

**EXHIBIT A**

**ROYALTY AGREEMENT**

THIS ROYALTY AGREEMENT (this "Royalty Agreement"), made and entered into as of \_\_\_\_\_, 201\_\_ (the "Execution Date"), is by and between [**Name of Recipient**], a [**State of Formation**] [**Type of Entity**] (the "Recipient"), and The Texas Technology Development Center ("T3DC"). Collectively, Recipient and T3DC are referred to as "the Parties."

WHEREAS, the Parties have previously executed that certain McDermott Pre-Seed Fund Award Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Award Agreement") and that certain convertible promissory note dated as of \_\_\_\_\_, 20\_\_ (the "Note") wherein T3DC awarded monies to Recipient (the "Award") to carry out the actions provided in the Award Agreement and provided for repayment of the Award pursuant to the Note;

WHEREAS, the Note is convertible, at T3DC's option, into either an equity interest in Recipient or a royalty interest in property developed or benefitted by the Award; and

WHEREAS, T3DC has decided to convert the Note into a royalty interest;

NOW THEREFORE, the Parties agree as follows:

**1. DEFINITIONS**

1.1 Definitions of capitalized terms used in this Royalty Agreement shall have the meanings given in Appendix A or elsewhere in the Royalty Agreement.

**2. ROYALTY PAYMENTS**

2.1 Royalties. Recipient shall pay T3DC royalties on Net Sales during the Royalty Term according to the following rates:

(a) **Describe Property**: \_\_\_\_\_% of Net Sales; and

(b) **Describe 2<sup>nd</sup> Property**: \_\_\_\_\_% of Net Sales.

2.2 Termination of Royalty Obligations: This royalty payment obligation shall terminate on a Product-by-Product and country-by-country basis upon the first date when there is no longer a Valid Claim covering such Product in the country where such Product is made or sold [**in** \_\_\_\_\_ **years**].

2.3 Manner of Payment. Royalty payments due under this Section 2 are due 30 days after the end of each Accounting Period and shall be paid in United States dollars.

### 3. REPORTS AND PAYMENTS

- 3.1 Recordkeeping. Recipient shall, and shall obligate its Affiliates to, keep full and accurate records (prepared in accordance with United States Generally Accepted Accounting Principles consistently applied) of Recipient's or its Affiliates' sales of Products and such other matters as may affect the determination of any amount payable to T3DC hereunder, in sufficient detail to reasonably enable T3DC or T3DC's representatives to determine any amounts payable to T3DC under this Royalty Agreement. Such records shall be kept at Recipient's or its Affiliates' principal place of business and, with all necessary supporting data, books and ledgers, shall, during all reasonable times for the 2 years following the end of the Accounting Period to which each shall pertain, be open for inspection at reasonable times during normal business hours (and upon at least 30 days prior written notice) no more than one time per calendar year by an independent audit firm selected by T3DC (reasonably acceptable to Recipient) for the purpose of verifying the accuracy of any payment report required under this Royalty Agreement or any amount payable hereunder. The results of each inspection shall be binding on both T3DC and Recipient absent mathematical error. T3DC shall bear all costs associated with such inspections.
- 3.2 Reports. Within 30 days after the end of each Accounting Period, Recipient shall deliver to T3DC a true and accurate report, giving such particulars of the business conducted by Recipient or its Affiliates during the preceding 4 Accounting Periods under this Royalty Agreement as are reasonably pertinent to an accounting for any royalty or other payments hereunder, along with the amount of royalties payable for such Accounting Period. If no payments are due, it shall be so reported.
- 3.3 Accounting. With each quarterly payment, Recipient shall deliver to T3DC the report described in Section 3.2, which shall include, but not be limited to, the following information:
- (a) Quantity of each Product sold by Recipient or its Affiliates during the applicable Accounting Period;
  - (b) The monetary amount, in the national currency of such country, of such sales;
  - (c) Actual gross sales and Net Sales for each Product (by country);
  - (d) The currency conversion rate used and U.S. dollar-equivalent of such sales; and
  - (e) Total royalties payable to T3DC including a calculation thereof.

All reports under this Section 3.3 shall be confidential information of Recipient.

#### **4. TERMINATION**

- 4.1 Generally. This Royalty Agreement shall become effective on the Execution Date and shall expire on the expiration of the Royalty Term.
- 4.2 Post-Expiration Obligations. Upon the expiration of this Royalty Agreement, Recipient shall submit all reports required by Section 3 and pay T3DC all royalties due or accrued on the sale of Products up to and including the date of expiration.
- 4.3 Survival. Upon the expiration of this Royalty Agreement, nothing herein shall be construed to release either party from any obligation that matured prior to the date of such expiration and Section 5 shall survive any such expiration.

#### **5. MISCELLANEOUS**

- 5.1 Entire Agreement. This Royalty Agreement (together with the Award Agreement and Note) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, that may have related in any way to the subject matter hereof. The appendices identified in this Royalty Agreement are incorporated herein by reference and made a part hereof.
- 5.2 Amendments and Waivers. No amendment or waiver of any provision of this Royalty Agreement shall be valid unless the same shall be in writing and signed by each Party. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.
- 5.3 Succession and Assignment. This Royalty Agreement and all of the provisions hereof shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns. The Recipient may not assign this Royalty Agreement or any of its rights or obligations hereunder without the prior written consent of T3DC. T3DC may assign this Royalty Agreement and any of its rights or obligations hereunder without the consent of the Recipient.
- 5.4 No Third-Party Beneficiaries. This Royalty Agreement shall not confer any rights or remedies upon any party other than the Parties and their respective successors and permitted assigns.
- 5.5 Governing Law. This Royalty Agreement shall be governed by and construed in accordance with the domestic Laws of the State of Texas, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Texas. The Recipient agrees that venue for any action, suit, litigation or other proceeding arising out of or in any way relating to this Royalty Agreement, or the

matters referred to therein, shall be in Bexar County, Texas. The Recipient hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that (A) the suit, action or proceeding is brought in an inconvenient forum or (B) the venue of the suit, action or proceeding is improper.

