

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY AGREEMENT
CONVEYING PARTY DATA	
Name	Execution Date
Niadyne, Inc.	02/25/2008
RECEIVING PARTY DATA	
Name:	Frederic, LLC
Street Address:	19 Union Square West, 12th Floor
City:	New York
State/Country:	NEW YORK
Postal Code:	10003
PROPERTY NUMBERS Total: 2	
Property Type	Number
Patent Number:	6287796
Patent Number:	6428972
CORRESPONDENCE DATA	
Fax Number:	(919)781-4865
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
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ATTORNEY DOCKET NUMBER:	17591.53
NAME OF SUBMITTER:	Robert T. Jones Jr.

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Total Attachments: 15
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SECURITY AGREEMENT

SECURITY AGREEMENT (the "Agreement"), dated as of February 25, 2008 between Niadyne, Inc., a Delaware corporation (the "Debtor"), and Frederic, LLC, a Delaware limited liability company (the "Secured Party").

WHEREAS, the Debtor has entered into a Revolving Credit Agreement, dated as of the same date hereof (as amended and in effect from time to time, the "Credit Agreement"), with the Secured Party, pursuant to which the Secured Party, subject to the terms and conditions contained therein, is to make loans to the Debtor; and

WHEREAS, it is a condition precedent to the Secured Party's making any loans to the Debtor under the Credit Agreement that the Debtor execute and deliver to the Secured Party a security agreement in substantially the form hereof; and

WHEREAS, the Debtor wishes to grant a security interest in favor of the Secured Party as herein provided;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the Credit Agreement. The term "State," as used herein, means the State of New York. All terms defined in the Uniform Commercial Code of the State and used herein shall have the same definitions herein as specified therein.

2. Grant of Security Interest. Except with respect to the "Excluded Assets" as defined below, the Debtor hereby assigns and grants to the Secured Party, to secure the payment and performance in full of all of the Obligations, a continuing Lien on and security interest in, upon and to all assets of Debtor, including, but not limited to, the following Property, all wherever located and whether now owned or hereafter acquired, created or arising (all of the same being hereinafter called the "Collateral"): all accounts, contract rights, chattel paper, documents, instruments, inventory, general intangibles, equipment, machinery, furniture, fixtures, deposit accounts, money, goods, letter of credit rights, supporting obligations, investment property, commercial tort claims, Patents (as defined below), intellectual property Trademarks (as defined below) and related rights and goodwill (whether registered or unregistered), property of Debtor, now or hereafter in Secured Party's possession, and all proceeds and products (including, without limitation, insurance proceeds), whether cash or non-cash, of all of the foregoing Property of Debtor as well as all rights to payments and proceeds under the Excluded Assets (including but not limited to royalties and proceeds of infringement suits).

"Excluded Assets" shall mean (A) the License Agreement with the Arizona Board of Regents on behalf of the University of Arizona ("UA") dated August 15, 2000, as amended December 23, 2004 (the "UA License"), (B) the License Agreement with the University of Kentucky Research Foundation ("UK") dated June 10, 1998, as amended December 31, 2004 (the "UK License"; collectively, with the UA License, the "University Licenses"), (C) the Exclusive Distribution Agreement, dated October 2006, between Niadyne, Inc. and Mentor Corporation (the "Mentor Contract"), (D) the Product Development, Distribution, and License Agreement between Chrysallis, Inc., Niadyne, Inc. and CR Products, LLC dated

[date omitted], 2006 (the "Canyon Ranch Contract"), and (E) any other contract right which by its terms is not assignable without consent of the other party to such contract.

Notwithstanding the foregoing or any other provision set forth in this Security Agreement or any financing statement or other filing to the contrary, Secured Party acknowledges and agrees to the following:

- (i) Debtor is the owner of the Patents (as defined below) and has licensed certain rights under one or more of such Patents to Niadyne Development, Inc. ("NDS") pursuant to those two certain Sublicense Agreements between Debtor and NDS dated February 23, 2005 (collectively, the "Debtor-NDS Licenses").
- (ii) Debtor has sublicensed certain of its rights under the University Licenses to NDS pursuant to the Debtor-NDS Licenses, to Mentor Corporation pursuant to the Mentor Contract and to Canyon Ranch pursuant to the Canyon Ranch Contract.
- (iii) Debtor's grant of a security interest to the Secured Party in the Patents is subject to, in all respects, the Debtor-NDS Licenses, the Mentor Contract, the Canyon Ranch Contract, the rights granted under any of the foregoing (including the rights of any sublicensee(s) thereunder), and, to the extent necessary to enable Debtor to perform its obligations under the Mentor Contract and Canyon Ranch Contract, Debtor's right to manufacture, use, sale, import, or export the technology claimed in the Patents.
- (iv) The Debtor-NDS Licenses shall only be deemed Collateral under this Agreement to the extent concerning Patents and intellectual property rights other than those granted to Debtor under the University Licenses.

