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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): ISOSTENT, INC. Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies) Name: ANGIOGENE, INC. Internal Address: \_\_\_\_\_

3. Nature of conveyance:  Assignment  Merger  Security Agreement  Change of Name  Other Technology License Agreement Execution Date: October 23, 2001

Street Address: 1851 Sherbrooke East Suite 704 City: Montréal, Quebec State: CANADA Zip: H2K 4L5 Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_ A. Patent Application No.(s) 09/084,675 and 09/755,735

B. Patent No.(s) 5,059,166 and 5,605,530 Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: SWABEY OGILVY RENAULT Internal Address: \_\_\_\_\_ Street Address: 1981 McGill College Suite 1600 City: Montreal QC State: CANADA Zip: H3A 2Y3

6. Total number of applications and patents involved:  7. Total fee (37 CFR 3.41).....\$ 40.00  Enclosed  Authorized to be charged to deposit account 8. Deposit account number: 19-5113 (Attach duplicate copy of this page if paying by deposit account)

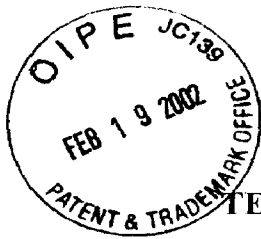
DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true, and correct and any attached copy is a true copy of the original document. Christian Cawthorn, Reg. NO. 47,352 Name of Person Signing Signature Date February 14, 2002

Total number of pages including cover sheet, attachments, and documents:

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents & Trademarks, Box Assignments Washington, D.C. 20231

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## TECHNOLOGY LICENSE AGREEMENT

**BETWEEN:** **ISOSTENT, INC.**, a body corporate duly incorporated under the laws of the State of Delaware having an office at 14600 Viburnum Drive, Dayton, Maryland 21036, United States of America, herein acting and represented by Robert E. Fischell, a duly authorized representative as he so declares;

(hereinafter designated as the “**Licensor**”)

**AND:** **ANGIOGENE, INC.**, a body corporate duly constituted under the *Canada Business Corporation Act* and having its principal place of business at 1851 Sherbrooke East, Suite 704, in the City and District of Montreal, Province of Quebec, H2K 4L5, herein acting and represented by François Bergeron, a duly authorized representative as he so declares;

(hereinafter designated as the “**Licensee**”)

**WHEREAS** the Licensor owns certain intellectual property rights covering a radioactive stent (“**Basic Radioactive Stent**”), a deformable prosthesis (“**Device**”) for the endovascular treatment of aneurysms (“**Method**”) and a radiation shield (“**Radiation Shield**”) and the Licensed Patents (as defined below);

**WHEREAS** the Licensor is the owner of national phase applications of the PCT application bearing number WO99/61107 on the Device and Method. The PCT application is now continued in Europe as a European Application bearing number EP- 9992444.1.

**WHEREAS** the Licensor is the owner of the corresponding pending U.S. patent application bearing number “09/084,675” and a continuation application bearing the number “09/755,735”, both applications being on the Device and Method;

**WHEREAS** the Licensor is the owner of the US patent bearing number “5,059,166 ”on the Basic Radioactive Stent;

**WHEREAS** the Licensor is the owner of the Canadian patent bearing number “2,031,891” on the Basic Radioactive Stent;

**WHEREAS** the Licensor is the owner of the corresponding pending Australian and Japanese applications on the Basic Radioactive Stent bearing numbers 624310 and 2,803,266 respectively and a European Patent bearing number EP-433011 on the Basic Radioactive Stent;

**WHEREAS** the Licensor is the owner of the US patent bearing number 5,605,530 on the Radiation Shield;

**WHEREAS** the Licensee is a Canadian biotechnology company developing and marketing products in the field of cardiovascular diseases;

**WHEREAS** the Licensee has also developed a similar deformable prothesis Device comprised of a detachable filling element containing at least one radioactive source for the endovascular treatment of aneurysms;

**WHEREAS** the Licensee wishes to license the said Licensed Technology (as defined below) and the right to employ the Licensed Patents in the field of treatment of aneurysms as stated in the letter of intent dated April 30, 2001, the terms of which were accepted by the Licensee and the Licensor;

**NOW THEREFORE**, in consideration of the promises and mutual covenants and agreements set forth herein, the parties agree as follows:

## 1. PREAMBLE

The preamble of the present Agreement forms an integral part of it.

## 2. DEFINITIONS

2.1 **"Agreement"**, **"herein"**, **"hereof"**, **"hereby"**, **"hereto"**, **"hereunder"** and similar expressions refer to this Agreement, as the same may be amended from time to time as permitted hereunder, and not to any particular Article, Section or other provisions hereof, and include any and every instrument supplemental or ancillary hereto or in implementation hereof;

2.1a **"Affiliate"** means, with respect to a party hereto, any entity controlling, controlled by or under common control with, directly or indirectly, such party, where "control" of an entity means the ownership of greater than fifty percent (50%) of the equity or voting interest of such entity.

