

FORM PTO-1594  
1-31-92RECORDATION FORM COVER SHEET  
**PATENTS ONLY**U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark OfficeAtty. Docket #: **BWD:2353.005**

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

1. Name of conveying party(ies):

1) **Simon Fraser University**

2)

2)

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other License Agreement

Execution Date: 1) 6/14/03 2) \_\_\_\_\_

2. Name and address of receiving party(ies):

Name: Phophesi Technologies, Inc.

Internal Address: \_\_\_\_\_

Street Address: 110 Wild Basin RoadSuite 100City: AustinState: TXZIP: 78746Additional 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): 10/003,705

B. Patent No.(s): \_\_\_\_\_

C. Attorney Docket Number: BWD:2353.005/34-001Additional numbers attached? ☐ Yes ☐ No

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

Name: Posz & Bethards, PLC

Internal Address: \_\_\_\_\_

Street Address: 11250 Roger Bacon Drive, Suite 10City: Reston State: VA ZIP: 201906. Total number of applications and patents involved: ☐7. Total fee (37 CFR 3.41).....\$ 40.00☐ Enclosed☒ Authorized to be charged to deposit account8. Deposit account number: 50-1147

(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.

Charles W. Bethards

Name of Person Signing

36,453

Reg. No.

Charles W. Bethards

Signature

9-30-03

Date

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

OMB No. 0651-0011 (exp. 4/94)

*SFU / PROPHESi • Technology License***TECHNOLOGY LICENSE AGREEMENT**

This Technology License Agreement ("*License Agreement*") is by and among:

**SIMON FRASER UNIVERSITY**, a corporation continued under the *University Act* of British Columbia, Canada and having its administrative offices at 8888 University Drive, in the City of Burnaby, in the Province of British Columbia Canada, V5A 1S6.

(the "*University*")

AND:

**PROPHESi Technologies, Inc.** a corporation incorporated under the laws of Delaware, U.S.A. having its principal executive offices at 2435 North Central Expressway, Suite 1600, Richardson, Texas 75080, U.S.A.

(the "*Licensee*")

AND with respect to Sections 3.5, 3.7, 4.1, 4.4 and 4.5 of this License Agreement only:

**DR. SHAWN STAPLETON**, of the School of Engineering Science at Simon Fraser University, residing at 7991 Woodhurst Drive, in the City of Burnaby, in the Province of British Columbia, V5A 4C6 Canada ("*Stapleton*")

AND with respect to Sections 3.5, 3.6 and 4.1 of this License Agreement only:

**HECTOR MINKUS**, of the School of Engineering Science at Simon Fraser University, residing at 1857 Cliffwood Road, North Vancouver, in the Province of British Columbia V7G 1S1 Canada ("*Minkus*")

WHEREAS:

- A. The University has been engaged in research during the course of which it, along with the Developers (as that term is defined below), has invented, developed and/or acquired certain technology relating to **Power Amplifier Systems** as further described in Schedule A to this License Agreement (the "*Technology*"), which research was undertaken in the School of Engineering Science of the University;
- B. The University is desirous of entering into this License Agreement with the objective of furthering society's use of its advanced technology, and to generate further research in a manner consistent with its status as a non-profit, tax exempt educational institution;
- C. The Licensee is desirous of the University granting a License (as that term is defined below) to the Licensee to use or cause to be used the Technology within the Fields of Use (as that term is defined below) and to manufacture, have manufactured, distribute, market, use, sell, offer to sell, import, lease and/or license or sub-license Products (as that term is defined below) and Improvements (as that term is defined below) derived or developed from the Technology and to sell the same to end users during the term of this License Agreement and, with respect to Improvements or Products based on Improvements, after the term of this License.

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NOW THEREFORE THIS LICENSE AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants herein set forth, the parties hereto have covenanted and agree as follows:

