

Form PTO-1595
(Rev. 10/02)

RECORDATION FORM COVER SHEET
PATENTS ONLY

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

OMB No. 0651-0027 (exp. 6/30/2005)

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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):
Regents of the University of Minnesota

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: American Biosystems, Inc.

Internal Address: _____

Street Address: 1020 West County Road F

City: St. Paul State: MN Zip: 55126

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

Assignment Merger

Security Agreement Change of Name

Other Exclusive license

Execution Date: 11/8/1988

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) _____

B. Patent No.(s) 4,977,889;
4,838,263; 5,056,505

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Paul Maeyaert

Internal Address: Advanced Respiratory, Inc.

Street Address: 1020 West County Road F

City: St. Paul State: MN Zip: 55126

6. Total number of applications and patents involved: 3

7. Total fee (37 CFR 3.41).....\$ 120.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:
501909

DO NOT USE THIS SPACE

9. Signature.

Paul Maeyaert  10/2/2003

Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and documents: 25

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

CH \$120.00 501909 4977889

CONFIDENTIAL

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M&G-3509.11-US-LB

U of M:

Ref: L:49/PO3:29/A

AS: 880822

Rev. CCS-881014

LICENSE AGREEMENT

THIS AGREEMENT is effective upon the 2nd day of Nov., 1988.

American Biosystems, Inc. (hereafter COMPANY), a corporation of the State of Minnesota, that has a principal place of business at 750 Walnut Street, Marine on St. Croix, Minnesota 55047, and the Regents of the University of Minnesota (hereafter UNIVERSITY), a non-profit corporation of the State of Minnesota, that has a principal office at 100 Church Street SE, Minneapolis, Minnesota, agree as follows:

ARTICLE IINTRODUCTION

1.1 COMPANY and the UNIVERSITY are occasionally referred to as "parties" in singular or plural usage as indicated by the context.

1.2 Terms in this agreement which appear in upper case letters, other than the names of the parties, NEWCO, and article headings, have the meanings given in Article II.

1.3 The UNIVERSITY, through the efforts of Dr. Warren Warwick and Leland Hansen, has developed a device and method to assist a person (especially a person with cystic fibrosis) in the expulsion of mucus that has accumulated in the lungs. The

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REEL: 014022 FRAME: 0002

UNIVERSITY has filed U.S. and foreign applications on this invention. The UNIVERSITY desires to enter into a license arrangement with a company that will commercialize this invention and that will fund additional UNIVERSITY research concerning the invention, including research to develop other therapeutic and diagnostic applications.

1.4 COMPANY is interested in obtaining exclusive commercial rights to the invention and in cooperating with the UNIVERSITY in further research concerning the invention. Subject to various factors now under review, COMPANY may sublicense the commercial rights it obtains to a new company (hereafter NEWCO) that is being formed to commercialize this invention as its first development project. NEWCO is also intended to commercialize other medical device products acquired from other sources.

1.5 The UNIVERSITY and COMPANY agree to the following terms and conditions in order to effect the purposes given above.

ARTICLE II

DEFINITIONS

2.1 TECHNOLOGY shall mean all information, knowledge, know-how, and inventions, whether patentable or not, in the possession of the UNIVERSITY as of the date of this agreement that were developed by or under the supervision of Dr. Warren Warwick and/or Leland Hansen of the UNIVERSITY concerning percussive or compressive thoracic physiotherapy devices (both therapeutic and diagnostic) and related methods, systems and

instrumentation, and specifically including the chest compression device which is the subject of U.S. Patent Application Number 045,888, filed May 1, 1987 (U of M docket 86005).

2.2 UNIVERSITY IMPROVEMENTS shall mean all improvements and developments specifically related to the TECHNOLOGY, whether patentable or not, that are made by or under the supervision of Dr. Warren Warwick and/or Leland Hansen within the first five (5) years following the date of this agreement and all improvements and developments of any kind, whether patentable or not, that are made by any UNIVERSITY employee at any time under funding from COMPANY. UNIVERSITY IMPROVEMENTS shall not include any improvements or developments made by either Dr. Warren Warwick or Leland Hansen after ceasing to be an employee of the UNIVERSITY. Dr. Warren Warwick and Leland Hansen agree to assign all UNIVERSITY IMPROVEMENTS to the UNIVERSITY.