2.2 **"Claim"** shall mean any demand, investigation, action, suit, proceeding, claim, assessment, judgment, settlement or compromise relating thereto;

2.3 **"Cure Period"** means a **forty-five (45)** day period after receipt of written notice of default;

2.4 **"Effective Date"** means the date on which this Agreement is signed which date is October 23, 2001;

2.5 **"Equity"** shall mean the shares of the Licensee on a fully diluted basis, as of the Effective Date, (assuming the exercise and/or conversion of all then outstanding exercisable and/or convertible securities) taking into account the Class A financing that occurred on

October 2, 2001, including the 2,666,667 Class A shares and the 400,000 common shares Warrants expected to be issued upon the satisfaction of certain milestones on or before April 2, 2003;

For the purposes of this Agreement the Licensee certifies to Licensor that the shares and exercisable and/or convertible securities of the Licensee issued and outstanding, as of the Effective Date are the following :

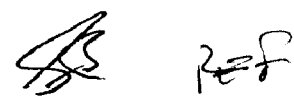
Common shares :	11 676 471
Common shares warrants :	3 273 947
Class "A" shares issued (and/or to be issued):	13 345 112
Employee stock option plan (Class "B" option) :	488 497
<b>Total :</b>	<b>28 784 027</b>

- 2.6 **"European Patents"** mean any patent resulting from the European Patent bearing Number EP-433011 on the Basic Radioactive Stent, issued on July 20, 1994;
- 2.7 **"Field"** shall mean the treatment of an aneurysm by means of radioactive modalities;
- 2.8 **"Improvements"** means any advances in, improvements or modification to, revisions or derivatives of the Licensed Technology;
- 2.9 **"Know-How"** means all information, data, discoveries and trade secrets, whether or not reduced to writing, in the Field, that Licensor owns or has the right to sublicense, pertinent to the Licensed Product or to the manufacture or use of the Licensed Product;
- 2.10 **"Licensed Materials"** shall mean Technical Data as may be provided by Licensor to Licensee;
- 2.11 **"Licensed Patents"** shall mean each and every patent and patent application listed in the **WHEREAS** clauses provided above and
- a) all divisional applications, continuations, continuations-in-part, reissues and corresponding foreign patents and patent applications based on those patents and patent applications listed in the **WHEREAS** clauses.
- 2.12 **"Licensed Product"** shall mean any product within the Field covered by any claim of any of the Licensed Patents;
- 2.13 **"Licensed Technology"** shall mean the Licensed Patents, the Licensed Materials and the Know-How and any improvements thereof;
- 2.14 **"Licensee Improvements"** shall mean any Improvements developed by Licensee during the term of this Agreement.

- 2.15 **“Licensee Project Director”** shall be François Bergeron, or such other individual as the Licensee may appoint from time to time, as notified to the Licensor in writing.
- 2.16 **“Licensor Improvements”** shall mean any improvements developed by Licensor during the term of this Agreement.
- 2.17 **“Licensor Project Director”** shall be Robert E. Fischell, or such other individual as the Licensor may appoint from time to time, as notified to the Licensee in writing.
- 2.18 **“Loss”** shall mean any and all loss, liability, damage, cost, expense, charge, fine, penalty or assessment, resulting from or arising out of any Claim, including the costs and expenses of any investigation, action, suit, proceeding, demand, assessment, judgment, settlement or compromise relating thereto and all interest, fines and penalties and reasonable legal fees and expenses incurred in connection therewith.
- 2.19 **“Net Sales”** means (1) the amounts paid to Licensee or any Affiliate by any purchasers for any Licensed Product, less transportation charges, insurance charges, custom duties, allowances for lost or damaged merchandise, taxes or other government charges on the sale, external commissions, shipping charges, the amount of any reduction, promotion or discount granted with respect to the Licensed Products, the amount of any rebate on a Licensed Product that a customer claims is defective or unsatisfactory, or credits or allowances given for returned Licensed Products, and/or (2) the Net Sales of any sub-licensee or cross-licensee of Licensee in respect of the Licensed Product. The calculation of Net Sales will be carried out in accordance with generally accepted accounting principles;
- 2.20 **“Royalty Payment”** shall mean a royalty payment from the Licensee to the Licensor based upon the Net Sales, the whole as more fully described in Section 7.2 hereof.
- 2.21 **“Section”** followed by a number refers to the specified Article or Section of this Agreement;
- 2.22 **“Technical Data”** shall mean all the technical information, data, plans, specifications, and other pertinent matters, in the Field, that Licensor owns or has the right to sublicense, regarding the Licensed Product.