**1.0 DEFINITIONS**

1.1 In this License Agreement, unless a contrary intention appears, the following words and phrases shall mean:

- (a) **"Broadcast Transmitter Field of Use"**: is that certain Fields of Use within the Technology to which the Licensee is granted a Broadcast Transmitter License Option pursuant to Section 3.1 of this License Agreement. The Broadcast Transmitter Field of Use is more fully described on Schedule B to this License Agreement, attached hereto;
- (b) **"Broadcast Transmitter License Option"**: is the right of the Licensee to secure a License to use the Technology in the Broadcast Transmitter Field of Use upon the occurrence of certain defined events as more fully set forth in Section 3.1 of this License Agreement;
- (c) **"Confidential Information"**: All forms of information of any kind or form, including any and all oral, written, electronic or other communications and other information which relate to the Technology, Improvements and Products, and which is of a confidential or proprietary nature, including, without limitation, all technical information, specifications and know-how or other confidential or proprietary information relating to the design, development and research, production, manufacture, marketing and sale of the Technology, Improvements and Products;
- (d) **"Date of Commencement" or "Commencement Date"**: this License Agreement will be deemed to have come into force on the Date of Commencement which shall be 6 June, 2003;
- (e) **"Developers"**: Stapleton and Minkus;
- (f) **"Effective Date of Termination"**: the date on which this License Agreement is terminated pursuant to Section 10;
- (g) **"Fields of Use"**: Includes "Granted Fields of Use," "Optioned Fields of Use" and the "Broadcast Transmitter Field of Use" and describes the areas in which the Technology may be utilized by the Licensee and are more fully described on Schedule B to this License Agreement, attached hereto;
- (h) **"Granted Fields of Use"**: include those Fields of Use within the Technology to which the Licensee is granted a License pursuant to Section 3.1 of this License Agreement or to which the Licensee is granted a License pursuant to the exercise of a License Option or the Broadcast Transmitter License Option, as provided by Section 3.1(B) and Section 3.1(C) of this License Agreement. The Granted Fields of Use are more fully described on Schedule B to this License Agreement, attached hereto;
- (i) **"Improvements"**: improvements, variations, updates, modifications, and enhancements made by the Licensee or any sub-licensees of the Licensee relating to the Technology at any time after the Commencement Date;

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- (j) **"License Option"**: is the right of the Licensee to secure a License to use the Technology in an Optioned Field of Use upon the occurrence of certain defined events as more fully set forth in Section 3.1 of this License Agreement;
- (k) **"Optioned Fields of Use"**: include those Fields of Use within the Technology to which the Licensee is granted a License Option pursuant to Section 3.1 of this License Agreement. The Optioned Fields of Use are more fully described on Schedule B to this License Agreement, attached hereto;
- (l) **"Product(s)"**: goods manufactured in connection with the use of all or some of the Technology within the Granted Fields of Use and/or any Improvements;
- (m) **"Technology"**: any and all knowledge, know-how and/or technique or techniques invented, developed and/or acquired, prior to the Date of Commencement by the University relating to the technology described in Schedule A of this License Agreement, attached hereto, including, without limitation, all research, data, specifications, instructions, manuals, papers or other materials of any nature whatsoever, whether written or otherwise, relating to same;
- (n) **"Triggering Event"**: shall be an investment in the Licensee by any third party or parties resulting in aggregate gross proceeds to the Licensee of at least \$3,000,000 U.S. which such investment is effected by means of the Licensee's sale of its Series A Preferred Stock; and
- (o) **"SFU Trade-marks"**: any mark, trade-mark, service mark, logo, insignia, seal, design, symbol, or device used by the University in any manner whatsoever.

## **2.0 PROPERTY RIGHTS IN AND TO THE TECHNOLOGY**

- 2.1 Except for the rights granted to Licensee herein, the parties hereto hereby acknowledge and agree that the University owns the entire right, title and interest in and to the Technology. The Licensee acknowledges and understands that the Technology was previously optioned to Telus Mobility Cellular Inc. ("Telus"). The University warrants that as of the Date of Commencement, Telus' option on the Technology has fully expired and is of no further force or effect.

## **3.0 GRANT OF LICENSE**

- 3.1 (A) In consideration of the good and valuable consideration described in this Section 3 and the covenants on the part of the Licensee contained herein, the University hereby grants to the Licensee an exclusive, royalty free, worldwide license (the **"License"**) to use the Technology within the Granted Fields of Use, to manufacture, have manufactured, distribute, market, sell, use, offer to sell, import, lease and/or license or sub-license Products, including a license to the Technology described in those certain patents set forth on Schedule A (the **"Patents"** and including any and all continuations, continuations in part, divisions, renewals of or substitutes for the Patents and any reissues, extensions and patents of addition thereof as well as all corresponding patents and patent applications issued and filed throughout the world), provided however that, with respect to this Section 3.1(A), such license to the Patents extends only to Technology within the Granted Fields of Use, and other intellectual property rights in the Patents, including, but not limited to, the right to enforce the Patents. Subject to the termination provisions in Section 10, this License will become effective on the Date of Commencement.

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- 3.2 Upon consummation of the Triggering Event, the Licensee agrees to transfer to the University, 30,000 shares of Common Stock. Upon consummation of the Triggering Event, the Licensee agrees to pay to the University a single one-time License fee in the sum of \$50,000 CDN. This one time License fee, along with the other consideration set forth in this Section 3, represents the entire consideration that shall be due to the University in exchange for its grant of the License to the Licensee. The parties agree that Licensee shall pay the University the forgoing consideration only upon the consummation of the Triggering Event. The License granted herein is personal to the Licensee and is not granted to any affiliated company or companies.
- 3.3 Upon the consummation of the Triggering Event, the Licensee shall pay to the University the sum of \$19,897.12 CDN to cover the direct costs incurred by the University from October 30, 2000 through June 6, 2003, for costs that are directly related to the Patents and the development of the Technology during such time.
- 3.4 Notwithstanding Section 3.1 herein, but subject to Section 8.5, the parties hereto acknowledge and agree that the University may use the Technology internally without charge in any manner whatsoever related solely to research, educational or other non-commercial use.
- 3.5 The Developers and University have entered into an amendment ("*Amendment Number 2*") to that certain Technology Assignment & Revenue Sharing Agreement of *High Efficiency Multi-carrier Microwave Power Amplifier Subsystem* technology, dated as of the 18<sup>th</sup> of October, 2000, as amended, pursuant to which the Developers and the University have amended and waived any rights or interests that the Developers may have with respect to the Technology, including, but not limited to, any rights to receive any royalty payments pursuant to such agreement.