2.3 COMPANY IMPROVEMENTS shall mean all improvements and developments specifically related to the TECHNOLOGY, whether patentable or not, that are made by COMPANY at any time.

2.4 U.S. APPLICATIONS shall mean U.S. Patent Application Number 045,888 ("Chest Compression Apparatus"), filed May 1, 1987, and all other present and future U.S. patent applications, including continuations, divisionals, and applications for reissue, on the TECHNOLOGY and UNIVERSITY IMPROVEMENTS (but not on COMPANY IMPROVEMENTS).

2.5 FOREIGN APPLICATIONS shall mean International Application No. PCT/US88/01342 ("Chest Compression Apparatus"), filed April 26, 1988, corresponding to U.S. Application No. 045,888 and designating the European Patent Office (all available states), Denmark, Finland, Japan, and Norway, and shall mean all other present and future foreign patent applications on the TECHNOLOGY and UNIVERSITY IMPROVEMENTS (but not on COMPANY IMPROVEMENTS).

2.6 U.S. PATENTS shall mean all U.S. patents and reissues that issue on U.S. APPLICATIONS.

2.7 FOREIGN PATENTS shall mean all foreign patents issuing on FOREIGN APPLICATIONS.

2.8 APPLICATIONS shall mean U.S. APPLICATIONS and FOREIGN APPLICATIONS.

2.9 PATENTS shall mean U.S. PATENTS and FOREIGN PATENTS.

2.10 PRODUCTS shall mean all products that incorporate the TECHNOLOGY and/or UNIVERSITY IMPROVEMENTS.

2.11 SUBLICENSEES shall mean sublicensees of COMPANY under this agreement.

ARTICLE III

APPLICATIONS AND PATENTS

3.1 The UNIVERSITY agrees to use its best efforts, consistent with sound and reasonable judgment, to continue to prosecute U.S. Application No. 045,888 and to maintain any U.S. PATENT issuing from that APPLICATION. The UNIVERSITY agrees to

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use its best efforts, consistent with sound and reasonable judgment, to timely file and prosecute other U.S. APPLICATIONS and maintain other U.S. PATENTS as requested by COMPANY. The UNIVERSITY shall have the option, at its sole discretion and expense, to file and prosecute U.S. APPLICATIONS and maintain U.S. PATENTS that COMPANY has determined not to pursue.

3.2 The UNIVERSITY agrees to use its best efforts, consistent with sound and reasonable judgment, to timely file and prosecute FOREIGN APPLICATIONS and maintain FOREIGN PATENTS in countries requested by COMPANY. The UNIVERSITY shall have the option, at its sole discretion and expense, to file and prosecute FOREIGN APPLICATIONS and to maintain FOREIGN PATENTS in countries not requested by COMPANY.

3.3 The UNIVERSITY shall have sole title to the TECHNOLOGY and UNIVERSITY IMPROVEMENTS and to all APPLICATIONS and PATENTS.

3.4 The UNIVERSITY shall bear all expenses for filing and prosecuting U.S. Application No. 045,888, and maintaining any U.S. PATENTS issuing on that APPLICATION. COMPANY shall reimburse the UNIVERSITY for all future out-of-pocket expenses from filing and prosecuting any additional U.S. APPLICATIONS and all FOREIGN APPLICATIONS and maintaining any additional U.S. and all FOREIGN PATENTS, requested by COMPANY. COMPANY, at UNIVERSITY'S request, shall also reimburse the UNIVERSITY for its agreed upon pro-rata share of filing the PCT application corresponding to U.S. Application No. 045,888. COMPANY may

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credit such reimbursements for expenses relating to a particular country against royalties owed to the UNIVERSITY for sales of PRODUCTS in that country. COMPANY may, at any time terminate its obligation to reimburse the UNIVERSITY for expenses relating to a particular APPLICATION or PATENT by giving written notice to the UNIVERSITY. COMPANY shall not be liable for any expenses relating to that APPLICATION or PATENT that are incurred after that notice. The UNIVERSITY shall thereafter have sole right to prosecute or maintain such APPLICATION or PATENT at its own expense.