### 3. GRANT OF RIGHTS

- 3.1 Subject to the terms and conditions of this Agreement, the Licensor hereby grants to the Licensee a worldwide, exclusive license, under the Licensed Patents and Licensor’s know-how rights in the Licensed Technology, to use the Licensed Technology in the Field, including the right to develop, make or have made, manufacture, distribute and sell the Licensed Products in the Field.
- 3.2 The Licensee may grant sub-licenses or cross-licenses in respect of its rights hereunder, in whole or in part, provided that each sub-license or cross-license is pursuant to a binding written agreement consistent with this Agreement and is limited only to the Field, that the Royalty Payment rate in each sub-license or cross-license shall be independently



determined by the Licensee and that the Licensee shall be responsible for payment of Royalty Payments to the Licensor.

- 3.3 It is expressly agreed that nothing contained in this Agreement shall be construed to restrict or prevent the Licensee from developing, manufacturing, making, having made for it or selling any other products that could be used for the same or similar purpose as the Licensed Products.
- 3.4 All titles to and interests in the intellectual property rights pertaining to the Licensed Technology remain the property of the Licensor. Licensor reserves all rights not expressly granted herein, and no right or license is granted under this agreement except as expressly granted herein, whether by implication, estoppel or otherwise.
- 3.5 The Licensor undertakes to execute and deliver all documents and instruments and do all acts and things as the Licensee may reasonably require to give effect to the license granted to the Licensee hereunder.
- 3.6 Licensor shall mark all Licensed Products with any notice regarding the Licensed Patents as reasonably requested by Licensor.
- 3.7 In the event of any public offering of any of the shares of Licensee (or any successor to Licensee by merger or other reorganization), Licensee hereby agrees to use its best efforts to allow Licensor to include in such offering any Class B shares issued to Licensor (or any other securities issued as a dividend or other distribution with respect to or in exchange for such shares, including without limitation in any merger or other reorganization), to the extent any shares of Licensee held by any other shareholder of Licensee are included in such offering. In addition, in the event any shares of Licensee (or any successor to Licensee by merger or other reorganization) or any shares issued in exchange for any shares of Licensee in connection with any merger or any other reorganization are registered on Nasdaq, the New York Stock Exchange, the Toronto Stock Exchange or any other securities exchange or are otherwise freely tradable, Licensee shall use its best efforts to cause the Class B shares issued to Licensor (or any other securities issued as a dividend or other distribution with respect to or in exchange for such shares, including without limitation in any merger or other reorganization) are so registered or otherwise freely tradable no later than those of any other shareholder of Licensee.
- 3.8 In the event of the issuance of shares, and/or of securities convertible into shares, by the Licensee at a price per share lower than 1.125 can. \$ (the October 2<sup>nd</sup>, 2001 subscription price), before one of the dates of issuance of Equity determined in paragraph 7.2 hereinafter the Licensee undertakes to issue to Licensor supplementary number of shares in order that the Licensee receives the indicated percentage for such subsequent issuance of all the shares and/or securities of the Licensee issued and outstanding on the issuance date.

#### 4. PROSECUTION OF PATENTS AND CONTINUATION

4.1 As of the effective date, the Licensee will assume the costs and expenses related to the prosecution and maintenance of the Licensed Patents according to the following schedule:

Licensed Patents	Angiogene share of preparation, filing, prosecution, insurance fees and related expenses	Angiogene share of maintenance fees and related expenses
US Patent Applications Serial Numbers 09/084,675 and 09/755,735 (the " <b>US Device and Method Application</b> ") including all divisional applications, continuations-in-part, reissues based on this Patent	0%	100%
National Phase Applications of the PCT Application bearing number WO99/61107 (the " <b>PCT Device and Method Application</b> ") including all divisional applications, continuations-in-part, reissues based on this Patent	100%	100%
US Patent Number 5,059,166 (the " <b>US Basic Radioactive Stent Patent</b> ") including all divisional applications, continuations-in-part, reissues based on this Patent	0%	50%
Canadian Patent Number 2,031,891 (the " <b>Canadian Basic Radioactive Stent Patent</b> ") including all divisional applications, continuations-in-part, reissues based on this Patent	0%	0%
European Patent Number EP-433011 (the " <b>European Basic Radioactive Stent Patent</b> ")	0%	0%

including all divisional applications, continuations-in-part, reissues based on this Patent		
Australian Patent Application number 624310 (the " <b>Australian Basic Radioactive Stent Patent Application</b> ") including all divisional applications, continuations-in-part, reissues based on this Patent	0%	0%
Japanese Patent Application Number 2,803,266 (the " <b>Japanese Basic Radioactive Stent Patent Application</b> ") including all divisional applications, continuations-in-part, reissues based on this Patent	0%	0%
All other foreign Patents and Patent Applications based on derived from the "US Basic Radioactive Stent Patent"	0%	0%
US Patent Number 5,605,530 (the " <b>US Radioactive Shield Patent</b> ") including all divisional applications, continuations-in-part, reissues based on this Patent	0%	50%
All other foreign Patents and Patent Applications based on derived from the "US Radioactive Shield Patent"	0%	0%

4.2 Neither the Licensee nor the Licensor will assume the costs for the preparation, filing, prosecution, maintenance, continuance and defense of any divisional applications, continuations or continuations-in-part relating to any patents or patent applications forming part of the Licensed Patents, unless agreed to in writing. For further certainty, it is agreed that neither the Licensee or the Licensor shall have any obligation whatsoever to file or have filed any new application or to prosecute any pending application or to



maintain any Licensed Patents. Licensor shall inform Licensee of any decisions not to file or prosecute any pending applications or to maintain any Licensed Patents. Licensee, at its own discretion, may then file or prosecute or maintain said applications or Patents at its own costs. These costs shall be deducted from any license fees payable under this Agreement for sales incurred in the country where Licensee has filed, prosecuted or maintained those Patents.