For purposes of this Agreement, "Patents" means (i) all foreign and U.S. patents and patent applications listed on Schedule 2 hereto; (ii) any patent applications filed by Debtor following the date of this Agreement, (iii) any patent applications or issued patents obtained by Debtor following the date of this Agreement, (iv) all U.S. and foreign patents issued or issuing with respect to (i), (ii), or (iii) above, (v) all divisionals, continuations, continuations-in-part, re-examinations, substitutions, extensions, renewals, registrations, supplements, confirmations, modifications, corrections, and reissues concerning any of the foregoing, and (vi) all foreign counterparts with respect to any of the foregoing.

For purposes of this Agreement, "Trademarks" means (i) all trademarks, trade names, trade styles, trademark and service mark applications listed on Schedule 3 hereto and rights to use any of the foregoing; (ii) all divisionals, continuations, continuations-in-part, re-examinations, substitutions, extensions, renewals, registrations, supplements, confirmations, modifications, corrections, and reissues concerning any of the foregoing; and (iii) any goodwill associated with any Trademark or the license of any Trademark.

3. Authorization to File Financing Statements. The Debtor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any appropriate Uniform Commercial Code jurisdiction initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Debtor is an organization, the type of

organization and any organizational identification number issued to the Debtor and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral, a sufficient description of real property to which the Collateral relates. The Debtor agrees to furnish any such information to the Secured Party promptly upon the Secured Party's request.

4. Other Actions. To further the attachment, perfection and first priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in the Collateral, and without limitation on the Debtor's other obligations in this Agreement, the Debtor agrees, in each case at the Debtor's expense, to take the following actions with respect to the following Collateral:

4.1. Collateral in the Possession of a Bailee. If any Collateral is at any time in the possession of a bailee, the Debtor shall promptly notify the Secured Party thereof and, at the Secured Party's request and option, shall promptly obtain an acknowledgement from the bailee, in form and substance satisfactory to the Secured Party, that the bailee holds such Collateral for the benefit of the Secured Party, and that such bailee agrees to comply, without further consent of the Debtor, with instructions from the Secured Party as to such Collateral.

4.2. Other Actions as to Any and All Collateral. The Debtor further agrees, at the request and option of the Secured Party, to take any and all other actions the Secured Party may reasonably determine to be necessary or desirable for the attachment, perfection and first priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in any and all of the Collateral, including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code, to the extent, if any, that the Debtor's signature thereon is required therefor, (b) causing the Secured Party's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral, (d) obtaining governmental and other third party waivers, consents and approvals in form and substance reasonably satisfactory to Secured Party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, (e) obtaining waivers from mortgagees and landlords in form and substance reasonably satisfactory to the Secured Party, and (f) executing, delivering and, when appropriate, filing any documents with any applicable foreign patent offices.

5. Reserved.

6. Representations and Warranties Concerning Debtor's Legal Status. The Debtor represents and warrants to the Secured Party as follows: (a) the Debtor's exact legal name is that indicated on the first page hereof, (b) the Debtor is an organization of the type, and is organized in the jurisdiction set forth on the first page hereof, (c) Schedule 1 hereto accurately sets forth the Debtor's organizational identification number or accurately states that the Debtor has none, and (d) Schedule 1 accurately sets forth the Debtor's place of business or, if more than one, its chief executive office, as well as the Debtor's mailing address, if different.

7. Covenants Concerning Debtor's Legal Status. The Debtor covenants with the Secured Party as follows: (a) without providing at least 30 days prior written notice to the Secured Party, the Debtor will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (b) if the Debtor does not have an organizational identification number and later obtains one, the Debtor shall forthwith notify the Secured

Party of such organizational identification number, and (c) the Debtor will not change its type of organization, jurisdiction of organization or other legal structure.