3.5 The UNIVERSITY shall direct and administer the prosecution of APPLICATIONS and of PATENTS. However, the UNIVERSITY shall keep COMPANY informed of its filing and prosecution activities, and shall give COMPANY the opportunity to comment on major decisions and actions concerning such activities. COMPANY agrees to fully cooperate with the UNIVERSITY in filing and prosecuting APPLICATIONS.

3.6 Nothing in this agreement shall be construed to give COMPANY rights in any technologies developed by the UNIVERSITY other than those explicitly specified in this agreement. Nothing in this agreement shall be construed to give the UNIVERSITY rights in technologies developed by COMPANY other than those explicitly specified in this agreement.

3.7 In the event that after December 31, 1993, the UNIVERSITY has a bona fide opportunity to license any FOREIGN PATENT or FOREIGN APPLICATION, it shall notify COMPANY in writing

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of the patent or application, the country involved, and the name of the prospective licensee, and COMPANY shall thereafter have ninety (90) days to demonstrate that it is or is about to market PRODUCTS in such country or has sublicensed its rights to such country. If COMPANY fails to do so, the UNIVERSITY shall be free to license such rights in such country and the COMPANY'S rights in such country to the licensed FOREIGN PATENT or FOREIGN APPLICATION shall cease.

ARTICLE IV

LICENSE GRANT AND COMMERCIAL EFFORTS

4.1 Subject to the terms and conditions of this agreement, the UNIVERSITY hereby grants and COMPANY hereby accepts an exclusive worldwide license to practice the TECHNOLOGY and UNIVERSITY IMPROVEMENTS to make, have made, use, and sell, lease, or otherwise dispose of PRODUCTS. This license shall be effective under all U.S. and FOREIGN APPLICATIONS and PATENTS. This license includes the right to grant sublicenses, as provided in 4.2. As one term of COMPANY'S sublicense to NEWCO (if any is granted), COMPANY shall require NEWCO to issue stock to the UNIVERSITY in the amount of one percent (1%) of the initial issue of shares of NEWCO. The UNIVERSITY retains an irrevocable, nonexclusive and nontransferable right to practice for its own non-commercial educational and research purposes (including support of existing patient-user population), the TECHNOLOGY and UNIVERSITY IMPROVEMENTS.

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4.2 The license granted by this agreement is to COMPANY alone and does not grant any rights to third parties or to any subsidiary or affiliate of COMPANY. However, COMPANY may transfer this agreement by way of sale of COMPANY, through sale of assets and/or sale of stock, provided that such sale is not primarily for the benefit of creditors, and further provided that the UNIVERSITY has advance notice of such a sale and that the UNIVERSITY is given the opportunity to review and comment on the purchaser. COMPANY shall also have the right to grant sublicenses under this agreement. The COMPANY shall give the UNIVERSITY an opportunity to review and comment on any sublicense prior to its execution. If COMPANY fails to give the UNIVERSITY the opportunity to review and comment on a sublicense agreement or a sale of COMPANY, the UNIVERSITY shall have the right to require that the sublicense or transfer of this agreement be suspended pending review and comment by the UNIVERSITY and the COMPANY shall retain the right to terminate or void such sublicense or transfer in response to the UNIVERSITY'S comments. COMPANY shall be responsible to the UNIVERSITY for the payment of royalties received by COMPANY on sales, leases, and other dispositions of PRODUCTS by SUBLICENSEES. If any sublicensee fails to pay royalties when due, and fails to cure the breach within sixty (60) days of written notice, COMPANY shall terminate the sublicense to the maximum extent permitted by law.

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4.3 COMPANY shall use its best efforts, consistent with its sound and reasonable business practices and judgment and its size and staffing, to effect commercial sales of PRODUCTS as soon as practicable and to maximize these sales. "Best efforts" under this clause shall mean satisfying the following milestones in the times indicated:

Milestone

Months

(a) design of first PRODUCT

first 6 months

(b) testing filing for regulatory approval, and pre-clinical evaluation

next 18 months

(c) establish marketing and distribution network

next 6 months

Beginning in April 1989 and continuing until commercial sales begin, COMPANY shall provide the UNIVERSITY with brief written reports of COMPANY's efforts and plans to effect commercialization. COMPANY shall provide these reports quarterly with the royalty report specified in 5.3.