4.3 Within 30 days from the Effective Date, the Licensor shall deliver to the Licensee the payment schedule for the maintenance fees in respect of each of the Licensed Patents. Moreover, the Licensor hereby agrees to promptly provide all relevant information required by the Licensee related to the Licensed Patents, upon demand, and duly and fully cooperate with the Licensee or its patent agents, at Licensee's expense (provided that Licensee shall not be obligated to compensate Licensor for the time of Licensor's employees), for the preparation, filing, prosecution, maintenance, continuance and defense of the patents listed in the **WHEREAS** Section of this Agreement, in the event Licensee decides not to maintain any such patents pursuant to Section 4.2.

## 5. IMPROVEMENTS

5.1 The Licensee shall be the sole and exclusive owner of any intellectual property rights in any Licensee Improvements and the Licensee shall be free to file for patent protection in respect of any Licensee Improvements.

5.2 The Licensor shall be the sole and exclusive owner of any intellectual property rights in any Licensor Improvements. The Licensor agrees to promptly notify the Licensee in writing of any Licensor Improvements (the "**Notice of Improvements**"). Such Licensor Improvements will be deemed to form part of the Licensed Technology, unless Licensee notifies Licensor in writing within thirty (30) days of its receipt of the Notice of Improvement that it is not interested in licensing a particular Licensor Improvement. The Licensee shall not be required to pay any increased royalties on Net Sales as a result of any additional patents covering Licensor Improvements included in the Licensed Technology in accordance with the provisions of this Section 5.1. Notwithstanding the foregoing, the Licensor has no obligation or plans to work on any Improvements.

## 6. TECHNICAL ASSISTANCE AND TECHNICAL DATA

6.1 If the Licensee wishes to have some of its key personnel visit the Licensor's premises for the purpose of becoming more familiar with any aspect of the Licensed Product, the Licensor agrees to receive such persons for reasonable periods, at mutually convenient times.

6.2 The Licensor will make reasonable efforts to furnish to the Licensee, at no cost to the Licensee, all Technical Data:

- a) related to the Licensed Technology that is now in the Licensor's possession and/or is acquired by the Licensor during the term of this Agreement;

- b) prepared by or for, or used by or in the possession of, the Licensor, that may be required for the preparation, filing, prosecution, maintenance, continuance and defence of patents aforementioned in Section 4; and
- c) relating to revisions, modifications, and changes of the Licensed Product, prepared by or for or used by or in the possession of the Licensor, from time to time, during the term of this Agreement, to the extent that such Technical Data is applicable to and is required by the Licensee.

## 7. LICENSE FEES

7.1 If not otherwise provided in this Agreement, all payments to be made to Licensor by Licensee under this Agreement shall be made in United States dollars. Conversion of Canadian dollars or other currency to United States dollars shall be made at the conversion rate existing in the United States (as reported in the Wall Street Journal) on the last business day of the calendar quarter for which royalties are due.

7.2 Licensee agrees to pay to Licensor the following amounts in the following manner:

- a) upon execution of this Agreement, the Licensee will transfer, to the Licensor, Class B shares representing 0.1% of its Equity;
- b) subject to Section 7.2d) below, the Licensee will pay royalties in the amount of 0.5% of its Net Sales to the Licensor;
- c) upon issuance and grant of a patent for the US Device and Method Application based upon US Application Serial No. 09/084,675 and/or European patent application EP- 99924441.1 for the Device and Method, provided that base claims, as published in the international PCT application bearing number WO99/61107, are allowed, the Licensee will transfer, an additional amount of Class B shares representing 0.15% of its Equity (as of the date of the issuance of the patent) to the Licensor if the US patent issues and an additional amount of Class B shares representing 0.05% of its Equity (as of the date of the issuance of the patent in the last such country) if the European patent issues and is granted in at least the following countries: Germany, France and the United Kingdom;
- d) upon issuance and grant of a patent for the US Device and Method Application and/or European application EP- 99924441.1 for the Device and Method, provided that base claims, as published in the international PCT application bearing number WO99/61107, are allowed, the Licensee's royalty payments to the Licensor will increase by an additional 0.75% of its Net Sales to the Licensor if the US patent issues, and an additional 0.25% of its Net Sales if the European patent issues and is granted in at least the following countries: Germany, France and the United Kingdom.