8. Representations and Warranties Concerning Collateral, etc. The Debtor further represents and warrants to the Secured Party as follows: (a) the Debtor is the owner of the Collateral, free from any right or claim of any person or any adverse lien, security interest or other encumbrance, except for (i) the security interest created by this Agreement, (ii) other liens permitted by the Credit Agreement, and (iii) the rights granted under the Debtor-NDS Licenses referenced in Section 2 above, (b) none of the Collateral constitutes, or is the proceeds of, "farm products" as defined in Section 9-102(a)(34) of the Uniform Commercial Code of the State, (c) the Debtor has at all times operated its business in compliance in all material respects with all applicable provisions of federal, state and local statutes and ordinances, including, but not limited to, those dealing with the control, shipment, storage or disposal of hazardous materials or substances, and (d) all other information set forth on Schedule 1 pertaining to the Collateral is accurate and complete.

9. Covenants Concerning Collateral, etc. The Debtor further covenants with the Secured Party as follows: (a) the Collateral will be kept at those locations listed on Schedule 1 and the Debtor will not remove the Collateral from such locations, without providing at least 30 days prior written notice to the Secured Party, (b) except for the security interest herein granted and liens permitted by the Credit Agreement and the rights granted under the Debtor-NDS Licenses, the Debtor shall be the owner of the Collateral free from any right or claim of any other person, lien, security interest or other encumbrance, and the Debtor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to the Secured Party, (c) the Debtor shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, lien or encumbrance in the Collateral in favor of any person, other than the Secured Party except for liens permitted by the Credit Agreement and the rights granted under the Debtor-NDS Licenses, (d) the Debtor will keep the Collateral in good order and repair (normal wear and tear excepted) and will not use the same in violation of law or any policy of insurance thereon, (e) the Debtor will permit the Secured Party, or its designee, to inspect the Collateral at any reasonable time, wherever located, (f) the Debtor will pay promptly when due all uncontested taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of such Collateral or incurred in connection with this Agreement, (g) the Debtor will continue to operate, its business in compliance in all material respects with all applicable provisions of federal, state and local statutes and ordinances, including, but not limited to, those dealing with the control, shipment, storage or disposal of hazardous materials or substances, and (h) the Debtor will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except for (i) sales of inventory in the ordinary course of business and (ii) so long as no Event of Default has occurred and is continuing, other dispositions permitted by the Credit Agreement.

10. Insurance.

10.1. Maintenance of Insurance. The Debtor will maintain with financially sound and reputable insurers insurance with respect to its properties and business against such casualties and contingencies as shall be in accordance with general practices of businesses engaged in similar activities in similar geographic areas. Such insurance shall be in such minimum amounts that the Debtor will not be deemed a co-insurer under applicable insurance laws, regulations and policies and otherwise shall be in such amounts, contain such terms, be in such forms and be for such periods as may be reasonably satisfactory to the Secured Party. In addition, all such insurance shall be payable to the Secured Party as loss payee. Without limiting the foregoing, the Debtor will (i) keep all of its physical property insured with casualty or physical hazard insurance on an "all risks" basis, with broad form flood and earthquake coverages and electronic data processing coverage, with a full replacement cost endorsement and an

“agreed amount” clause in an amount equal to 100% of the full replacement cost of such property, (ii) maintain all such workers’ compensation or similar insurance as may be required by law, and (iii) maintain, in amounts equal to those generally maintained by businesses engaged in similar activities in similar geographic areas, general public liability insurance against claims of bodily injury, death or property damage occurring, on, in or about the properties of the Debtor; business interruption insurance; and product liability insurance.

10.2. Insurance Proceeds. The proceeds of any casualty insurance in respect of any casualty loss of any of the Collateral shall, subject to the rights, if any, of other parties with an interest having priority in the property covered thereby, (i) so long as no Default or Event of Default has occurred and is continuing and to the extent that the amount of such proceeds is less than \$25,000, be disbursed to the Debtor for direct application by the Debtor solely to the repair or replacement of the Debtor’s property so damaged or destroyed, and (ii) in all other circumstances, be held by the Secured Party as cash collateral for the Obligations. The Secured Party may, at its sole option, disburse from time to time all or any part of such proceeds so held as cash collateral, upon such terms and conditions as the Secured Party may reasonably prescribe, for direct application by the Debtor solely to the repair or replacement of the Debtor’s property so damaged or destroyed, or the Secured Party may apply all or any part of such proceeds to the Obligations with the Commitment (if not then terminated) being reduced by the amount so applied to the Obligations.

10.3. Continuation of Insurance. All policies of insurance shall provide for at least 30 days prior written cancellation notice to the Secured Party. In the event of failure by the Debtor to provide and maintain insurance as herein provided, the Secured Party may, at its option, provide such insurance and charge the amount thereof to the Debtor. The Debtor shall furnish the Secured Party with certificates of insurance and policies evidencing compliance with the foregoing insurance provision.