4.5 COMPANY shall not use the name of the UNIVERSITY for commercial purposes without prior written approval from the UNIVERSITY.

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4.6 COMPANY and SUBLICENSEES shall alone have the obligation to ensure that any PRODUCT they make, use, or sell, lease, or otherwise dispose of is not defective and that any PRODUCT satisfies all applicable government regulations, including FDA requirements.

4.7 COMPANY hereby grants the UNIVERSITY a nonexclusive, non-transferrable royalty-free right to use COMPANY IMPROVEMENTS for the UNIVERSITY's own non-commercial research and education purposes.

ARTICLE V

ROYALTIES, REPORTS AND RECORDS

5.1 For the license granted hereunder, COMPANY shall pay or cause to be paid to the UNIVERSITY a royalty of 3% on net sales of PRODUCT for treatment or diagnosis of cystic fibrosis and 4 1/2% on net sales of PRODUCT for any other purpose or share sublicensing income as hereinafter set forth, where such PRODUCT is manufactured, assembled, or sold, leased, or otherwise disposed of in a country where it is covered by any valid claim of the PATENTS or any pending claim of any U.S. APPLICATION or any corresponding claim of any FOREIGN APPLICATION. For purposes of determining whether a royalty is due, every claim of every PATENT and every claim of every pending patent APPLICATION shall be presumed valid unless or until: (a) it is held invalid in any proceedings before any court, arbitration, or patent office; or (b) is acknowledged by the UNIVERSITY to be invalid; or (c) is

contained within a patent application which has a priority filing date which is more than five (5) years old (regardless of whether or not the APPLICATION was filed as a convention or non-convention case). "Net sales" in this clause means the gross amount invoiced for sales, leases, and other dispositions of PRODUCT by COMPANY and SUBLICENSEES less (i) all trade, quantity, and cash discounts actually allowed, (ii) all credits and allowances actually granted on account of rejection, returns, billing errors, and retroactive price reductions, (iii) duties, freight and insurance, and (iv) excise, sale and use taxes, and equivalent taxes. * Except as noted herein, the royalties of this Paragraph 5.1 shall apply to the COMPANY and all SUB-LICENSEES. As the only exceptions to the foregoing, if the COMPANY grants sublicenses under this Agreement to anyone other than NEWCO in a bona fide, arms length transaction, the royalties of this Paragraph 5.1 shall not apply, and, instead, any royalties or other cash payments received by the COMPANY for the sale of PRODUCT as described herein as a result of any such sublicense shall be shared between the COMPANY and the UNIVERSITY in the manner hereinafter set forth. The COMPANY shall be entitled to two-thirds of the payments received from such sublicensees and the UNIVERSITY shall be entitled to one-third of the payments received from the sublicensees.

5.2 Royalties shall be payable only once with respect to the same unit of PRODUCT. If any PATENT has not yet been held invalid, but is ineffective in preventing significant competition from similar products and that competition significantly reduces or otherwise restricts the COMPANY's market share or results in

the COMPANY reducing its selling price, then the royalties or sublicense fees set forth in Paragraph 5.1 shall be reduced by fifty percent (50%) on a country-by-country basis.

5.3 COMPANY shall provide the UNIVERSITY with quarterly written reports of all sales, leases, or other dispositions of PRODUCTS by COMPANY and SUBLICENSEES. The report shall be made within sixty (60) days of the end of each calendar quarter whether or not any sales of PRODUCTS has occurred during that quarter. The UNIVERSITY agrees to keep the information in these reports confidential, except as may be necessary to maintain an action against COMPANY for breach of this agreement. Royalty payments for sales, leases, and other dispositions of PRODUCTS invoiced during a calendar quarter shall accompany the report for that quarter. Payments shall be made in United States Dollars. Any currency translations that are necessary to calculate payments shall be made at the exchange rate used by COMPANY for financial accounting purposes in accordance with generally accepted accounting principles. Royalty checks shall be made payable to the Regents of the University of Minnesota and mailed to the address specified in Article XII.