- 7.3 No Royalty Payments from the Licensee's Net Sales shall be due to the Licensor for the sale of the Licensed Products in a particular country where all of the Licensed Patents have either been rejected, declared invalid by a final, non-appealable judgment or expired. However, notwithstanding the foregoing, Royalty Payments will be made to the Licensor if (1) the Licensed Product is made by the Licensee or its sublicensees in a country where there is at least one issued, unexpired and valid Licensed Patent, irrespective of where that Licensed Product is sold, or (2) the Licensed Product is made by the Licensee or its sublicensees in a country where there is not at least one issued, unexpired and valid Licensed Patent but there is no competing device sold in that particular country which competing device would infringe a claim of any of the Licensed Patents.
- 7.4 Royalty Payments shall be made quarterly within sixty (60) days after the last day of March, June, September and December, respectively, for royalties accruing during the three (3) preceding months.
- 7.5 All amounts due hereunder shall be without deduction of exchange, collection or other charges and without deduction of withholding or similar taxes or other government imposed fees or taxes. Any amounts due hereunder that are not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month or, if less, the maximum rate allowed by law.
- 7.6 The Licensee shall furnish the Licensor with a final statement within six (6) months following the date of termination of this Agreement.
- 7.7 Royalty Payments to Licensor shall be in United States dollars and may be either:
- a) wire transferred to an account to be specified at a later date; or
  - b) mailed to:
- ISOSTENT, Inc.  
71 Riverlawn Drive  
Fair Haven, New Jersey 07704  
United States of America
- 7.8 In transmitting any Royalty Payment to the Licensor, the Licensee shall identify how many units of each of the Licensed Products have been sold in a particular country plus any other reasonable information that would be deemed useful to the understanding of the basis on which the Royalty Payment is made. Such information shall be mutually agreed upon between the Licensee and the Licensor.

## 8. AUDITING

The Licensor shall have the right to, at its own expense, ask Licensee's auditor to issue a certificate to the effect that the payment of any royalties hereunder is made in accordance with the present Agreement. At least once each calendar year, the Licensor at its own expense, shall have the right to have its own auditor review the Royalty Payments made by the Licensee under

this Agreement. In the event that there is an underpayment of more than five percent (5%) in any one year, then the Licensee shall reimburse the Licensor for the cost of the audit in that particular year.

## 9. WARRANTIES AND REPRESENTATIONS

- 9.1 Licensor hereby represents and warrants that it has the full and sole right to enter into this Agreement with the Licensee and it is the sole and exclusive owner of the Licensed Patents and has the right to license the Know-How.
- 9.2 Licensor warrants that as of the Effective Date of this Agreement, there is in effect no license in the Field granted by it to any other person or entity, worldwide, covering the Licensed Technology.
- 9.3 Licensor hereby represents and warrants that there are no current and subsisting liens, hypothecations, charges, security interests or other encumbrances on or affecting the Licensed Technology;
- 9.4 Licensor hereby represents and warrants that there are no current claims by third parties relating to the Licensed Technology and to its knowledge, the Licensor is not aware of any violations, infringements or misappropriations of any third party's rights by the Licensed Technology;
- 9.5 Licensor hereby represents and warrants that the Licensed Patents are in good standing.
- 9.6 The Licensor does not warrant that the Licensed Patents are valid, that any Licensed Product will be a useful or operable medical device or that any Licensed Product will be marketable by the Licensee.

## 10. INFRINGEMENT

- 10.1 The Licensee hereby undertakes to promptly notify the Licensor of any notice and Claim of infringement or of any action for infringement of patents brought against it by a third party and based upon the use of the Licensed Technology by the Licensee as permitted hereunder.
- 10.2 In the event of any action for infringement of intellectual property rights brought against the Licensee by a third party based upon a claim that the use of an invention claimed by a Licensed Patent in the Field infringes a third party patent right (the "**Action for Infringement**"), the Licensee shall have the right to suspend the payment of royalties in respect of Net Sales made in the jurisdiction in which the Action for infringement has been instituted and place the amount of such royalties in escrow until final judgment or until judgment from which the period to file an appeal has expired. In the event the Action for infringement is dismissed, all royalties placed by the Licensee in escrow, including any accrued interest, shall be paid forthwith to the Licensor. If, on the other hand, the Action for infringement is allowed, then the Licensee shall be entitled to deduct from any royalties placed by it in escrow the amount of any costs, expenses and damages

resulting from such claim and royalties paid or to be paid to such third party and, at its option, terminate this Agreement forthwith as far as that jurisdiction is concerned.