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- 3.6 As consideration for Minkus' (i) agreement to consent to the waivers and relinquishment of royalty rights set forth in Amendment Number 1, and (ii) agreement to become a party to this License Agreement, with respect to only Sections 3.5, 3.6 and 4.1 of this License Agreement, Licensee will provide to Minkus the amount of \$ 15,000.00 U.S.
- 3.7 As consideration for Stapleton's (i) agreement to consent to the waivers and relinquishment of royalty rights set forth in Amendment Number 1, and (ii) agreement to become a party to this License Agreement, with respect to only Sections 3.5, 3.7, 4.1, 4.4, and 4.5 of this License Agreement, the Licensee has provided to Stapleton certain shares of Common Stock, which such shares of Common Stock were issued to Stapleton contingent upon Stapleton's execution of this License Agreement.

**SUBLICENSING**

- 3.8 The Licensee shall have the sole authority and right to grant sub-licenses to the Technology to affiliated and non-affiliated companies, entities or individuals and to other third parties so long as the Licensee provides written notice to the University within 90 days after the date of the grant of the sub-license (i) notifying the University that a sub-license has been granted, (ii) setting forth the general terms and conditions of the sub-license (excluding payment terms and other terms not specifically related to the license grant), and (iii) including the name of the third party who has been granted the sub-license. The Licensee may, at its option, seek the prior written approval of the University with respect to the survivability of the sub-license to be granted upon the termination of this License Agreement pursuant to Section 10 of this License Agreement, in which case, if the University grants such approval, the sub-licensee shall not be required to re-negotiate the sub-license with this University upon the termination of this License Agreement, as provided in Section 10.6 hereof. The University shall provide its written approval or disapproval within ten (10) business days following such request from Licensee. If the University does not respond during such time period, then the University shall be deemed to have approved the sublicense. The University's right to approve shall be limited solely to the survivability of the sub-license upon the termination of this License Agreement.
- 3.9 Any sub-license granted by the Licensee shall be personal to the sub-licensee and shall not be assignable without the prior written consent of the Licensee. The Licensee will provide written notice to the University within 90 days after the assignment of a sub-license notifying the University that an assignment of a sub-license has been granted by the Licensee and which sets forth the name of the assignee of the sub-license. Such sub-licenses shall contain covenants by the sub-licensee to observe and perform similar terms and conditions to those in this Agreement.

*SFU / PROPHESi • Technology License***ASSIGNMENT**

- 3.10 Upon the occurrence of any of the following events: (i) the merger, sale or acquisition of the Licensee with or into any third party entity or corporation or (ii) the sale of all or substantially all of the assets of the Licensee in a sale transaction or series of transactions, or (iii) the proposed sale of the License, the Broadcast Transmitter License Option or any of the License Options granted pursuant to this License Agreement (items (i), (ii) and (iii) of this Section 3.10 being collectively referred to herein as a "*Merger/Sale Transaction*"), the Licensee may assign the License, the Broadcast Transmitter License Option or any of the License Options granted pursuant to this License Agreement, so long as the Licensee provides prompt written notice to the University prior to or upon consummation of a Merger/Sale Transaction (y) notifying the University that a Merger/Sale Transaction will or has occurred and (z) including the name of the third party entity, individual or company to whom the License, the Broadcast Transmitter License Option or any of the License Options will be assigned or transferred.