5.4 COMPANY and SUBLICENSEES shall keep and maintain sufficient records of sales, leases, and other disposition of PRODUCT to enable verification of royalty payments in accordance with generally accepted accounting practices. Such records of the COMPANY shall be open to inspection upon at least ten (10)

days written notice, such inspection to be at reasonable times during normal business hours by a certified public accountant chosen by the UNIVERSITY and acceptable to COMPANY for the limited and sole purpose of verifying royalty payment. Such inspection shall be made at the UNIVERSITY's expense. The UNIVERSITY and the auditors agree to hold such records confidential, except as may be necessary to maintain an action against COMPANY for breach of this agreement. The records required by this paragraph shall be maintained and available for inspection for a period of five (5) years following the calendar quarter to which they pertain. This paragraph shall survive termination of this agreement.

ARTICLE VI

INFRINGEMENT

6.1 In the event that the UNIVERSITY or COMPANY determines that a third party is making, using or selling a product that may infringe a U.S. or FOREIGN PATENT, it will promptly notify the other party in writing. COMPANY may, at its sole option, bring suit against such alleged infringer in its name or the UNIVERSITY's name or in both names as may be required to establish jurisdiction. In the event COMPANY decides to bring suit, it shall give prompt written notice to the UNIVERSITY of that fact. All recoveries in such suit shall belong to COMPANY except that the UNIVERSITY shall have the right to elect to pay up to fifty percent (50%) of the litigation costs and receive a

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percentage of any recovery equal to the percentage of litigation costs paid. The UNIVERSITY must make such election within thirty (30) days of its receipt of notice that COMPANY has decided to bring suit. The UNIVERSITY shall also have the right to choose to be represented by separate counsel in any such suit at its own expense. Such expense for separate counsel shall not be considered as part of "litigation costs" for purposes of determining the UNIVERSITY's share of any recovery in accordance with the sentence above. If COMPANY elects not to bring a suit against the alleged infringer, it shall promptly notify the UNIVERSITY of that fact and the UNIVERSITY shall have the right to commence such action at its own cost and expense, in which case any recoveries shall belong to the UNIVERSITY. In such suits by the UNIVERSITY, COMPANY shall have rights of participation and recovery that are the same as the UNIVERSITY's rights as provided above when COMPANY elects to sue.

6.2 If, to avoid infringement of a third party patent, the COMPANY or any of its sublicensees pays royalties to the third party to enable the COMPANY or such licensee to make, use or sell the PRODUCTS, the royalties paid by the COMPANY or its licensee to the third party may be used as a credit against the earned royalties or sublicense fees owed by the COMPANY to the UNIVERSITY. However, at no time may the credits be used for more than fifty percent (50%) of the earned royalty or other payments

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owed the UNIVERSITY. If the credits are not completely used in any calendar year, then the unused credits may be carried forward to subsequent years.

ARTICLE VII

TERM AND TERMINATION

7.1 This agreement's term shall end at the later of: (a) when the last of all PATENTS has either expired or been invalidated in an unappealed decision by a court having jurisdiction; or (b) six (6) years from the date of this agreement. If no PATENT issues, this agreement's term shall end upon the date no APPLICATION remains pending or upon the date six (6) years following the effective date of this agreement, whichever occurs first. If this agreement terminates under this Paragraph 7.1, all rights of the COMPANY under Paragraph 4.1 shall continue in perpetuity.

7.2 The UNIVERSITY shall have the right to terminate this agreement upon sixty (60) days written notice by certified mail to COMPANY under the following circumstances unless the breach is cured by the COMPANY:

- (1) if royalties due the UNIVERSITY are unpaid;
- (2) if there is a material breach or default of this agreement by COMPANY;
- (3) if COMPANY fails to use its best efforts to effect commercial sales of PRODUCT in accordance with 4.3; or

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(4) if COMPANY fails to give the UNIVERSITY an opportunity to review and comment upon the sale of COMPANY or a sublicense of this agreement in accordance with 4.4.

If COMPANY does not cure a curable default within sixty (60) days of receipt of notice to termination, such termination shall become effective. If such termination is effective and NEWCO as a sublicensee is not in breach, the UNIVERSITY shall offer NEWCO the option to undertake this agreement in its entirety.

7.3 COMPANY may terminate the license granted hereunder at any time upon sixty (60) days notice by certified mail to the UNIVERSITY.