10.3 Each Party shall promptly advise the other in writing of any acts of infringement of the Licensed Patents by a third party. The Licensee may institute and prosecute any proceedings to restrain infringement or defend declaratory judgment actions relating to any rights of the parties in respect of the Licensed Technology in the Field. The Licensor may participate in such proceedings or actions, upon notice to the Licensee to that effect. In addition, if requested by Licensee and necessary to prosecute the proceedings or action, the Licensor agrees to be made party to any such proceedings or action, at Licensee's expense (unless Licensor is willing to fund the costs of its participation). It is understood and agreed that any financial settlement resulting from such a lawsuit shall be divided between the Licensee and the Licensor according to the division of the legal costs of such action. For example, if the Licensor pays 25% of the legal costs, then the Licensor would receive 25% of any settlement from the third party. It is understood and agreed that the Licensor retains the right to provide any percentage between 0% and 50% of the legal costs for such an action. If the Licensee elects to not take any legal action against an infringing third party, then the Licensor has the right but not the obligation to take such legal action and, in such a case, the Licensor would pay all legal costs and would retain the entire amount of any settlement obtained from such a third party.

## 11. INDEMNIFICATION

11.1 INDEMNIFICATION BY THE LICENSEE. During the term of this Agreement, the Licensee shall be in complete control of the design, manufacture, testing and marketing of any Licensed Product that will be placed in clinical trial or will be sold by the Licensee. Therefore, the Licensee agrees to hold harmless and indemnify the Licensor and its directors, officers, employees and agents from and against all Loss suffered or incurred by any one or more of them as a direct result of, based upon or arising in connection with any use, distribution, marketing, sale or licensing of the Licensed Products by the Licensee (subject to the Licensor's indemnification obligations set forth in Section 11.2 hereof).

11.2 INDEMNIFICATION BY THE LICENSOR. The Licensor agrees to hold harmless and indemnify the Licensee and its directors, officers, employees and agents from and against all Loss suffered or incurred by any one or more of them as a direct result of, based upon or arising in connection with any misrepresentation or breach of warranty made or given by the Licensor under Section 9 hereof.

11.3 In no case shall either of the parties, its officers, directors, representatives, employees, agents and affiliates be liable to the other party for indirect or consequential damages of any kind, including any economic loss or damage to property and loss of profits in any circumstances, except for amounts awarded to third parties for which the other party is obligated to indemnify under this Section 11.

## 12. CONFIDENTIALITY OBLIGATIONS

- 12.1 "Confidential Information" shall have the same meaning as defined in the Information Disclosure and Mutual Confidentiality Agreement ("Confidentiality Agreement") signed between the parties effective since April 30, 2001. The parties hereby acknowledge that they have received, used and been made aware of Confidential Information during the course of this Agreement.
- 12.2 The parties undertake at all times during the term of this Agreement and for a period of two (2) years thereafter, to abide by all obligations provided by the terms of the Confidentiality Agreement. Notwithstanding the foregoing, in the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Confidentiality Agreement, the terms of this Agreement shall prevail.
- 12.3 The parties acknowledge and represent that the confidentiality clause provided for in this Agreement is entirely reasonable and is necessary to protect their respective legitimate interests. Should a tribunal rule that the foregoing confidentiality undertaking is unreasonable as to its duration, the parties hereby expressly agree to grant the tribunal the necessary powers to reduce such duration to a level it shall deem reasonable rather than declare null such confidentiality clause. In such an eventuality, the provisions of this confidentiality clause shall be deemed to have been amended by the parties retroactively to the date of signature of this Agreement and the confidentiality undertaking so amended shall be *ipso facto* enforceable against the parties.

## 13. TERM AND TERMINATION

- 13.1 This Agreement shall commence on the Effective Date and unless earlier terminated in accordance with the provisions of this Section 13, shall continue until the termination of the exclusive rights of the last of the Licensed Patents (including any Licensor Improvements forming part of the Licensed Patents in accordance with the provisions of Section 5.1 hereof, whether such termination results from expiration of the Licensed Patents or the expungement of the Licensed Patents without right of further appeal.
- 13.2 Either party may terminate this Agreement if:
- a) the other party makes an assignment in bankruptcy for the general benefit of its creditors;
  - b) the other party admits in writing its inability to pay debts as they mature;
  - c) a trustee or receiver is appointed for a substantial part of the other party's assets; or
  - d) a bankruptcy proceeding is instituted against the other party that is acquiesced in or, in any event, is not dismissed within sixty (60) days of being filed, or results in an adjudication of bankruptcy;

- e) the other party commits a material breach of this Agreement, including without limiting the foregoing, and such breach is not cured within the Cure Period. For purposes of clarification, "material breach" shall include without limitation any failure to pay royalties or any other amounts due under this Agreement or to issue Equity as required by this Agreement.

13.3 The Licensee may terminate this Agreement in the event that US Patent Application Serial Number 09/084, 675 is not granted to the Licensor.