**4.0 FUTURE RIGHTS TO THE IMPROVEMENTS**

- 4.1 Subject to Paragraph 10.4, the University and the Developers acknowledge and agree that the Licensee will own the entire right, title and interest in and to all Improvements, and the Licensee will have the full right and authority to design, research, develop, produce, manufacture, market and sell products based on either the Technology or the Improvements. The termination of this License Agreement shall not affect the rights of Licensee with respect to the Improvements.
- 4.2 The Licensee shall have the right to identify any process, use or products arising out of the Technology, Improvements and Products that may be patentable. The Licensee has the right to take all reasonable steps to apply for a patent in the name of the Licensee at its own cost, and such application or patent based on such application shall be owned solely by the Licensee. If any of such processes, uses or products utilize in any way the Technology within the Fields of Use, or the Improvements or Products, the University shall cooperate with the Licensee to the fullest extent reasonable, except for the payment of fees and costs, to help assure any proper patent filing.
- 4.3 As of the Commencement Date, the Licensee shall pay all expenses relating to outstanding patent prosecution and maintenance of the Technology within the Fields of Use. As of the Commencement Date, the Licensee shall have the sole authority for the prosecution of the Patents and University therefore covenants and agrees that it will communicate to Licensee, its successors, legal representatives and assigns, any facts known to the University respecting the Technology that are relevant to the prosecution of the Patents, and will testify in any legal proceedings, sign all lawful papers necessary in order to diligently and effectively prosecute the Patents, execute all divisional, renewal, substitutional, continuing, and reissue applications, make all rightful declarations and/or oaths and generally do everything possible to aid Licensee, its successors, legal representatives and assigns, to obtain and enforce patent protection for the Technology within the certain defined Fields of Use. The University also acknowledges and agrees that the prosecution of the Patents will involve many subjective determinations by Licensee and that Licensee shall have no liability to the University whatsoever as to the determination by the various patent offices with respect to the issuance or scope of the Patents (i.e. if a prosecuted patent is not issued by the subject patent office, the Licensee will have no liability to the University as a result of such non-issuance).
- 4.4 Subject to the Licensee's legal rights to the Technology, the University retains its rights within the Fields of Use to internally use and further develop the Technology solely for academic research purposes, provided that such use and further development is conducted only under the supervision of Stapleton or pursuant to



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additional contracts between Licensee and the University; and provided further that in order to retain its rights, the University must undertake all necessary steps to protect such further developments of the Technology by means of filing for patents both domestically and internationally. If the University does not take such necessary steps to protect the further developments of the Technology within 90 days of its inception, as reasonably determined by the Licensee, the Licensee shall have the right to file patent applications in the Licensee's name for such further developments of the Technology. It is also understood and agreed that all restrictions under Section 8 of this License Agreement continue to apply to all activities conducted under the terms of this License Agreement. The University hereby grants Licensee an exclusive, worldwide, royalty-free license to any development or improvement to the Technology that results from the University's activities described in this Section 4.4 (*i.e.* only to further developments of the Technology resulting from Stapleton's work at the University or pursuant to additional contracts between the Licensee and the University) and which the University has protected by means of filing domestic and international patents; provided however, that any license granted pursuant to an additional contract between the Licensee and the University shall be limited to the extent provided for in such additional contract and if there shall arise a conflict between the rights provided for by this Section 4.4 and any such additional contract, the additional contract shall control. As per the terms and conditions of this License Agreement, upon the expiration of any License Option or the Broadcast Transmitter License Option, the University shall retain all rights to the Technology within those Fields of Use in which a License Option or the Broadcast Transmitter License Option was not exercised, free of any restrictions imposed by this Section 4.4.

- 4.5 The University hereby acknowledges that in the event the Licensee funds further developments to the Technology or Improvements at the University under a research contract, then the Licensee shall have the right, but not the obligation, to take ownership of all of the rights, title and interest in and to the intellectual property developed under such research contract, in accordance with Section 4.4 of this License Agreement.

## **5.0 INFRINGEMENT**

- 5.1 In the event of an alleged infringement of the Technology and/or Improvements or any right with respect to the Technology and/or Improvements, the Licensee shall have the right (but not be under any obligation) to prosecute litigation designed to enjoin infringers of the Technology and/or Improvements. The University agrees to cooperate to the extent of executing all necessary documents and to vest in the Licensee the right to institute any such suits, so long as all the direct or indirect costs and expenses of bringing and conducting any such litigation or settlement shall be borne by the Licensee and in such event all recoveries shall enure to the Licensee.
- 5.2 If the University shall have knowledge that the rights to the Technology and/or the Improvements are being infringed, such knowledge shall promptly be transmitted to the Licensee by the University.

## **6.0 DISCLAIMER OF WARRANTY**

- 6.1 The University makes no representations, conditions, or warranties, either express or implied, with respect to the Technology or any Improvements or the Products. Without limiting the generality of the foregoing the University specifically disclaims any implied warranty, condition, or representation that the Technology or any Improvements or the Products:
- (a) shall correspond with a particular description;

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- (b) are of merchantable quality;
- (c) are fit for a particular purpose; or
- (d) are durable for a reasonable period of time.

The University shall not be liable for any loss, whether direct, consequential, incidental, or special which the Licensee suffers arising from any defect, error, fault, or failure to perform with respect to the Technology or any Improvements or Products. The Licensee acknowledges that it has been advised by the University to undertake its own due diligence with respect to the Technology.

6.2 The parties acknowledge and agree that the *International Sale of Goods Act* and the United Nations Convention on Contracts for the International Sale of Goods have no application to this License Agreement.

6.3 Nothing in this License Agreement shall be construed as:

- (a) a warranty or representation by the University as to the Technology or anything made, used, sold or otherwise disposed of under this License Agreement is or will be free from infringement of patents, copyrights, trade-marks, industrial design or other intellectual property rights,
- (b) an obligation by the University to bring or prosecute or defend actions or suits against third parties for infringement of patents, copyrights, trade-marks, industrial designs or other intellectual property or contractual rights, or
- (c) the conferring by the University of the right to use in advertising or publicity the name of the University or SFU Trade-marks.