7.4 Upon end of term of this agreement in accordance with 7.1 above, COMPANY shall have the unrestricted royalty-free right to make, use and sell, lease or otherwise dispose of PRODUCTS anywhere in the world.

7.5 Upon termination of this agreement for any reason, including the end of term as specified above, all rights and obligations under this agreement shall terminate, except those that have accrued prior to termination (e.g., the obligation to report and pay royalty on sales made under this agreement) and except as specified in the agreement (see 5.4, 7.1, 7.2, 7.4 and 9.3).

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ARTICLE VIIIPUBLICATION

8.1 It is the policy of the UNIVERSITY to promote and safeguard free and open inquiry by faculty, students and others. To further this policy, the UNIVERSITY shall retain the right to publish the TECHNOLOGY and UNIVERSITY IMPROVEMENTS. However, the UNIVERSITY agrees that prior to publishing any TECHNOLOGY and UNIVERSITY IMPROVEMENTS that are not the subject of a U.S. APPLICATION, the UNIVERSITY will provide COMPANY with a copy of the paper at least ninety (90) days prior to publication to allow COMPANY to review the paper and inform the UNIVERSITY whether to file any APPLICATIONS on any of its contents.

ARTICLE IXINDEMNIFICATION AND INSURANCE

9.1 COMPANY agrees to indemnify the UNIVERSITY and hold the UNIVERSITY harmless against all liabilities, demands, damages, expenses, or losses arising (i) from the manufacture, use lease, sale or other disposition of a PRODUCT by COMPANY or a SUBLICENSEE, (ii) from a third party's use of a PRODUCT purchased, leased, or otherwise acquired from COMPANY or a SUBLICENSEE, or (iii) from a third party's manufacture of a PRODUCT at the request of COMPANY or a SUBLICENSEE.

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9.2 COMPANY agrees to maintain and have SUBLICENSEES maintain liability insurance to insure against any of the above liabilities and to name the UNIVERSITY as coinsured. At the UNIVERSITY's request, COMPANY shall provide UNIVERSITY with certification of such insurance.

9.3 The provisions of this article shall survive termination of this agreement.

ARTICLE X

WARRANTIES AND LIMITATIONS

10.1 The UNIVERSITY and COMPANY each represent and warrant that they have the right to enter into this agreement. The UNIVERSITY warrants that it has the right to convey to COMPANY the rights granted under this agreement.

10.2 The UNIVERSITY warrants that it is the sole owner of the TECHNOLOGY, of U.S. Application No. 045,888, and of International Application No. PCT/US88/01342.

10.3 The UNIVERSITY makes no representation or warranty that filed APPLICATIONS will result in issued PATENTS.

10.4 The UNIVERSITY makes not representations or warranties concerning the validity or scope of any PATENTS.

10.5 The UNIVERSITY does not warrant that any PRODUCT made, used, or sold, leased or otherwise disposed of under the license of this agreement is or will be free from infringement of patents of third persons.

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10.6 Nothing herein shall be construed to grant COMPANY rights under any applications or patents other than APPLICATIONS and PATENTS.

10.7 The UNIVERSITY does not make any representations, extend any warranties of any kind, express or implied, or assume any responsibility whatever concerning the manufacture, use, or sale, lease or other disposition by COMPANY or its vendees or transferees of PRODUCTS.

ARTICLE XI

UNIVERSITY RESEARCH

11.1 COMPANY agrees to fund additional UNIVERSITY research concerning the TECHNOLOGY providing Dr. Warren Warwick remains employed by the UNIVERSITY and is the principal investigator for such research. This funding shall be for a minimum of \$10,000 a year for three (3) years. The parties agree to negotiate the terms of a research agreement in good faith, except that the results of such research shall be subject to the terms and conditions of this present agreement as UNIVERSITY IMPROVEMENTS. The UNIVERSITY shall own any results of the research, and shall hold title to any patent that issues for which a UNIVERSITY employee is named as the sole inventor. In order to preserve rights to any intellectual property that may be developed from the COMPANY-sponsored research, the UNIVERSITY shall submit a copy of any manuscript to the COMPANY at least sixty (60) days before any publication. The UNIVERSITY shall cause a patent

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application to be filed at COMPANY request before any publication. The COMPANY shall have an absolute right to delete its own proprietary information from any manuscript.