11. Collateral Protection Expenses; Preservation of Collateral.

11.1. Expenses Incurred by Secured Party. In the Secured Party’s discretion, if the Debtor fails to do so, the Secured Party may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, maintain any of the Collateral, make repairs thereto and pay any necessary filing fees or insurance premiums. The Debtor agrees to reimburse the Secured Party on demand for all expenditures so made. The Secured Party shall have no obligation to the Debtor to make any such expenditures, nor shall the making thereof be construed as the waiver or cure of any Default or Event of Default.

11.2. Secured Party’s Obligations and Duties. Anything herein to the contrary notwithstanding, the Debtor shall remain obligated and liable under each contract or agreement comprised in the Collateral to be observed or performed by the Debtor thereunder. The Secured Party shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Secured Party of any payment relating to any of the Collateral, nor shall the Secured Party be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Secured Party or to which the Secured Party may be entitled at any time or times. The Secured Party’s sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Uniform Commercial Code of the State or otherwise, shall be to deal with such Collateral in the same manner as the Secured Party deals with similar property for its own account.

12. Securities and Deposits. The Secured Party may at any time following and during the continuance of a Default and Event of Default, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Secured Party may following and during the continuance of a Default and Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to the Collateral. Regardless of the adequacy of Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Secured Party to the Debtor may at any time be applied to or set off against any of the Obligations.

13. Notification to Account Debtors and Other Persons Obligated on Collateral. If a Default or an Event of Default shall have occurred and be continuing, the Debtor shall, at the request and option of the Secured Party, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Secured Party in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Secured Party or to any financial institution designated by the Secured Party as the Secured Party's agent therefor, and the Secured Party may itself, if a Default or an Event of Default shall have occurred and be continuing, without notice to or demand upon the Debtor, so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, the Debtor shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Debtor as trustee for the Secured Party without commingling the same with other funds of the Debtor and shall turn the same over to the Secured Party in the identical form received, together with any necessary endorsements or assignments. The Secured Party shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Secured Party to the Obligations, such proceeds to be immediately credited after final payment in cash or other immediately available funds of the items giving rise to them.

14. Power of Attorney.

14.1. Appointment and Powers of Secured Party. The Debtor hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Debtor or in the Secured Party's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of the Debtor, without notice to or assent by the Debtor, to do the following:

(a) upon the occurrence and during the continuance of a Default or an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code of the State and as fully and completely as though the Secured Party were the absolute owner thereof for all purposes, and to do, at the Debtor's expense, at any time, or from time to time, all acts and things which the Secured Party deems necessary or useful to protect, preserve or realize upon the Collateral and the Secured Party's security interest therein, in order to effect the intent of this Agreement, all at least as fully and effectively as the Debtor might do, including, without limitation, and to the extent applicable, (i) the filing and prosecuting of registration and transfer applications with the appropriate federal, state, local or other agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (ii) upon written notice to the Debtor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Secured Party so elects, with a view to causing the liquidation of assets of the issuer of any such securities, and (iii) the execution, delivery and recording, in

connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral; and

(b) to the extent that the Debtor's authorization given in Section 3 is not sufficient, to file such financing statements with respect hereto, with or without the Debtor's signature, or a photocopy of this Agreement in substitution for a financing statement, as the Secured Party may deem appropriate and to execute in the Debtor's name such financing statements and amendments thereto and continuation statements which may require the Debtor's signature.

14.2. Ratification by Debtor. To the extent permitted by law, the Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable.

14.3. No Duty on Secured Party. The powers conferred on the Secured Party hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtor for any act or failure to act, except for the Secured Party's own gross negligence or willful misconduct.

15. Rights and Remedies. If an Event of Default shall have occurred and be continuing, the Secured Party, without any other notice to or demand upon the Debtor shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code of the State and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the Collateral, and for that purpose the Secured Party may, so far as the Debtor can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Secured Party may in its discretion require the Debtor to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Debtor's principal office(s) or at such other locations as the Secured Party may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party shall give to the Debtor at least ten (10) Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Debtor hereby acknowledges that ten (10) Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, the Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Secured Party's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

16. Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on the Secured Party to exercise remedies in a commercially reasonable manner, the Debtor acknowledges and agrees that it is not commercially unreasonable for the Secured Party (a) to fail to incur expenses reasonably deemed significant by the Secured Party to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or

media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as the Debtor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure the Secured Party against risks of loss, collection or disposition of Collateral or to provide to the Secured Party a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Secured Party in the collection or disposition of any of the Collateral. The Debtor acknowledges that the purpose of this Section 16 is to provide non-exhaustive indications of what actions or omissions by the Secured Party would fulfill the Secured Party's duties under the Uniform Commercial Code or other law of the State or any other relevant jurisdiction in the Secured Party's exercise of remedies against the Collateral and that other actions or omissions by the Secured Party shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section 16. Without limitation upon the foregoing, nothing contained in this Section 16 shall be construed to grant any rights to the Debtor or to impose any duties on the Secured Party that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 16.