## 7.0 INDEMNITY AND LIMITATION OF LIABILITY

7.1 The Licensee hereby indemnifies, holds harmless and defends the University, its Board of Governors, directors, officers, employees, faculty, students, invitees, and agents against any and all third party claims (including all reasonable legal fees and disbursements incurred in association therewith on a solicitor-client basis) arising out of or in any way connected with the exercise of any rights under this License Agreement including, without limiting the generality of the foregoing, against any damages or losses, consequential or otherwise, arising from or out of the use of the Technology or Products licensed under this License Agreement by the Licensee or its sub-licensees, or their customers or end-users howsoever the same may arise. However, notwithstanding the foregoing, Licensee's indemnity obligation shall not include any claims that the manufacture, use and/or sale of Products infringes upon the intellectual property rights of any third party provided that such alleged infringement relates directly or indirectly to the Technology.

7.2 Except for breaches of Section 13.5(c) or those occurring as a result of gross negligence or wilful breach, and excluding any liabilities that might arise under Section 7.1, each party's total liability, whether under the express or implied terms of this License Agreement, in tort (including negligence), or at common law, for any loss or damage suffered by the other party, whether direct, indirect, special, or any other similar or like damage that may arise or does arise from any breaches of this License Agreement by such party, its Board of Governors, officers, employees, faculty, students, or agents shall be limited to the sum of the license fee paid pursuant to Sections 3.2 and the reimbursement amount described in Section 3.3.

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- 7.3 Except for breaches of Section 13.5(c) or those occurring as a result of gross negligence or wilful breach, in no event shall either party be liable for consequential or incidental damages arising from any breach or breaches of this License Agreement.
- 7.4 No action, whether in contract or tort (including negligence), or otherwise arising out of or in connection with this License Agreement may be brought by a party against the other party more than six months after the date on which the aggrieved party knew or had reason to know that a cause of action has occurred.

**8.0 PUBLICATION AND CONFIDENTIALITY**

- 8.1 The University shall keep and use all of the Confidential Information in confidence and will not, without the Licensee's prior written consent, disclose any Confidential Information to any person or entity. In the event that the Triggering Event does not occur and the this License Agreement is terminated pursuant to its terms in accordance with Section 10 of this License Agreement, the Licensee shall not disclose any of the University's Confidential Information to any third party for a period of 3 years from the Commencement Date.
- 8.2 In the event that either party is required by judicial or administrative process to disclose any or all of the other party's Confidential Information, that party shall promptly notify the other and allow the other reasonable time to oppose such process before disclosing any Confidential Information.
- 8.3 Notwithstanding any termination of this License Agreement, the obligations created in this Section 8 shall survive and be binding upon the Licensee, its successors and assigns.
- 8.5 Notwithstanding Section 8.1, the University shall not be restricted from making public the results of research regarding the Technology, including but not limited to presenting accounts of such research at symposia and professional meetings, or from publishing in journals or other publications. Licensee shall be provided with the opportunity to review any proposed oral or written disclosure of such research, its results, or data at least thirty (30) days prior to submission for publication or presentation. Upon Licensee's request in writing made within thirty (30) days of receipt of such notice, University shall, at the request of the Licensee, delay the proposed publication or presentation for a period not to exceed one hundred eighty (180) days from the date of the request in order (a) to allow for adequate protection of the intellectual property disclosed in the proposed publication or (b) to allow for the removal, in consultation with the Licensee, of any confidential or proprietary information of the Licensee contained in the proposed publication.

**9.0 INSURANCE**

- 9.1 The Licensee shall procure and maintain public liability, and errors and omissions insurance in reasonable amounts, with a reputable and financially secure insurance carrier. Additionally, prior to the release of a Product to market and at all times thereafter, the Licensee shall procure and maintain product liability insurance in an amount which is the lesser of (i) \$1 million per occurrence or (ii) an amount of insurance that is customarily maintained by similarly situated companies and which is consistent with industry standards. If permitted by the Licensee's insurance carrier on commercially reasonable terms, the Licensee shall use its best efforts to ensure that any and all such policies of insurance required pursuant to this clause shall contain a waiver of subrogation against the University, its Board of Governors, directors, faculty, officers, employees, students, and agents. Such policy shall include severability of interest and cross-

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liability clauses and shall provide that the policy shall not be cancelled or materially altered except upon at least 30 days written notice to the University. The Licensee shall provide the University with certificates of insurance evidencing such coverage upon execution of the License Agreement, or, in the case of product liability insurance, when that insurance is obtained.