- 5.6 Severability. If any provision in this Royalty Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.
- 5.7 Expenses. Except as otherwise specifically provided in this Royalty Agreement, each Party will bear its own expenses (including fees and disbursements of legal counsel, accountants, financial advisors and other professional advisors) incurred in connection with the preparation, negotiation, execution, delivery and performance of this Royalty Agreement.
- 5.8 Notices. All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall be in writing and faxed, mailed or delivered to each party at the respective addresses of the parties as set forth in the Award Agreement, or at such other address or facsimile number as the Recipient shall have furnished to T3DC in writing.
- 5.9 Construction. In the construction of this Royalty Agreement, the rule of construction that a document is to be construed most strictly against a party who prepared the same shall not be applied, it being agreed that all parties have participated in the preparation of the final form of this Royalty Agreement.
- 5.10 Counterparts. This Royalty Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Royalty Agreement may be executed by facsimile, photo or electronic signature and such facsimile, photo or electronic signature shall constitute an original for all purposes.

The Parties have duly executed this Royalty Agreement as of the Effective Date.

**RECIPIENT**

**THE TEXAS TECHNOLOGY  
DEVELOPMENT CENTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## APPENDIX A TO ROYALTY AGREEMENT

### DEFINITIONS

“Accounting Period” shall mean each 3-month period ending March 31, June 30, September 30 and December 31.

“Affiliate” shall mean: (a) in the case of corporate entities, direct or indirect ownership of at least 50% of the stock or participating shares entitled to vote for the election of directors or the power to control such entity; and (b) in the case of non-corporate entities, direct or indirect ownership of at least 50% of the equity interest or the power to control such entity.

“Net Sales” shall mean, without duplication, all Product-based gross revenues invoiced by Recipient or any of its Affiliates for commercialization of Products that are covered by a Valid Claim in the jurisdiction in which such commercialization occurs, to the extent attributable, less all reasonably related expenses or other accruals relating thereto including but not limited to: (1) the cost to Recipient of manufacturing and distribution of Products; (2) royalties or the like paid to third parties on Products; (3) discounts, rebates and deductions, or any other consideration accrued to customers (including group purchasing organizations) based on volumes and/or revenues commercialized, or any other deductions or the like allowed (whether in cash or trade) to wholesalers or distributors or to other customers for quantity purchases, prompt payments or other special conditions; (4) credits, write-offs, collection fees, allowances or refunds, not exceeding the original invoice amount, for claims, returns, collections or bad debts, and any other allowances made for returned or deficient goods or services; (5) transportation expenses, including any and all carriage or insurance charges, packaging, freight, and costs of delivery; and (6) sales and use taxes and other fees or taxes imposed by any government or governmental agency, including, but not limited to any import, export or customs duties. Net Sales shall be determined from books and records maintained in accordance with United States Generally Accepted Accounting Principles, consistently applied throughout the organization and across all products of the entity whose sales of Product are giving rise to Net Sales. Solely with regard to Product that is provided by Recipient to a third party for conversion into a finished dosage form that will ultimately be sold by Recipient or an Affiliate to third parties, “Net Sales” shall be based on a per unit “Transfer Price” reflecting the fair market value of the Product provided by Recipient to the third party. This Transfer Price shall be set based on good faith negotiations between the Parties, taking into account the manner of determining Net Sales set forth above and the royalty rates for products set forth in this Royalty Agreement. **[The Transfer Price shall initially be \$ \_\_\_/\_\_\_ (unit) for [Describe property].]** Upon request of either Party, the Transfer Price may be renegotiated in good faith, with the proviso that such renegotiation will take place no more than once every 2 years.

“Patent Rights” shall mean the patents and patent application set forth in Appendix B, including any divisionals, converted utility patents, continuations, continuations-in-part, or reissues, renewals, reexaminations, or extensions thereof.

“Product(s)” shall mean \_\_\_\_\_ produced and commercialized by Recipient under this Royalty Agreement, the research, development, manufacture, use, sale, offer to sell and import of which, but for the license granted herein, would infringe Valid Claims of the Patent Rights in the country of such manufacture, use or sale.

“Royalty Term” shall mean, with respect to a Product in each country in the Territory, the period commencing on the Effective Date and ending on the expiration of the last to expire patent right containing a Valid Claim that, but for the licenses granted herein, would be infringed by the manufacture, use, import, offer for sale or sale of the Product by Recipient or its Affiliates in that country [\_\_\_\_\_ years].

“Territory” means the entire world.

“Valid Claim” shall mean any claim from (a) an issued and unexpired patent included within the Patent Rights that has not been revoked or held unenforceable or invalid by a final decision, from which an appeal cannot be taken or in respect of which the applicable period of appeal has expired, of a court or other governmental authority having authority over patents, and that has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise; or (b) a pending claim in a patent application within the Patent Rights.

**APPENDIX B TO ROYALTY AGREEMENT**  
**ROYALTY PATENTS AND APPLICATIONS**

**ISSUED PATENTS**

Πατεντ No.	Τίτλε

**PENDING APPLICATIONS**

Αππλιχαιτιον No.	Τίτλε