17. No Waiver by Secured Party, etc. The Secured Party shall not be deemed to have waived any of its rights or remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Secured Party. No delay or omission on the part of the Secured Party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Secured Party with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Secured Party deems expedient.

18. Suretyship Waivers by Debtor. The Debtor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Debtor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Secured Party may deem advisable. The Secured Party shall have no duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 11.2. The Debtor further waives any and all other suretyship defenses.

19. Marshalling. The Secured Party shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, the Debtor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the

enforcement of the Secured Party's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Debtor hereby irrevocably waives the benefits of all such laws.

20. Proceeds of Dispositions; Expenses. The Debtor shall pay to the Secured Party on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Secured Party in protecting, preserving or enforcing the Secured Party's rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Secured Party may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code of the State, any excess shall be returned to the Debtor. In the absence of final payment and satisfaction in full of all of the Obligations, the Debtor shall remain liable for any deficiency.

21. Overdue Amounts. Until paid, all amounts due and payable by the Debtor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the Default Rate.

22. Governing Law; Consent to Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (including Section 5-1401 of the general obligations law of the State of New York). The Debtor agrees that any action or claim arising out of, or any dispute in connection with, this Agreement, any rights, remedies, obligations, or duties hereunder, or the performance or enforcement hereof or thereof, may be brought in the courts of the State or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Debtor by mail at the address specified in Section 7.2 of the Credit Agreement. The Debtor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

23. Waiver of Right to Trial by Jury. TO THE EXTENT PERMITTED BY APPLICABLE LAW, DEBTOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE NOTE, OR ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SECURED PARTY. DEBTOR SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY SECURED PARTY EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY IT. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Debtor acknowledges that this waiver is a material inducement to enter into a business relationship, that the Secured party has already relied on this waiver in entering into this Agreement, and that Secured Party will continue to rely on this waiver in its related future dealings. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN

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IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 23 AND EXECUTED BY SECURED PARTY), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO THE LOANS MADE UNDER THE CREDIT AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

24. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Debtor and its respective successors and assigns, and shall inure to the benefit of the Secured Party and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Debtor acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, the Debtor has caused this Agreement to be duly executed as of the date first above written.

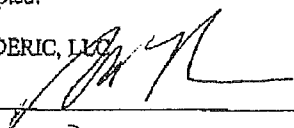
NIADYNE, INC

✓ By:  _____

✓ Title: CEO _____

Accepted:

FREDERIC, LLC

✓ By:  _____

✓ Title: CEO _____

SCHEDULE 1

1. Name. The exact legal name of the Debtor as that name appears on its Certificate or Articles of Incorporation is as follows:

Niadyne, Inc.

2. Other Identifying Factors.

- (a) The following is a mailing address for the Debtor:

Niadyne, Inc.
2350 Meridian Parkway, Suite 300
Research Triangle Park, NC 27713

- (b) If different from its indicated mailing address, the Debtor's place of business or, if more than one, its chief executive office is located at the following address:

<u>Address</u>	<u>County</u>	<u>State</u>
2530 Meridian Parkway Suite 200	Durham	Durham, NC 27713

- (c) The following is the type of organization of the Debtor:

Corporation

- (d) The following is the jurisdiction of the Debtor's organization:

Delaware

- (e) The following is the Debtor's state issued organizational identification number [state "None" if the state or organization does not issue such a number]: F-2753190.