## **10.0 TERM AND TERMINATION**

- 10.1 This License Agreement is effective as of the Commencement Date, and remains in effect (a) with respect to the license to each of the Patents, for the duration of such Patent; and (b) with respect to the license to the Technology (other than Patents), in perpetuity, unless earlier terminated in accordance with this Section 10. Upon termination of this License Agreement pursuant to this Section 10.1, Licensee shall continue to have the right to manufacture, have manufactured, distribute, market, sell, use, offer to sell, import, lease and or license or sub-license any Improvements and any Products based solely on the Improvements.
- 10.2 The University may, at its option, and acting reasonably and in good faith, terminate this License Agreement upon the occurrence of any of the following events by delivering written notice to that effect to the Licensee:
- (a) if the Licensee liquidates or dissolves its operations before the Triggering Event,
  - (b) if the Triggering Event does not occur within six (6) months from the Commencement Date.
- 10.3 Upon the occurrence of any of the events set forth below in this Section 10.3, the University shall provide the Licensee with 180 days (the "*Salvage Period*") within which the Licensee may (i) assign the License granted pursuant to this License Agreement to any third party or (ii) issue a sub-license to any third party pursuant to the rights of the Licensee set forth in Sections 3.8 and 3.9 of this License Agreement. The events triggering the Salvage Period are:
- (a) any execution, sequestration, or any other process of any court that (i) becomes enforceable against the Licensee, (ii) is related to the Technology and prevents Licensee from engaging in its business, and (iii) is not released or satisfied by the Licensee within 30 days thereafter, or
  - (b) if any resolution is approved by the Board of Directors of the Licensee relating to the dissolution, liquidation or bankruptcy of the Licensee, or
  - (c) if the Technology becomes subject to any security interest or lien in favour of any third party claiming through the Licensee, unless such security interest or lien results from any debt instrument or agreement entered into by the Licensee in the ordinary course of its business (including, but not limited to, entering into ordinary debt arrangement or lines of credit with financial institutions), or
  - (d) if the Licensee, in its sole discretion and for any reason, gives written notice to the University of its desire to begin an Salvage Period.

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- 10.4 In the event that (i) this License Agreement is terminated under paragraph 10.2 or (ii) the Salvage Period expires without the Licensee having assigned or sub-licensed the rights granted to it pursuant to this License Agreement, all right, title and interest in the Technology, which is licensed to the Licensee under paragraph 3.1 shall revert to the University and both the License Option and the Broadcast Transmitter License Option shall expire and any License granted hereby will be null and void and of no further force or effect and all sub-licenses shall terminate and be of no further force or effect.
- 10.5 The Licensee agrees that it will not take any action or enter into any agreement with any third party (other than as specifically provided for under this Agreement) that it reasonably believes will impact the reversion rights of the University in the Technology under paragraph 10.4 without the prior written approval and consent of the University.
- 10.6 Upon termination of this License Agreement for any reason, any sub-licensee not then in default shall have the right to seek a License from the University and the University agrees to negotiate such Licenses in good faith under reasonable terms and conditions. The Licensee may, at its option, seek the prior written approval of the University with respect to the survivability of the sub-license to be granted upon the termination of this License Agreement pursuant to this Section 10, in which case, if the University grants such approval, the sub-licensee shall not be required to re-negotiate the sub-license with this University upon the termination of this License Agreement, as provided in this Section 10.6. The University shall provide its written approval or disapproval within ten (10) business days following such request from Licensee. If the University does not respond during such time period, then the University shall be deemed to have approved the sublicense. The University's right to approve shall be limited solely to the survivability of the sub-license upon the termination of this License Agreement.
- 10.7 Section 6.1, and Sections 7 and 8 will survive the termination of this License Agreement.

**11.0 GOVERNING LAW AND ARBITRATION**

- 11.1 This License Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada in force therein without regard to its conflict of law rules. All parties agree that by executing this License Agreement they have agreed to the jurisdiction of the Supreme Court of British Columbia. Subject to Sections 11.2 and 11.3 below, the British Columbia Supreme Court shall have exclusive jurisdiction over this License Agreement.
- 11.2 In the event of any dispute arising between the parties concerning this License Agreement, its enforceability or the interpretation thereof, the same may (if the parties mutually agree) be settled by a single arbitrator appointed by the party against whom such action is being taken or alleged. If the party against whom such action is being taken or alleged is located in Canada, then the provisions of the *Commercial Arbitration Act* of British Columbia, or any successor legislation then in force, shall control and the place of arbitration shall be Vancouver, British Columbia. If the party against whom such action is being taken or alleged is located in the United States, then the claim or controversy shall be settled by the *American Arbitration Act* in accordance with its Commercial Arbitration Rules, and the place of arbitration shall be Austin, Texas. The language to be used in the arbitration proceedings shall be English.
- 11.3 Paragraph 11.2 of this Section shall not prevent a party hereto from applying to a court of competent jurisdiction for interim protection such as, by way of example, an interim injunction.

