to assign this Agreement without compliance with the provisions of this Agreement shall be null and void.

ARTICLE 13 - Non-Use of Names

LICENSEE shall not use the names of the University of Kentucky nor of Dr.Hastings, nor any adaptation thereof in any advertising, promotional, or sales literature without prior written consent obtained from UKRF in each case, except that LICENSEE may state that it is licensed by UKRF under one or more of the patents and/or applications comprising the Patent Rights.

Stites & Harbison
400 West Market Street
Louisville, Kentucky 40202

ARTICLE 16 - Miscellaneous Provisions

16.1 This Agreement shall be construed, governed, interpreted, and applied in accordance with the laws of the Commonwealth of Kentucky, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

16.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

16.3 The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

16.4 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and duly executed this License Agreement the day and year first set forth below.

WITNESS:

UNIVERSITY OF KENTUCKY
RESEARCH FOUNDATION

By:_____

Title: _____

WITNESS:

LICENSEE

By: _____

Title: _____

By execution of this Agreement, the undersigned acknowledge receiving a copy of this Agreement, and of having read and reviewed same prior to its execution by the parties.

By: _____

APPENDIX A

**PATENT RIGHTS PATENT APPLICATIONS AND
PATENT RIGHTS PATENTS**

1. United States Patent Application Serial No. 61/291,131, entitled “Implantable Intraocular Pressure Sensor”, filed on December 30, 2009.