11.2 The UNIVERSITY, Dr. Warren Warwick and Leland Hansen agree that during the first five (5) years following the effective date of this agreement Dr. Warwick and Leland Hansen shall not seek or obtain funding for the purpose of doing research to develop the TECHNOLOGY and/or IMPROVEMENTS from sources that would put restrictions on licensing the results of such research to COMPANY. However, nothing herein shall be construed to limit Dr. Warren Warwick and/or Leland Hansen from seeking and obtaining Federal Government funding for research concerning the TECHNOLOGY and/or IMPROVEMENTS. COMPANY understands that a UNIVERSITY license to COMPANY for the results of such Government funded research shall be subject to Government regulations (a copy of the current regulations is attached to this agreement), including a royalty-free right for the Government to use any inventions for Government purposes.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 This agreement shall be binding upon and be to the benefit of the parties hereto and their heirs, successors and assignees. However, neither party shall assign this agreement, in whole or in part, without the written consent of the other.

PATENT

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12.2 This agreement shall be governed by the Laws of the State of Minnesota. All disputes arising out of or relating to this agreement (including any questions of fraud or questions concerning the validity or enforceability of this agreement or any of the rights herein conveyed) shall be settled by arbitration to be held in Saint Paul, Minnesota. Such arbitration shall be held in accordance with the then-existing Commercial Rules of the American Arbitration Association. The arbitration shall be speedily concluded with the hearing to take place and the award to be made within ninety (90) days of the filing of any demand for arbitration. Judgment upon the award of all or a majority of the arbitrators shall be binding upon the parties hereto and may be entered in any court having jurisdiction. Specific performance and injunctive relief may be ordered by the award. Costs and attorney fees shall be paid as the Arbitrators' award shall specify. As the sole exception to arbitration, each party shall have the right to obtain injunctive relief, only, from any court having jurisdiction so as to preserve that party's rights for resolution in any pending or imminent arbitration proceedings, but no such injunction shall prohibit or postpone such arbitration proceedings and the injunctions may be modified or vacated as a result of the arbitration award. This paragraph 12.2 shall survive any termination of this Agreement.

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12.3 For purposes of mailings of notices (which shall be in writing), payments, or other communications, the addresses of the parties are given below.

In the case of the UNIVERSITY

Regents of the University of Minnesota
Office of Patents and Licensing
Administrative Services Center
1919 University Avenue, 5th Floor
St. Paul, MN 55104

New Address 3/15/91

1100 Washington Ave South
Suite 201
Minneapolis, MN 55415-1221

In the case of COMPANY

American BioSystems, Inc.

Attn: President

750 Walnut Street

Marine on St. Croix, MN 55047

12.4 No term or provision of this agreement shall be waived and not breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach.

12.5 This agreement may not be modified, changed or terminated orally. No change, modification, addition or amendment shall be valid unless in writing and signed by the parties hereto.

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12.6 This agreement constitutes and contains the entire agreement of the parties respecting its subject matter and supersedes any and all prior negotiations, correspondence, understandings, and agreements, whether written or oral, between the parties respecting its subject matter.

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IN WITNESS of this agreement, the UNIVERSITY and COMPANY have caused this agreement to be executed by their duly authorized officers on the dates indicated.

REGENTS OF THE UNIVERSITY OF MINNESOTA

AMERICAN BIOSYSTEMS, INC.

By [Signature]

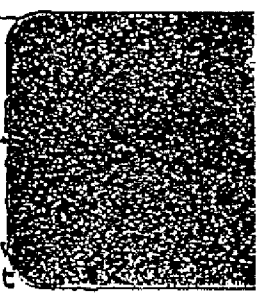
By [Signature]

Title John F. Thuenta Director, Patents & Licensing

Title President

Date 11/1/88

Date 11/2/88



By their signatures below, Leland Hansen and Dr. Warren Warwick acknowledge that they have read and understood this agreement and have not objections to its terms. Leland Hansen and Dr. Warren Warwick also hereby agree to be personally bound by the obligations specified in 2.2, 8.1, and 11.2.

[Signature]
Warren Warwick

[Signature]
Leland Hansen