**SFU / PROPHESi • Technology License****12.0 NOTICES**

- 12.1 All payments, reports and notices or other documents that any of the parties hereto are required or may desire to deliver to any other party hereto may be delivered only by personal delivery or by registered or certified mail, telex or telecopy, all postage and other charges prepaid, at the address for such party set forth below or at such other address as any party may hereinafter designate in writing to the others. Any notice personally delivered or sent by telex or telecopy shall be deemed to have been given or received at the time of delivery, telexing or telecopying. Any notice mailed as aforesaid shall be deemed to have been received on the expiration of five days after it is posted, provided that if there shall be at the time of mailing or between the time of mailing and the actual receipt of the notice a mail strike, slow down or labour dispute which might affect the delivery of the notice by the mails, then the notice shall only be effected if actually received.

If to the University:      The Director  
University - Industry Liaison Office  
Simon Fraser University  
8888 University Drive  
2100 Strand Hall  
Burnaby, British Columbia  
V5A 1S6  
Telephone:                (604)291-4984  
Telecopier:              (604)291-3477

If to the Licensee:        PROPHESi Technologies, Inc.  
Peter A. Allen  
2435 North Central Expressway, Suite 1600  
Richardson, Texas 75080  
Telephone:                (214) 697-7346  
Telecopier:                972-892-3701

If to the Developers:     Dr. Shawn Stapleton  
7991 Woodlawn Drive, Burnaby, B.C. V5A 4C6  
Telephone:                (604)-420-4309

Mr. Hector (Ettore) Minkus  
1857 Cliffwood Road, North Vancouver, B.C. V7G 1S1  
Telephone:                (604) 929-1125

**13.0 MISCELLANEOUS COVENANTS, REPRESENTATIONS AND WARRANTIES OF LICENSEE AND THE UNIVERSITY**

- 13.1 The Licensee hereby represents and warrants to the University that it is a corporation duly organized, existing, and in good standing under the laws of the State of Delaware and has the power, authority, and capacity to enter into this License Agreement and to carry out the transactions contemplated by this License Agreement, all of which have been duly and validly authorized by all requisite corporate proceedings.

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- 13.2 The Licensee represents and warrants that it has the expertise necessary to handle the Technology and any Improvements with care and without danger to the Licensee, its employees, agents, or the public. The Licensee shall not accept delivery of the Technology until it has requested and received from the University all necessary information and advice to ensure that it is capable of handling the Technology and any Improvements in a safe and prudent manner.
- 13.3 The Licensee shall comply with all laws, regulations and ordinances, whether Federal, Provincial, Municipal or otherwise with respect to the Technology and any Improvements and/or this License Agreement.
- 13.4 Upon the Licensee's receipt of any offer from any government, any governmental agency or any other third party to enter into a contract for the purchase, delivery or transfer of Products or any goods or services utilizing the Technology or any Improvements in any way (a "*Commercial Contract*"), the University hereby covenants to represent and warrant to any such government, governmental agency or third party that the Licensee has the requisite authority to use the Technology for the purposes of fulfilling the proposed Commercial Contract. The covenants of the University set forth in this Section 13.4 shall survive (i) with respect to any Licenses granted within the Granted Fields of Use, until this License Agreement is terminated pursuant to Section 10 and (ii) with respect to any License Options or the Battery Transmitter License Option, until the expiration of such options pursuant to the terms and conditions of Section 3.1.
- 13.5 The University hereby represents and warrants to Licensee that:
- (a) The University has the requisite legal capacity and full power and authority to enter into this License Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by the University of this License Agreement, the consummation by the University of the transactions contemplated hereby and the compliance by the University with the provisions hereof will not, to the University's knowledge, conflict with, or result in any violation of or default by the University under any agreement or instrument to which the University is a party or by which the University may be bound.
- (b) The University has the right to grant licenses to the Technology free and clear of all liens and encumbrances.
- (c) To the knowledge of the University, the use of the Technology within the Granted Fields of Use to manufacture, have manufactured, distribute, market, sell, use, offer to sell, import, lease and/or license or sub-license Products, by or on behalf of Licensee or a sub-licensee does not and will not infringe or violate the intellectual property or other rights of any third party, and there are no actions for infringement against the University with respect to Products or the Technology anywhere in the world. "Knowledge" for the purpose of this section shall mean the actual knowledge of the University's directors, officers, employees, faculty and students after reasonable inquiry.
- (d) The Patents comprise all of the patent rights owned by or licensed to the University related to the Technology that would be required by the Licensee to fully use and exploit the Technology according to the terms of this Agreement.