13.4 Throughout the term of this Agreement, the Licensee agrees to use reasonable commercial efforts in order to design, develop, test, manufacture and market the Licensed Product. In the absence of such effort, the Licensor retains the right to terminate this Agreement after the expiry of the fifth (5<sup>th</sup>) year of the term of this Agreement and thereafter, upon ninety (90) days written notice to the Licensee, if the Licensee fails to remedy its breach within such ninety (90) day period. Furthermore, even if the Licensee has used reasonable commercial efforts in order to design, develop, test, manufacture and market the Licensed Product in the United States, in the event the Licensee has failed, by January 1, 2007, to either : (a) obtain regulatory approval in order to market the Licensed Product in the United States; or (b) obtain a CE Mark for marketing of the Licensed Product in Europe, then the Licensee may pay the Licensor a fee in addition to those set out in Section 7 in the form of Class B shares representing 0,2% of its Equity (as of such date) (the "Additional License Fee") for each year during which it has failed to meet the requirements above, for a maximum of five (5) years. If Licensee decides not to pay to Licensor the Additional License Fee, this Agreement will be deemed terminated.

13.5 Promptly upon termination of this Agreement, the Licensee shall notify the Licensor of the quantities of any Licensed Products already manufactured and in inventory at the effective date of termination and subject to the Licensee making the Royalty Payments as provided for in Section 7.2 hereof, the Licensee shall have the right to sell off such remaining inventory of Licensed Products for a period not to exceed twelve (12) months or until the stock of Licensed Products is fully deplete, whichever occurs first.

#### 14. NOTICE

14.1 Except for the payment of a Royalty Payment, any notice or other written communication required or permitted to be given by a party under this Agreement will be considered delivered five (5) business days after the notice has been mailed by certified mail addressed to the attention of the other party's designated contact identified in this Agreement or in any addendum.

14.2 The Notices shall be sent to the following contacts:

**LICENSOR**

Dr. Robert E. Fischell  
ISOSTENT, Inc.  
14600 Viburnum Drive,  
Dayton Maryland,  
21036, United States of America

Tel: (301) 854-0606  
Fax: (410) 531-2447

**LICENSEE**

M. François Bergeron  
ANGIOGENE Inc.  
1851 Sherbrooke East, Suite 704,  
Montreal, Quebec  
H2K 4L5, Canada

Tel: (514) 596-1111 #224  
Fax: (514) 596-1119

**15. Survival**

The provisions of Sections 9, 11, 12 and 13.5 shall survive notwithstanding expiry or termination of this Agreement.

**16. ADVICE OF COUNSEL, GOOD FAITH AND FAIR CONSIDERATION**

16.1 Each of the parties hereto has received the advice of independent legal counsel or has had the opportunity to receive such advice by counsel, prior to signing this Agreement. Each of the parties hereto acknowledges that no other party or agent or attorney of any party has made a promise, representation not contained herein concerning the subject matter herein to induce the other party to execute this Agreement.

16.2 Each of the parties hereto acknowledges and declares that this Agreement was freely negotiated by it in good faith, that the Agreement does not constitute a contract of adhesion, that there was no exploitation of either party by the other, and that there is no serious disproportion between the consideration provided by the Licensor and the Licensee.

**17. GOVERNING LAW**

This Agreement and all documents ancillary hereto, and the obligations of the parties hereto shall be governed by and construed in accordance with the laws applicable in the Province of Quebec and the laws of Canada applicable therein, excluding any conflicts of law dispositions.

**18. NON-AGENCY RELATIONSHIP**

The parties are independent of one another, and this Agreement does not give either party the right to bind the other to any obligation, or to assume or to incur any obligation on behalf of or in the name of the other party. This Agreement shall not be interpreted to make one party a partner, employee, agent or other representative of the other for any purpose. Each Party shall use its own name when soliciting, negotiating and completing contracts, so that the transaction indicates that it is acting on its own behalf and not for the other party.



## 19. WAIVER

No party shall be deemed to have waived its right to enforce any obligation of the other party under this Agreement unless the waiver is in writing signed by the waiving party. If a party does not exercise a right under this Agreement, or does not require full performance by the other party, or accepts payment by the other party, that shall not be construed as a waiver by either the party of any right under this Agreement. To be effective, a waiver by a party of a right under this Agreement must be in writing, but no such waiver shall constitute a waiver of rights regarding any other breach or any subsequent similar breach of this Agreement.

## 20. ESCALATION OF DISPUTES

20.1 Should any dispute or difference arise between Licensee and Licensor either during this Agreement or after termination of this Agreement as to any matter arising out of or as a result of this Agreement, except to the extent that an equitable remedy is sought or circumstances clearly indicate that the time required for the process set forth in this Section would cause irreparable harm to a party, either party shall first give to the other party notice in writing of such dispute or difference and at the expiration of fifteen (15) days unless it shall have been settled, such dispute or difference shall be referred to the Licensee Project Director and Licensor Project Director for resolution. If within an additional fifteen (15) days such dispute shall not have been settled, then the parties shall have the right to pursue arbitration as set forth in Section 21 below.

## 21. ARBITRATION

21.1 Any and all disputes, claims, counterclaims, controversies or differences arising out of or in connection with this Agreement, its negotiation, breach, existence, validity or termination, which the parties were unable to resolve amicably in accordance with the provisions of Section 20, shall be referred to and finally settled by arbitration, from which there shall be no appeal.