SCHEDULE 2

**NIADYNE, INC. PATENTS
WITH CASE REFERENCE AND ISSUE DATE**

Issued Patent	Case Reference	Issue Date
6,287,796	NIAD 202.1	September 11, 2001
6,428,972	NIAD 202.2	August 6, 2002

Schedule 3

TRADEMARKS

Country	Title Mark	Status	Application No	Date Filed	Registration No	Registered Date
Argentina	NIA 24/7	Published	2381367	07/10/2002		
Argentina	NIA 24/7	Published	2381368	07/10/2002		
Australia	NIA 24/7	Registered	918818	07/04/2002	918818	07/04/2002
Brazil	NIA 24/7	Published	824737792	07/23/2002		
Brazil	NIA 24/7	Published	824737784	07/23/2002		
Canada	NIA 24/7	Allowed	1,146,621	07/17/2002		
China	NIA 24/7	Registered	3233340	07/05/2002	3233340	03/21/2004
China	NIA 24/7	Registered	3233440	07/05/2002	3233440	09/28/2003
European Community Trade Mark Office (OHIM)	NIA 24/7	Published	2764298	07/04/2002		
Japan	NIA 24/7	Registered	55992/2002	07/04/2002	4823312	12/3/2004
Mexico	NIA 24/7	Registered	557288	07/19/2002	800717	7/19/2002
Mexico	NIA 24/7	Registered	557287	07/19/2002	772290	7/19/2002
Russian Federation	NIA 24/7	Registered	2002-715267	08/09/2002	255936	08/09/2002
United States of America	NIA 24/7	Allowed	76/384,218	03/14/2002		
United States of America	N24	Allowed	78/679,793	07/27/2005		
United States of America	NIA24	Application filed	77/351,532	12/13/2007		
United States of America	NIA24	Application filed	77/351,578	12/13/2007		
Argentina	NIADYNE	Application Filed	2377560	06/03/2002		
Argentina	NIADYNE	Application Filed	2377561	06/03/2002		
Australia	NIADYNE	Registered	915117	06/03/2002	915117	11/04/2002
Brazil	NIADYNE	Application Filed	824638930	06/04/2002		
Brazil	NIADYNE	Application Filed	824638921	06/04/2002		
Canada	NIADYNE	Allowed	1,142,265	06/04/2002		
China	NIADYNE	Registered	3197866	06/03/2002	3197866	12/21/2003
China	NIADYNE	Registered	3197865	06/03/2002	3197865	08/28/2003

European Community Trade Mark Office (OHIM)	NIADYNE	Registered	2722957	06/03/2002	2722957	09/16/2003
Japan	NIADYNE	Registered	45794/2002	06/03/2002	4675012	05/23/2003
Mexico	NIADYNE	Application Filed	549821	06/04/2002		
Mexico	NIADYNE	Registered	549827	06/04/2002	783,814	06/04/2002
Russian Federation	NIADYNE	Registered	2002711129	06/04/2002	260494	12/22/2003
United States of America	NIADYNE	Registered	76/345,752	12/04/2001	2,813,649	02/10/2004
United States of America	NIASOMES	Registered	76/357,479	01/10/2002	2,825,821	03/23/2004
United States of America	NIASPHERES	Allowed	78/908,778	06/15/2006		
Argentina	PRO-NAD	Registered	2377562	06/03/2002	1954381	10/08/2003
Argentina	PRO-NAD	Application Filed	2377563	06/03/2002		
Australia	PRO-NAD	Registered	915116	06/03/2002	915116	06/03/2002
Brazil	PRO-NAD	Application Filed	824638913	06/04/2002		
Brazil	PRO-NAD	Application Filed	824638905	06/04/2002		
Canada	PRO-NAD	Registered	1,142,266	06/04/2002	TMA617,567	08/25/2004
China	PRO-NAD	Application Filed	3197864	06/03/2002		
China	PRO-NAD	Registered	3197863	06/03/2002	3197863	02/21/2004
European Community Trade Mark Office (OHIM)	PRO-NAD	Registered	2722965	06/03/2002	2722965	10/29/2003
Japan	PRO-NAD	Registered	45795/2002	06/03/2002	4695319	07/25/2003
Mexico	PRO-NAD	Registered	549826	06/04/2002	788,079	06/04/2002
Mexico	PRO-NAD	Registered	549825	06/04/2002	788,078	06/04/2002
Russian Federation	PRO-NAD	Registered	2002711128	06/04/2002	253556	06/04/2002
United States of America	PRO-NAD	Registered	76/345,753	12/04/2001	2,948,674	05/15/2005

United States of America	PRO-NIACIN	Application Filed	77/351,724	12/13/2007		
United States of America	PRO-NIACIN	Application Filed	77/351,738	12/13/2007		
United States of America	PRONIASOMES	Allowed	76/356,018	01/07/2002	3,015,859	11/15/2005
United States of America	PRONIASOMES	Registered	76/976,213	01/07/2002	2,818,262	02/24/2004