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**14.0 GENERAL**

- 14.1 Nothing contained herein shall be deemed or construed to create between the parties hereto a partnership or joint venture. No party shall have the authority to act on behalf of any other party, or to commit any other party in any manner or cause whatsoever or to use any other party's name in any way not specifically authorized by this License Agreement. No party shall be liable for any act, omission, representation, obligation or debt of any other party, even if informed of such act, omission, representation, obligation or debt.
- 14.2 Subject to the limitations hereinbefore expressed, this License Agreement shall enure to the benefit of and be binding upon the parties, and their respective successors and permitted assigns.
- 14.3 No condoning, excusing or overlooking by any party of any default, breach or non-observance by any other party at any time or times in respect of any covenants, provisos, or conditions of this License Agreement shall operate as a waiver of such party's rights under this License Agreement in respect of any continuing or subsequent default, breach or non-observance, so as to defeat in any way the rights of such party in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by such party, save only an express waiver in writing.
- 14.4 No exercise of a specific right or remedy by any party precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.
- 14.5 Marginal headings as used in this License Agreement are for the convenience of reference only and do not form a part of this License Agreement and are not to be used in the interpretation hereof.
- 14.6 The terms and provisions, covenants and conditions contained in this License Agreement which by the terms hereof require their performance by the parties hereto after the termination of this License Agreement shall be and remain in force notwithstanding such termination of this License Agreement for any reason whatsoever.
- 14.7 In the event that any part, section, clause, paragraph or subparagraph of this License Agreement shall be held to be indefinite, invalid, illegal or otherwise voidable or unenforceable, the entire License Agreement shall not fail on account thereof, and the balance of the License Agreement shall continue in full force and effect.
- 14.8 The parties hereto acknowledge that all parties hereto have been advised to seek independent legal advice.
- 14.9 This License Agreement sets forth the entire understanding between the parties and no modifications hereof shall be binding unless executed in writing by the parties hereto.
- 14.10 Time shall be of the essence of this License Agreement.




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IN WITNESS WHEREOF the parties hereto have hereunto executed this License Agreement on the 19<sup>th</sup> day of June, 2003.

SIMON FRASER UNIVERSITY

PROPHESi Technologies, Inc.

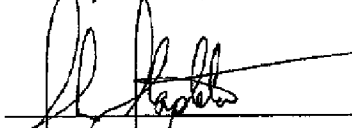
\_\_\_\_\_  
Mike Volker,  
Director, University/Industry Liaison Office

  
Peter A. Allen  
President

Date \_\_\_\_\_

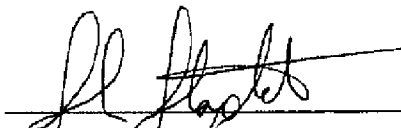
Date 19/06/03

With respect to 3.5, 3.7, 4.1, 4.4 and 4.5 only:

  
\_\_\_\_\_  
Dr. Shawn Stapleton,

Date June 19, 2003

With respect to 3.5, 3.6 and 4.1 only:

  
\_\_\_\_\_  
Mr. Ettore (Hector) Minkus

Date June 19, 2003

*SFU / PROPHESi • Technology License*

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IN WITNESS WHEREOF the parties hereto have hereunto executed this License Agreement on the 19<sup>th</sup> day of June, 2003.

SIMON FRASER UNIVERSITY

PROPHESi Technologies, Inc.



Mike Volker,  
Director, University/Industry Liaison Office



Peter A. Allen  
President

Date 19 June 03

19/06/03  
Date \_\_\_\_\_

With respect to 3.5, 3.7, 4.1, 4.4 and 4.5 only:

With respect to 3.5, 3.6 and 4.1 only:

\_\_\_\_\_  
Dr. Shawn Stapleton,

\_\_\_\_\_  
Mr. Ettore (Hector) Minkus

Date \_\_\_\_\_

Date \_\_\_\_\_

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**Schedule A  
Technology Description****High Efficiency Multi-carrier Microwave Power Amplifier Subsystem**

A high efficiency low distortion switching mode power amplifier for telecommunication applications includes an analog to binary digital converter (Modulator), and an amplifier terminated by an output filter/matching network that can operate over one or more frequency bands. The amplifier is preferably a Class S amplifier. Where production cost and other factors enter into consideration, a different class of amplifier (class C, D, E or F) could be used instead of the Class S. The modulator can be connected to the Class S amplifier with a fiber optic link for low distortion connections to remote antennas. Multiple modulators and amplifiers can be multiplexed over the fiber link to support multiple sector antenna on a cell site or multiple transmitter elements on a phased array antenna.

**Patents and Technology**

- 1) US Patent Application Serial No. 10/003725 filed on October 30, 2001 based on US Provisional Application Serial No. 60/243,729 filed on October 30, 2000 title "High Efficiency Multicarrier Microwave Power Amplifier Subsystem."
- 2) Canadian Patent Application Serial No. 2,362,104 filed October 30, 2001 title "High Efficiency Multicarrier Microwave Power Amplifier Subsystem."
- 3) All research data, specifications, manuals, papers or any other materials relating to the Technology.

**Schedule B  
Fields of Use**

**Granted Fields of Use**

- 1) RF power amplifiers for use in public access wireless network equipment including, but not limited to, cellular, PCS, 3G, 4G, Nextel iDEN, TETRA, and like applications and services.
- 2) RF power amplifiers for use in public access wireless subscriber equipment including, but not limited to, cellular, PCS, 3G, 4G, Nextel iDEN, TETRA, and like applications and services.

**Optioned Fields of Use**

*Redacted*

*Stapleton\_PropheSI\_June18*