21.2 The arbitration shall be held in accordance with the provisions of Book VII of the *Code of Civil Procedure* (Quebec) then in effect before three (3) arbitrators. Each party shall appoint one (1) arbitrator and those two (2) shall appoint the third (3<sup>rd</sup>). If the two (2) arbitrators fail to concur on the choice of the third (3<sup>rd</sup>) arbitrator within thirty (30) days after their appointment, the third (3<sup>rd</sup>) arbitrator shall be appointed by a judge of the Superior Court of Quebec according to Sections 941.1 and 941.2 of the *Code of Civil Procedure*. The arbitrators shall be lawyers.

21.3 The place of arbitration shall be Montreal and the law applicable to the arbitration procedures and to the rules of evidence shall be the laws of the Province of Quebec, and without limiting the foregoing, the *Code of Civil Procedure* of the Province of Quebec.

21.4 The prevailing party in such arbitration shall be entitled, in addition to the fees and expenses of arbitration, to its reasonable attorney's fees and expert fees, as determined by the arbitrators in the award.

- 21.5 The parties hereby express their intention, unless otherwise agreed in writing, that the decision of the arbitrators shall be rendered within one hundred and eighty (180) days from the date of the designation of the third (3<sup>rd</sup>) arbitrator; however, the arbitrators will not lose jurisdiction if the decision is not rendered within the said time period.
- 21.6 The award shall include interest from the date of any damages incurred for breach or other violation of the contract, and from the date of the award until paid in full according to Sections 1611 to 1621 of the *Civil Code of Quebec*. Any award rendered by the arbitrators may be entered into any Court having jurisdiction thereof.
- 21.7 Performance under this Agreement shall continue if reasonably possible during the arbitration proceedings.

## 22. SUCCESSORS AND ASSIGNMENTS

- 22.1 Without the prior written consent of each party, neither party shall transfer or encumber any of its rights under this Agreement in any manner whatever. However, the Licensee has the right to sub-license or cross-license its rights under this Agreement to any third party, provided that it notifies the Licensor in writing of any such sub-licenses or cross-license. In such a case, the Licensee shall be responsible for the Royalty Payment that is due and payable to the Licensor under the terms of this Agreement. Furthermore, the Licensor shall have the right to assign this agreement to IsoStent, LLC, a Delaware limited liability company that is being formed to receive future IsoStent royalties, provided that the Licensor shall not be released from its obligations hereunder as a result of such assignment and the Licensor shall remain fully liable in all respects hereunder, as solitary co-debtor with IsoStent, LLC. Still further, the Licensor retains the right to exclusively or non-exclusively license to any third party any of the Licensed Technology outside of the Field.
- 22.2 This Agreement shall enure to the benefit of and bind the Parties and their successors and permitted assigns.

## 23. HEADINGS, GENDER, ETC.

The use of all headings and the division of this Agreement into sections are only for the convenience of the reader, and shall not affect the legal interpretation of this Agreement. As used in this Agreement, the singular number includes the plural and vice versa, use of a particular gender includes all other genders and the word "person" includes an individual, a partnership, a trust, a personal representative, a body corporate and politic, the Crown and any Crown representative, an association and any other incorporated or unincorporated organization or entity.

## 24. ENTIRE AGREEMENT

- 24.1 This Agreement is the entire agreement and understanding between the parties regarding its subject matter, and supersedes all previous agreements and understandings between the parties regarding its subject matter. No party is relying on any representation, warranty, condition, inducement, promise or other assurance (express or implied, oral or

written, statutory or otherwise), which may have been made previously by another party concerning this Agreement and its subject matter, unless it is specifically stated in this Agreement.

24.2 This Agreement may only be amended by a written agreement between the parties.

## 25. SEVERABILITY

Each provision of this Agreement is separate and distinct from the others, such that any decision of a court or tribunal to the effect that any provisions of this Agreement is null or unenforceable shall in no way affect the validity of the other provisions of this Agreement or the enforceability thereof. Notwithstanding the above, such invalid provision shall be interpreted, to the extent possible, so as best to reasonably effect the original intent of the parties.

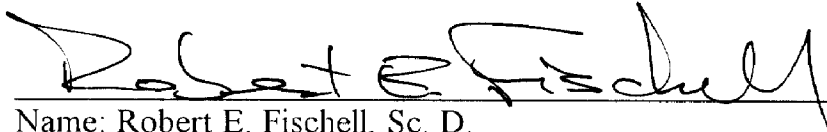
## 26. LANGUAGE

The parties have specifically agreed that this Agreement as well as all other documents relating to this Agreement, including notices, be written in English only. *Les parties aux présentes se sont expressément entendus que la présente convention de même que tous les documents, y compris tout avis s'y rattachant, soient rédigés en anglais seulement.*

The parties hereto have executed this Agreement as of the Effective Date.

### ISOSTENT, INC.

Per:




Name: Robert E. Fischell, Sc. D.

Title: President and Chairman

### ANGIOGENE, INC.

Per:



Name: Francois Bergeron

Title: President and CEO